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Contents

Federal Register

Vol. 78, No. 222

Monday, November 18, 2013

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Consumer Assessment of Healthcare Providers and Systems Health Plan Survey Comparative Database, 69088–69090

Agricultural Marketing Service
RULES
Cotton Futures Classification:
Optional Classification Procedure, 68983–68985

Agriculture Department
See Agricultural Marketing Service
See Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69040

Army Department
NOTICES
Meetings:
Army Education Advisory Subcommittee, 69077

Bureau of Safety and Environmental Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69118–69121
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Open and Nondiscriminatory Access to Oil and Gas Pipelines under the OCS Lands Act, 69121–69123

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69090–69093
Performance Review Board Members, 69093

Coast Guard
RULES
Safety Zones:
Vessel Removal from the Oakland Estuary, Alameda, CA, 68995–68997
Special Local Regulations:
Southern California Annual Marine Events for the San Diego Captain of the Port Zone, 68995
PROPOSED RULES
Special Local Regulations:
Eleventh Coast Guard District Annual Marine Events, 69007–69018

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
RULES
Ownership and Control Reports:
Enhanced Identification of Futures and Swap Market Participants, 69178–69266

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Removal of DFARS Coverage on Contractors Performing Private Security Functions, 69282–69283
Requirements Relating to Supply Chain Risk, 69268–69273
Safeguarding Unclassified Controlled Technical Information, 69273–69282

Defense Department
See Army Department
See Defense Acquisition Regulations System
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Preaward Survey Forms, 69086–69088
Arms Sales, 69073–69076
Privacy Act; Systems of Records, 69076–69077

Drug Enforcement Administration
NOTICES
Importers of Controlled Substances:
Johnson Matthey, Inc., 69130
Importers of Controlled Substances; Applications:
Cerilliant Corp., 69130–69131
Importers of Controlled Substances; Registrations:
Catalent CTS, LLC., 69131–69132
Chattem Chemicals, Inc., 69131
Noramco, Inc., 69132
Manufacturers of Controlled Substances; Applications:
Johnson Matthey, Inc., 69132–69133
Morton Grove Pharmaceuticals, 69133
National Center for Natural Products Research (NIDA MProject), 69132
Manufacturers of Controlled Substances; Registrations:
AMPAC Fine Chemicals, LLC., 69134
Apertus Pharmaceuticals, 69134
Lin Zhi International, Inc., 69133

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Florida; Approval of Revision to the State Implementation Plan, 68997–68999
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
8 Hour Ozone National Ambient Air Quality Standard (Renewal), 69083–69084
Air Emission Standards for Tanks, Surface Impoundment and Containers (Renewal), 69084
Compliance Assurance Monitoring Program (Renewal), 69082–69083
Implementation of Ambient Air Protocol Gas Verification Program (Renewal), 69084–69085

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Short-Term Letter of Credit Export Credit Insurance Policy, 69085–69086

Federal Aviation Administration
RULES
Special Conditions:
Boeing Model 777–200, –300, and –300ER Series Airplanes; Aircraft, 68986–68987
Boeing Model 777–200, –300, and –300ER Series Airplanes; Aircraft Electronic System Security Protection from Unauthorized Internal Access, 68985–68986

Federal Communications Commission
PROPOSED RULES
Mobile Wireless Communications Networks:
Reliability and Continuity of Communications Networks, Including Broadband Technologies, 69018–69033
NOTICES
Radio Broadcasting Services:
AM or FM Proposals to Change the Community of License, 69086

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 69086

Federal Emergency Management Agency
RULES
Suspensions of Community Eligibility, 68999–69002
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69097–69100
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Federal Assistance Form; How to Process Mission Assignments in Federal Disaster Operations, 69100–69101

Federal Energy Regulatory Commission
NOTICES
Applications:
Houston Pipe Line Co., LP, 69078–69079
Meetings:
Midcontinent Independent System Operator, Inc.; Technical Conference, 69079–69080
Preliminary Permit Applications:
Houtama Hydropower, LLC, 69080–69081
JD Products, LLC, 69081–69082
Mid-Atlantic Hydro, LLC, 69081

Federal Register Office
PROPOSED RULES
Incorporation by Reference; Correction, 69006

Federal Register, Administrative Committee
See Federal Register Office

Federal Trade Commission
RULES
Guides for Private Vocational and Distance Education Schools, 68987–68991

Fish and Wildlife Service
NOTICES
Draft Long Range Transportation Plan for U.S. Fish and Wildlife Service Lands in the Midwest Region, 69123–69124
Meetings:
Trinity Adaptive Management Working Group, 69124–69125

Food and Drug Administration
PROPOSED RULES
Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption:
Environmental Impact Statement, 69006–69007
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods, etc., 69095
Guidance for Industry on Special Protocol Assessment, 69093–69095
Premarket Notification for a New Dietary Ingredient, 69095–69097

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Preaward Survey Forms, 69086–69088

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Healthcare Research and Quality Agency
See Agency for Healthcare Research and Quality

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Quality Control for Rental Assistance Subsidy Determinations, 69103–69104
Second Allocation, Waivers, and Alternative Requirements for Grantees:
Community Development Block Grant Disaster Recovery Funds, 69104–69113
Statutorily Mandated Designation of Difficult Development Areas for 2014, 69113–69118

Interior Department
See Bureau of Safety and Environmental Enforcement
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping Duty Investigations; Results, Extensions, Amendments, etc.:
Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan, 69041–69047
Travel and Tourism Trade Missions:
Taiwan, Japan and Korea, 69047–69048

International Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Trade, Investment, and Industrial Policies in India; Effects on the U.S. Economy, 69128–69129

Justice Department
See Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
COPS Application Package, 69129–69130

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Current Population Survey; Displaced Worker, Job Tenure, and Occupational Mobility Supplement, 69134–69135

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69125–69127
Meetings:
Rio Grande Natural Area Commission, 69127

Maritime Administration
NOTICES
Administrative Waivers of the Coastwise Trade Laws:
Vessel PURSE PRINCESS, 69172–69173
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69173

Mine Safety and Health Administration
NOTICES
Petitions:
Mandatory Safety Standards; Modifications, 69135–69137

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Preaward Survey Forms, 69086–69088

National Archives and Records Administration
See Federal Register Office

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 69137–69138

National Institutes of Health
NOTICES
Meetings:
Office of the Director, 69097

National Oceanic and Atmospheric Administration
RULES
Fraser River Sockeye and Pink Salmon Fisheries:
Inseason Orders, 69002–69005
PROPOSED RULES
Endangered and Threatened Wildlife:
90-Day Finding on Petitions to List the Pinto Abalone, 69033–69039
NOTICES
Meetings:
Caribbean Fishery Management Council, 69048–69049
Permits:
Marine Mammals; File No. 18171, 69049
Takes of Marine Mammals Incidental to Specified Activities:
Operation, Maintenance, and Repair of the Northeast Gateway Liquefied Natural Gas Port and the Algonquin Pipeline Lateral Facilities in Massachusetts Bay, 69049–69072
Taking and Importing Marine Mammals:
Elliott Bay Seawall Project, Seattle, WA, 69072–69073

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Biscayne National Park, FL, 69127–69128

National Science Foundation
NOTICES
Meetings:
Proposal Review Panel for Computing Communication Foundations, 69138
Meetings; Sunshine Act, 69138–69139

Navy Department
NOTICES
Environmental Assessments; Availability, etc.:
Former Naval Air Station Alameda, Alameda, CA, 69077–69078

Nuclear Regulatory Commission
NOTICES
Draft Guidance for Industry and Staff:
Physical Security; Design Certification and Operating Reactors; Standard Review Plan, 69139–69140
Petitions:
CSMI, LLC; Request for Action, 69140

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Payment of Premiums; Termination Premium, 69140–69141

Personnel Management Office
RULES
Electronic Retirement Processing, 68981–68983

Postal Regulatory Commission
NOTICES
Meetings; Sunshine Act, 69141

Railroad Retirement Board
NOTICES
Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations, 69141–69143

Research and Innovative Technology Administration
NOTICES
Funding Availability:
University Transportation Centers Program, 69173–69175

Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 69040–69041

Securities and Exchange Commission
NOTICES
Applications:
Altegris Advisors, LLC, et al., 69155–69159
Guggenheim Equal Weight Enhanced Equity Income Fund and Guggenheim Funds Investment Advisers, LLC, 69143–69147
Ranger Alternative Management, L.P. and Ranger Funds Investment Trust, 69147–69155
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 69162–69164
Chicago Board Options Exchange, Inc., 69159–69162, 69168–69171
ICE Clear Credit LLC, 69167–69168
NASDAQ OMX PHLX LLC, 69164–69167
National Securities Clearing Corp., 69168

State Department
RULES
Visas:
Documentation of Nonimmigrants; Visa Classification; T Visa Class, 68992–68995
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Mentor Protege Program Application, 69171–69172
Meetings:
Defense Trade Advisory Group; Cancellation, 69172
U.S. Department of State Advisory Committee on Private International Law; Electronic Commerce, 69172

Substance Abuse and Mental Health Services Administration
NOTICES
Performance Review Board Members, 69097

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Research and Innovative Technology Administration

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes, 69101–69102
Prior Disclosure, 69102
Commercial Gaugers and Laboratories; Accreditations and Approvals:
Inspectorate America Corp., 69102–69103

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Financial Statement, 69175
Presidential Management Certificate, 69175–69176
Meetings:
Advisory Committee on Prosthetics and Special–Disabilities Programs, 69176

Separate Parts In This Issue

Part II
Commodity Futures Trading Commission, 69178–69266

Part III
Defense Department, Defense Acquisition Regulations System, 69268–69283

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.

1 CFR

Proposed Rules:

51 69006

5 CFR

850 68981

7 CFR

27 68983

14 CFR

25 (2 documents) 68985, 68986

16 CFR

254 68987

17 CFR

15 69178
17 69178
18 69178
20 69178

21 CFR

Proposed Rules:

16 69006
112 69006

22 CFR

41 68992

33 CFR

100 68995
165 68995

Proposed Rules:

100 69007

40 CFR

52 68997

44 CFR

64 (2 documents) 68999, 69001

47 CFR

Proposed Rules:

4 69018

48 CFR

204 69273
208 69268
212 (2 documents) 69268, 69273
215 69268
225 69282
233 69268
239 69268
244 69268
252 (3 documents) 69268, 69273, 69283

50 CFR

300 69002

Proposed Rules:

223 69033
224 69033

Rules and Regulations

Federal Register
Vol. 78, No. 222
Monday, November 18, 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 850

RIN 3206–AM45

Electronic Retirement Processing

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed regulations applicable to electronic benefits processing under the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), the Federal Employees' Group Life Insurance (FEGLI), the Federal Employees Health Benefits (FEHB), and the Retired Federal Employee Health Benefits (RFEHB) Programs. These amendments are also being adopted to provide OPM with the flexibility to implement further improvements in automated retirement processing, recordkeeping, and electronic submission of forms and retirement applications as OPM's technological initiatives reach completion.

DATES: Effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson or Kristine Prentice, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On March 5, 2013, OPM published (at 78 FR 14233) proposed regulations to amend part 850 of title 5, Code of Federal Regulations, by updating regulations previously published (at 72 FR 73573). Pursuant to the President's January 18, 2011, Executive Order 13563—*Improving Regulation and Regulatory Review,* 76 FR 3821 (January 21, 2011), the Office of Personnel Management (OPM) undertook a review of part 850 of title 5, Code of Federal Regulations, to streamline and revise this part so that it better serves OPM's ongoing modernization of the processing of benefits under the CSRS, FERS, FEGLI, FEHB, and the RFEHB Programs. OPM is adopting these amendments to part 850 to ensure the rule reflects the electronic recordkeeping and automated retirement processing improvements being deployed by OPM, agencies, and Shared Service Centers under OPM's Human Resources Line of Business.

OPM received no comments on the proposed regulations. Accordingly, we are now adopting the proposed regulations as final without change.

Executive Order 13563 and Executive Order 12866

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the purpose of this regulation is to assist in facilitating OPM's ongoing modernization of the processing of benefits under CSRS, FERS, FEGLI, FEHB, and RFEHB.

List of Subjects in 5 CFR Part 850

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM is amending 5 CFR part 850 as follows:

PART 850—ELECTRONIC RETIREMENT PROCESSING

■ 1. The authority citation for part 850 continues to read as follows:

Authority: 5 U.S.C. 8347; 5 U.S.C. 8461; 5 U.S.C. 8716; 5 U.S.C. 8913; sec. 9 of Pub. L. 86–724, 74 Stat. 849, 851–52 (September 8, 1960) as amended by sec. 102 of Reorganization Plan No. 2 of 1978, 92 Stat. 3781, 3783 (February 23, 1978).

■ 2. The heading for part 850 is revised to read as set forth above.

■ 3. Revise 850.101 to read as follows:

§ 850.101 Purpose and scope.

(a) The purpose of this part is to enable changes to OPM's retirement and insurance processing systems to improve the quality and timeliness of services to employees and annuitants covered by CSRS and FERS by using contemporary, automated business processes and supporting accessible technologies. By utilizing these automated processes, OPM will employ more efficient and effective business systems to respond to increased customer demand for higher levels of customer service and online self-service tools.

(b) The provisions of this part authorize exceptions from regulatory provisions that would otherwise apply to CSRS and FERS annuities and FEGLI, FEHB, and RFEHB benefits processed by or at the direction of OPM. Those regulatory provisions that would otherwise apply were established for a hardcopy based retirement and insurance benefits processing system that may eventually be phased out but which will continue to operate concurrently with OPM's modernization efforts. During the phased transition to electronic retirement and insurance processing, certain regulations that were not designed with information technology needs in mind, and which are incompatible with electronic business processes, must be set aside with respect to electronic retirement and insurance processing. The regulations set forth in this part make the transition to electronic processing possible.

(c) The provisions of this part do not affect retirement and insurance eligibility and annuity computation provisions. The provisions for capturing retirement and insurance data in an electronic format, however, may support, in some instances, more precise calculations of annuity and insurance benefits than were possible using hardcopy records.

■ 4. Revise 850.103 to read as follows:

§ 850.103 Definitions.

In this part—

Agency means an Executive agency as defined in section 105 of title 5, United States Code; a legislative branch agency; a judicial branch agency; the U.S. Postal Service; the Postal Regulatory Commission; and the District of Columbia government.

Biometrics means the technology that converts a unique characteristic of an individual into a digital form, which is then interpreted by a computer and compared with a digital exemplar copy of the characteristic stored in the computer. Among the unique characteristics of an individual that can be converted into a digital form are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

Cryptographic control method means an approach to authenticating identity or the authenticity of an electronic document through the use of a cipher (i.e., a pair of algorithms) which performs encryption and decryption.

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Digital signature means an electronic signature generated by means of an algorithm that ensures that the identity of the signatory and the integrity of the data can be verified. A value, referred to as the ''private key,'' is generated to produce the signature and another value, known as the ''public key,'' which is linked to but is not the same as the private key, is used to verify the signature.

Digitized signature means a graphical image of a handwritten signature usually created using a special computer input device (such as a digital pen and pad), which contains unique biometric data associated with the creation of each stroke of the signature (such as duration of stroke or pen pressure). A digitized signature can be verified by a comparison with the characteristics and biometric data of a known or exemplar signature image.

Director means the Director of the Office of Personnel Management.

Electronic communication means any information conveyed through electronic means and includes electronic forms, applications, elections, and requests submitted by email or any other electronic message.

Electronic Document Management System (EDMS) means the electronic system of images of hardcopy individual retirement records (SF 2806 and SF 3100) and other retirement-related documents.

Electronic Individual Retirement Record (eIRR) means a web-based database that contains certified electronic closeout and fully paid post-56 military service deposit Individual Retirement Records (IRRs), also known as Standard Form (SF) 2806 and SF 3100. The eIRR is stored in the Electronic Individual Retirement Record records storage database (formerly known as the Individual Retirement Record Closeout Data Capture or ICDC records storage database).

Electronic Official Personnel Record Folder (eOPF) means an electronic version of the hardcopy Official Personnel Folder (OPF), providing Web-enabled access for federal employees and HR staff to view eOPF documents.

Electronic Retirement Record (ERR) means the certified electronic retirement record submitted to OPM as a retirement data feed in accordance with the Guide to Retirement Data Reporting. The ERR is submitted to OPM whenever an Agency would otherwise submit a hardcopy IRR to OPM.

Employee means an individual, other than a Member of Congress, who is covered by CSRS or FERS.

Enterprise Human Resources Integration (EHRI) Data System means the comprehensive electronic retirement record-keeping system that supports OPM's retirement processing across the Federal Government.

FEGLI means the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code.

FEHB means the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

FERS means the Federal Employees' Retirement System established under chapter 84 of title 5, United States Code.

Member means a Member of Congress as defined by section 2106 of title 5, United States Code, who is covered by CSRS or FERS.

Non-cryptographic method is an approach to authenticating identity that relies solely on an identification and authentication mechanism that must be linked to a specific software platform for each application.

Personal identification number (PIN) or password means a non-cryptographic method of authenticating the identity of a user of an electronic application, involving the use of an identifier known only to the user and to the electronic system, which checks the identifier against data in a database to authenticate the user's identity.

Public/private key (asymmetric) cryptography is a method of creating a unique mark, known as a digital signature, on an electronic document or file. This method involves the use of two computer-generated, mathematically-linked keys: A private signing key that is kept private and a public validation key that is available to the public.

Retirement Data Repository means a secure centralized data warehouse that stores electronic retirement data of employees covered under the Civil Service Retirement System or the Federal Employees Retirement System compiled from multiple sources including agencies and Shared Service Centers.

RFEHB means the Retired Federal Employees Health Benefits Program established under Public Law 86–724, 74 Stat. 849, 851–52 (September 8, 1960), as amended.

Shared Service Centers means processing centers delivering a broad array of administrative services to multiple agencies.

Shared symmetric key cryptography means a method of authentication in which a single key is used to sign and verify an electronic document. The single key (also known as a ''private key'') is known only by the user and the recipient or recipients of the electronic document.

Smart card means a plastic card, typically the size of a credit card, containing an embedded integrated circuit or ''chip'' that can generate, store, or process data. A smart card can be used to facilitate various authentication technologies that may be embedded on the same card.

■ 5. Amend § 850.106 by revising paragraph (a)(4) to read as follows:

§ 850.106 Electronic signatures.

(a) * * *

(4)(i) In general, any regulatory requirement under CSRS, FERS, FEGLI, FEHB or RFEHB that a signature be notarized, certified, or otherwise witnessed, by a notary public or other official authorized to administer oaths may be satisfied by the electronic signature of the person authorized to perform those acts when such electronic signature is attached to or logically associated with all other information and records required to be included by the applicable regulation.

(ii) Except as provided in paragraph (a)(4)(iii) of this section, a person signing a consent or election for the purpose of electronic notarization under paragraph (a)(4)(i) of this section must be in the physical presence of the notary public or an official authorized to administer oaths.

(iii) The Director may provide in directives issued under § 850.104 that alternative procedures utilized by a notary public or other official authorized to administer oaths (such as audio-video conference technology) will be deemed to satisfy the physical presence requirement for a notarized, certified, or witnessed election or consent, but only if those procedures with respect to the electronic system

provide the same safeguards as are provided by physical presence.

* * * * *

■ 6. Revise § 850.201 to read as follows:

§ 850.201 Applications for benefits.

(a) Hardcopy applications and related submissions that are otherwise required to be made to an individual's employing agency (other than by statute) may instead be submitted electronically in such form as the Director prescribes under § 850.104.

(b) Data provided under subpart C of this part are the basis for adjudicating claims for CSRS and FERS retirement benefits, and will support the administration of FEGLI, FEHB and RFEHB coverage for annuitants, under this part.

§ 850.202 [Amended]

■ 7. Amend § 850.202 by removing the paragraph parenthetical designation ''(a)'' and by removing paragraph (b).

■ 8. Revise § 850.203 to read as follows:

§ 850.203 Other elections.

Any other election may be effected in such form as the Director prescribes under § 850.104. Such elections include but are not limited to elections of coverage under CSRS, FERS, FEGLI, FEHB, or RFEHB by individuals entitled to elect such coverage; applications for service credit and applications to make deposit; and elections regarding the withholding of State income tax from annuity payments.

■ 9. Revise § 850.301 to read as follows:

§ 850.301 Electronic records; other acceptable records.

(a) Acceptable electronic records for retirement and insurance processing by OPM include—

(1) Electronic employee data, including an eIRR or an ERR, submitted by an agency, agency payroll office, or Shared Service Center, or other entity and stored within the EHRI Retirement Data Repository, the eIRR records storage database, or other OPM database.

(2) Electronic Official Personnel Folder (eOPF) data; and

(3) Documents, including hardcopy versions of the Individual Retirement Record (SF 2806 or SF 3100), or data or images obtained from such documents, including images stored in EDMS, that are converted to an electronic or digital form by means of image scanning or other forms of electronic or digital conversion.

(b) Documents that are not converted to an electronic or digital form will continue to be acceptable records for processing by the retirement and insurance processing system.

■ 10. Revise § 850.401 to read as follows:

§ 850.401 Electronic notice of coverage determination.

An agency or other entity that submits electronic employee records directly or through a Shared Service Center must include in the notice of law enforcement officer, firefighter, or nuclear materials retirement coverage, required by §§ 831.811(a), 831.911(a), 842.808(a), or 842.910(a) of this chapter, the position description number, or other unique alphanumeric identifier, in the notice for the position for which law enforcement officer, firefighter, or nuclear materials courier retirement coverage has been approved. Agencies or other entities must submit position descriptions to OPM in a PDF document to combox address: *combox@opm.gov*.

[FR Doc. 2013–27534 Filed 11–15–13; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[AMS–CN–13–0043]

RIN 0581–AD33

Cotton Futures Classification: Optional Classification Procedure

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending regulations to allow for the addition of an optional cotton futures classification procedure—identified and known as ''registration'' by the U.S. cotton industry and the Intercontinental Exchange (ICE). In response to requests from the U.S. cotton industry and ICE, AMS will offer a futures classification option whereby cotton bales may be certificated for the purpose of an exchange's cotton futures contract using Smith-Doxey data to verify that submitted bales meet more restrictive quality requirements and age parameters established by that exchange. AMS anticipates that the futures classification option will be available in time for the implementation of ICE's Cotton Resolution No. 2, which is scheduled to commence with the March 2014 contract month.

DATES: *Effective Date:* November 19, 2013.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are approximately 60 cotton merchant organizations of various sizes active in trading U.S. cotton. Cotton merchants voluntarily use the AMS cotton futures classification services under the Cotton Futures Act (Act) (7 U.S.C. 15b). Many of these cotton merchants are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.201). Establishing the registration option for cotton futures classification will not significantly affect small businesses as defined in the RFA because:

(1) The established user fee for cotton futures classification services is $3.50 per bale (7 CFR § 27.80). Users choosing the registration option would incur no additional charges;

(2) The established cotton futures classification fee represents a very small portion of the cost per-unit currently borne by those entities utilizing the service;

(3) The average price paid to producers for cotton from the 2012 crop was 73.22 cents per pound, making a 500 pound bale of cotton worth an average of $366.10. The current user fee

for futures classification services, $3.50 per bale, is less than one percent of the average value of a bale of cotton;

(4) The fee for this service will not affect competition in the marketplace;

(5) The futures classification option is expected to streamline marketing and create logistical efficiencies for all entities utilizing this option; and

(6) The use of futures classification services is voluntary. For fiscal year 2013, there were 913,179 cotton futures samples (approximately 5.4 percent of the 16,942,409 Smith-Doxey classifications) voluntarily submitted for the futures classification service.

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements associated with this rule have been previously approved by OMB and were assigned OMB control number 0581–0008, Cotton Classing, Testing, And Standards.

Background

The Act requires USDA-verified quality measurements for each bale to be included in futures contracts for the purpose of verifying that each bale meets the minimum quality requirements for cotton futures trading. Furthermore, the Act authorizes the charging of user fees required to recover the cost associated with providing futures quality verification services.

USDA was first directed to provide cotton classification services to producers of cotton under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75–28). Therefore, the original classification of a cotton bale's sample and quality data which results from this classification is commonly referred to as the Smith-Doxey classification or Smith-Doxey data. While cotton classification is not mandatory, practically every cotton bale grown in the United States today is classed by AMS under the authority of the Cotton Statistics and Estimates Act (7 U.S.C. 471–476) and the U.S. Cotton Standards Act (7 U.S.C. 51–65) and under regulations found in 7 CFR part 28—Cotton Classing, Testing, and Standards. The U.S. cotton industry uses Smith-Doxey data to assign quality-adjusted market values to U.S. cotton and market U.S. cotton both domestically and internationally. Smith-Doxey data is commonly used by the cotton merchant community to indicate which bales may be tenderable against a cotton futures contract.

Conventional procedures employed for verifying quality measurements for bales to be included in futures contracts consists of two futures classifications: 1) initial futures classification and 2) final futures classification. AMS, Cotton and Tobacco Program revised these procedures to incorporate Smith-Doxey data into the cotton futures classification process in March 2012 (77 FR 5379). When verified by a futures classification, Smith-Doxey data serves as an initial futures classification with the verifying futures classification serving as a final futures classification. The use of Smith-Doxey data significantly reduced the number of futures classifications required for many of the bales that were submitted for certification.

The successful incorporation of Smith-Doxey data into the futures classification procedures prompted the U.S. cotton industry and ICE to request that the AMS, Cotton and Tobacco Program use Smith-Doxey data to certify that bales submitted for quality verification meet more restrictive quality requirements and age parameters set by ICE for use in a cotton futures contract. The U.S. cotton industry and ICE refer to this optional procedure as the ''registration option''.

The established user fee for cotton futures classification services is $3.50 per bale (7 CFR 27.80). Customers choosing this cotton futures classification option will incur this charge. In the event that AMS determines that a bale submitted under this option fails to meet quality or age parameters set by the exchange inspection agency, the owner of the bale will be notified of the bale's failure.

AMS, Cotton and Tobacco Program is amending regulations in 7 CFR part 27 to allow for the use of original Smith-Doxey data to certify that bales submitted for quality verification meet quality and age parameters set by the applicable exchange inspection agency. Accordingly, the definition of ''Classification'' in § 27.2, paragraph (n) is amended to allow the registration option for the futures classification services. Also in § 27.2, the term ''Smith-Doxey data'' is defined in new paragraphs (p).

Summary of Comments

A proposed rule was published in the **Federal Register** on September 9, 2013, with a comment period of September 9, 2013 through October 9, 2013 (78 FR 54970). AMS received two comments: one from a national trade organization representing cotton merchant firms that handle over 80 percent of the U.S. cotton sold in domestic and foreign markets; and one from an American commodities exchange that operates regulated exchanges and clearing houses for energy, agricultural, credit, currency, emissions, and equity index products. Both comments expressed support for all provisions outlined in the proposed rule and the future classification services provided by the AMS Cotton and Tobacco Program. Comments may be viewed at *www.regulations.gov.*

The U.S. cotton industry and ICE requested that AMS, Cotton and Tobacco Program make this option available in December 2013 to coincide with the implementation of ICE's Cotton Resolution No. 2, which is scheduled to commence with the March 2014 contract month. Accordingly, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble, 7 CFR part 27 is amended to read as follows:

PART 27—[AMENDED]

■ 1. The authority citation for 7 CFR part 27 is revised to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 473b, 7 U.S.C. 1622(g).

■ 2. In § 27.2, paragraph (n) is revised and new paragraph (p) is added to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) *Classification.* The classification of any cotton shall be determined by the quality of a sample in accordance with the Universal Cotton Standards (the official cotton standards of the United States) for cotton property measurements of American Upland cotton. High Volume Instruments will determine all cotton property measurements except extraneous matter. Cotton classers authorized by the Cotton and Tobacco Program will determine the presence of extraneous matter. Original Smith-Doxey data may serve as certification that bales submitted for quality verification meet quality and age parameters set by an applicable exchange inspection agency as a futures classification option.

* * * * *

(p) *Smith-Doxey data.* Data reflecting the original classification of a cotton bale provided to producers of cotton under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75–28).

Dated: November 5, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–27533 Filed 11–15–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0958; Special Conditions No. 25–503–SC]

Special Conditions: Boeing Model 777–200, –300, and –300ER Series Airplanes; Aircraft Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 777–200, –300, and –300ER series airplanes. These airplanes, as modified by the Boeing Company, will have novel or unusual design features associated with the architecture and connectivity of the passenger service computer network systems to the airplane critical systems and data networks. This onboard network system will be composed of a network file server, a network extension device, and additional interfaces configured by customer option. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* The effective date of these special conditions is November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2012, The Boeing Company applied for a change to Type Certificate No. T00001SE Rev. 30 dated June 6, 2012 for installation of an onboard network system, associated line replaceable units (LRUs) and additional software functionality in the Boeing Model 777–200, –300, and –300ER Series Airplanes. The Boeing Model 777–200 airplanes are long-range, wide-body, twin-engine jet airplanes with a maximum capacity of 440 passengers. The Boeing Model 777–300 and 777–300ER series airplanes have a maximum capacity of 550 passengers. The Model 777–200, –300, and –300ER series airplanes have fly-by-wire controls, software-configurable avionics, and fiber-optic avionics networks.

The proposed architecture is novel or unusual for commercial transport airplanes by enabling connection to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This proposed data network and design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to aircraft systems. Furthermore, regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be caused by unauthorized access to aircraft data buses and servers.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, The Boeing Company must show that the Model 777–200, –300, and –300ER series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–128.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200, –300, and –300ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

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

In addition to the applicable airworthiness regulations and proposed special conditions, the Boeing Model 777–200, –300, and –300ER series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

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

Novel or Unusual Design Features

The Boeing Model 777–200, –300, –300ER series airplanes will incorporate the following novel or unusual design features: An onboard computer network system, and a network extension device. The network extension device will improve domain separation between the airplane information services domain and the aircraft control domain. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight-safety related control and navigation systems,
2. Operator business and administrative support (operator information services),
3. Passenger information systems, and,
4. Access by systems internal to the airplane.

Discussion

The integrated network configurations in the Boeing Model 777–200, –300, and –300ER series airplanes may enable increased connectivity with external network sources and will have more interconnected networks and systems, such as passenger entertainment and information services than previous airplane models. This may enable the exploitation of network security vulnerabilities and increased risks potentially resulting in unsafe conditions for the airplanes and occupants. This potential exploitation of security vulnerabilities may result in intentional or unintentional destruction, disruption, degradation, or exploitation of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are being issued to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or

wireless electronic connections between the airplane information services domain, aircraft control domain, and the passenger entertainment services.

For the reasons discussed above, these special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–200, –300, –300ER series airplanes. Should The Boeing Company apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777–200, –300, –300ER series airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200, –300, –300ER series airplanes modified by The Boeing Company.

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to enable the operator to ensure that continued airworthiness of the aircraft is maintained, including all post STC modifications that may have an impact on the approved electronic system security safeguards.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–27343 Filed 11–15–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0959; Special Conditions No. 25–504]

Special Conditions: Boeing Model 777–200, –300, and –300ER Series Airplanes; Aircraft Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 777–200, –300, and –300ER series airplanes. These airplanes, as modified by The Boeing Company, will have novel or unusual design features associated with the architecture and connectivity capabilities of the airplane's onboard network computer systems, which may allow access to or by external computer systems and networks. This onboard network system will be composed of a network file server, a network extension device, and additional interfaces configured by customer option. Connectivity to, or access by, external systems and networks may result in security vulnerabilities to the airplane's onboard network system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* The effective date of these special conditions is November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2012, The Boeing Company applied for a change to Type Certificate No. T00001SE Rev. 30 dated June 6, 2012 for installation of an onboard network system, associated line replaceable units (LRUs) and additional software functionality in the Boeing Model 777–200, –300, and –300ER Series Airplanes. The Boeing Model 777–200 airplanes are long-range, wide-body, twin-engine jet airplanes with a maximum capacity of 440 passengers. The Boeing Model 777–300 and 777–300ER series airplanes have a maximum capacity of 550 passengers. The Model 777–200, –300, and –300ER series airplanes have fly-by-wire controls, software-configurable avionics, and fiber-optic avionics networks.

The proposed architecture is novel or unusual for commercial transport airplanes by enabling connection to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This proposed data network and design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to aircraft systems. Furthermore, regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be caused by unauthorized access to aircraft data buses and servers.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, The Boeing Company must show that the Boeing Model 777–200, –300, and –300ER series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–128.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–200, –300, and –300ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

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

In addition to the applicable airworthiness regulations and proposed special conditions, the Boeing Model 777–200, –300, and –300ER series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

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

Novel or Unusual Design Features

The Boeing Model 777–200, –300, –300ER series airplanes will incorporate the following novel or unusual design features: An onboard computer network system, and a network extension device. The network extension device will improve domain separation between the airplane information services domain and the aircraft control domain. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

1. Flight Safety related control and information systems.
2. Operator business and administrative support (operator information domain);
3. Passenger information and entertainment systems (passenger entertainment domain), and;
4. The capability to allow access to or by external sources.

Discussion

The architecture and network configuration in the Boeing Model 777–200, –300, and –300ER series airplanes may enable increased connectivity to, or access by, external airplane sources, airline operations, and maintenance systems to the aircraft control functions and airline information services. The aircraft control functions and airline information services perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane systems, data buses, and servers. Therefore, these special conditions are issued to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–200, –300, –300ER series airplanes. Should The Boeing Company apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 777–200, –300, –300ER series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–200, –300, –300ER series airplanes modified by The Boeing Company.

1. The applicant must ensure airplane electronic system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.
2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.
3. The applicant must establish appropriate procedures to enable the operator to ensure that continued airworthiness of the aircraft is maintained, including all post Type Certification modifications that may have an impact on the approved electronic system security safeguards.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–27342 Filed 11–15–13; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 254

Guides for Private Vocational and Distance Education Schools

AGENCY: Federal Trade Commission.

ACTION: Final rule; revisions to Guides.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of the Guides for Private Vocational and Distance Education Schools (''Vocational School Guides'' or ''Guides'') as part of its systematic review of all current FTC rules and guides and issues its revisions.

DATES: This action is effective as of November 18, 2013.

ADDRESSES: Requests for copies of this rule should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The notice is also available on the Commission's Web site, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Del Monaco, Attorney, East Central Region, Federal Trade Commission, (216) 263–3405, 1111

Superior Avenue, Suite 200, Cleveland, Ohio 44114.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission reviews all Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. These Guides, like other industry guides issued by the Commission, are ''administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.'' 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

II. Background

The Commission promulgated the Guides (then titled the ''Guides for Private Vocational and Home Study Schools'') in May 1972, and they became effective on August 14, 1972 (37 FR 9665 (May 16, 1972)). The Commission amended the Guides effective October 9, 1998. These amendments added a provision addressing misrepresentations related to postgraduation employment. In order to streamline the Guides, certain provisions not specific to vocational schools and a section suggesting affirmative disclosures were deleted (63 FR 42570 (Aug. 10, 1998), as amended at 63 FR 72350 (Dec. 31, 1998)).[1]

On July 30, 2009, the Commission published a **Federal Register** Notice (''FRN'') seeking comment on the Guides as part of the Commission's ongoing periodic review of its rules and guides to determine their current effectiveness and impact (74 FR 37973).[2] The FRN listed eighteen questions, with additional subparts, on which comments were solicited. Generally, the FRN sought comments regarding the Guides' benefits to consumers and burdens on businesses. In addition, the FRN's questions addressed whether modifications are needed to increase the Guides' benefits, reduce their costs, or address changes in relevant technology, economic conditions, or other applicable law.

The Guides are intended to advise proprietary businesses that offer vocational training courses, either on the school's premises or through distance education, how to avoid deceptive practices in connection with the advertising, promotion, marketing, or sale of their courses or programs. Specifically, the Vocational School Guides address misrepresentations in the description of a school, including misrepresentations that the school is affiliated with the government or is an employment agency. The Guides also address misleading representations related to the accreditation and approval of the school, the transferability of credit received at the school to other institutions, and the use of testimonials and endorsements. The Guides caution schools against misrepresenting the qualifications of teachers, the nature of courses, the availability of employment after graduation, the availability of financial assistance, and enrollment qualifications. They also address the use of deceptive diplomas or certificates. Finally, the Guides warn against using deceptive sales practices, such as placing classified ads that appear to be ''help wanted'' ads. The Guides make clear that practices inconsistent with them may violate section 5 of the FTC Act.

III. Regulatory Review Comments and Responses

The Commission received eight comments in response to the FRN.[3] They were submitted by the U.S. Department of Education (''DOE''); the National Consumer Law Center (''NCLC''); the National Association for College Admission Counseling (''NACAC''); the American Association of Collegiate Registrars and Admissions Officers (''AACRAO''); the Career College Association (now known as the Association of Private Sector Colleges and Universities, hereinafter ''APSCU''); the Council of Recognized National Accrediting Agencies (''CRNAA''); Consumers Union; and Professor George Gollin of the University of Illinois, Urbana-Champaign, who is a board member of the Council for Higher Education Accreditation (''CHEA'').[4]

Seven of the eight comments stated that the Guides should be retained.[5] Commenters described the Guides as filling a critical need, providing clear instruction regarding acceptable practices in the vocational schools sector. The comments noted the many instances of fraud in the industry and urged that the Guides be strengthened and enforced more vigorously.

APSCU, the sole dissenter, would retain the Guides only for unaccredited and unlicensed vocational schools. It believes the Guides are unnecessary and create additional burdens for institutions that are licensed by a state or accredited by a DOE-recognized accrediting agency. The Commission disagrees with this statement for at least three reasons. First, APSCU identified no material inconsistencies between the Guides and the standards of any accrediting agencies or state licensing bodies and thus failed to identify how the Guides impose additional burdens. Second, the Guides simply identify deceptive practices that are unlawful under the FTC Act and, therefore, do not impose any burden beyond that already associated with complying with section 5 of the FTC Act. Third, exempting accredited and licensed vocational schools from the Guides could be read as implying that circumstances have changed since the Guides were adopted, when, in fact, law enforcement actions targeting deceptive practices of accredited and licensed vocational schools indicate that some of these entities have continued to engage in such practices.[6]

[1] The deleted affirmative disclosures included the school's make-up work policy, costs of purchasing the textbooks and equipment needed for the courses, a description of the school's physical facilities, and a description of the school's placement service.

[2] Previously, a Notice of Intent to Request Public Comments gave notice that the Commission would initiate a review of, and solicit public comments on, the Guides during 2009 (74 FR 6129 (Feb. 5, 2009)).

[3] All comments are in the public record and available for inspection at the Commission's Web site, *http://www.ftc.gov/os/comments/vocationalschoolguides/.*

[4] NCLC is a nonprofit organization specializing in issues commonly faced by low income consumers. NACAC is a nonprofit association of high school counselors and college admissions officers, and AACRAO is a nonprofit association of higher education admissions and registration professionals. APSCU is a membership organization representing for-profit higher education institutions. CRNAA is an alliance of six accrediting bodies which are recognized by the Secretary of DOE as reliable authorities on the quality of education and training offered by the institutions they accredit. Consumers Union is the nonprofit publisher of *Consumer Reports,* and CHEA is an organization of colleges and universities that advocates for self-regulation of academic quality through accreditation.

[5] This FRN discusses the comments received by topic, not question number, because most of the comments responded by topic rather than by question number.

[6] *E.g, United States ex rel. Washington* v. *Educ. Mgmt. Corp.,* 871 F. Supp.2d 433 (W.D. Pa. 2012); Settlement in *United States ex rel. Goodstein v Kaplan, Inc., et al.,* E.D. Pa. Civ. Action No. 2:07 cv 1491 (July 15, 2011), *available at http://www.justice.gov/usao/pae/News/2011/Jul/chi_settlementagreement.pdf,* and News Release, *$1.6 Million Settlement Agreement Announced with CHI Institute For Alleged Failures to Comply with Federal Student Financial Aid Requirements, available at http://www.justice.gov/usao/pae/News/2011/Jul/chi_release.pdf* (July 22, 2011); GAO, *For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices,* GAO–10–948T

Many of the comments urging retention of the Guides also focused heavily on the recruitment practices and representations of vocational schools. In response, the Commission proposes to modify the Guides in four respects. These changes address the practices highlighted in the comments, and advise against use of particular types of misleading representations.

First, DOE, NCLC, and Consumers Union urged that the Guides address with greater specificity misrepresentations, frequently used in recruitment, on such topics as salaries, job placement, and completion rates and time frames. Accordingly, the Commission has revised the scope and application section of the Guides in section 254.0(b) to reference specifically the recruitment process. The revised Guides also address misrepresentations about completion and dropout rates and postgraduation employment prospects.

Second, DOE suggested that the Guides address misleading statements indicating that a program of instruction would render a student eligible to take a licensing exam. The Commission believes that doing so is warranted, and has modified section 254.3 of the Guides to address instances in which institutions misrepresent that completion of a program will qualify students to take a licensing exam.

Third, NCLC and Consumers Union recommended that the Guides be modified to cover representations relating to admissions testing and students' suitability for particular courses. In this regard, the Commission has amended section 254.5 of the Guides to state more explicitly that misrepresenting a student's score on an admission test is a deceptive practice. In addition, the revised Guides specify in subsections (c) and (d) of section 254.5 that it is a deceptive practice to provide inaccurate information regarding the time required to complete a course or program of instruction or a student's likelihood of success in a school or program of instruction.

Finally, DOE urged that the Guides address representations regarding transfer of course credit from another school, assistance provided to students facing language or other barriers to learning, the source of funding for student loans, and security policies and crime statistics. In response to these comments, the Commission has amended section 254.4(a) of the Guides to address specific misrepresentations relating to student financial assistance, assistance overcoming language barriers or learning disabilities, the extent to which students will receive credit for courses completed at other institutions, security policies, and crime statistics.

The Commission has decided not to adopt two other changes to the Guides which were suggested in the comments. First, NCLC, Consumers Union, and NACAC opined that the Guides should define ''clearly and conspicuously.'' Only NACAC, however, provided a reason for doing so, which was to increase the public's awareness of the Guides. We do not believe that adding a definition to the Guides would significantly advance that goal. The Guides have included the words ''clearly and conspicuously'' for forty years without defining the term. Many FTC guides and rules employ this phrase without a detailed definition.[7] As in other contexts where we have declined to adopt a definition, the Commission believes it is unnecessary to define this phrase in the Guides because the concept is well developed in Commission case law and policy statements, and mandating rigid ''clear and conspicuous'' criteria would undermine the flexibility that this standard provides.[8]

Finally, DOE recommended expanding the scope of the Guides to include resident primary and secondary schools and institutions of higher education offering at least a two-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree. Presently the Guides exclude such schools and institutions.[9] The Commission declines to expand the scope of the Guides because this proposal raises issues that are not addressed by the record before the Commission. For example, resident primary and secondary schools are unlike institutions of higher education in many respects, and those differences may result in different considerations with respect to the guidance provided by the Guides. Because the record does not address these issues, the Commission has decided not to expand the Guides. However, the scope of the Guides does not alter the scope of section 5 of the FTC Act, and resident primary and secondary schools and institutions of higher education within the scope of the Act are covered by its proscription of deceptive and unfair conduct. Consequently, the Commission may use its enforcement authority to remedy deceptive acts and practices by such schools, including deceptive conduct described in the Guides.[10]

IV. Conclusion

For the reasons described above, the Commission has determined to retain the Guides, with the revisions indicated below.

List of Subjects in 16 CFR Part 254

Advertising, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends 16 CFR Part 254 as follows:

PART 254—GUIDES FOR PRIVATE VOCATIONAL AND DISTANCE EDUCATION SCHOOLS

■ 1. The authority citation for part 254 continues to read as follows:

Authority: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

■ 2. Amend § 254.0 by revising paragraph (b) to read as follows:

§ 254.0 Scope and application.

* * * * *

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act

(Aug. 4, 2010), *available at http://www.gao.gov/products/GAO-10-948T.*

[7] *See, e.g.,* Guides for the Jewelry, Precious Metals, and Pewter Industries, 16 CFR 23.7(b)(4); Telemarketing Sales Rule, 16 CFR 310.3(a)(1), 310.3(a)(3)(iii), 310.4(b)(1)(v)(A)(i), 310.4(d), 310.4(e), & 310.6(b)(6); Trade Regulation Rule on Mail or Telephone Order Merchandise, 16 CFR 435.2(a)(1)(i), 435.2(b)(1), & 435.2(b)(2); Business Opportunity Rule, 16 CFR 437.1(e), 437.3(a)(5)(ii); but see Privacy of Consumer Financial Information, 16 CFR 313.3(b) (defining clear and conspicuous); Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 CFR 308.3(d)(2) (same).

[8] 60 FR 43842, 43843–44 (1995) (rejecting comments that ''clear and conspicuous'' should be defined in the Telemarketing Sales Rule); 74 FR 53124, 53130 n.55 (2009) (the Commission frequently adopts ''clear and conspicuous'' standard for disclosures because of its flexibility).

[9] 16 CFR 254.0(a). Independent of the Guides, true nonprofit corporations are outside the scope of the FTC Act. 15 U.S.C. 44. *See California Dental Ass'n* v. *FTC,* 526 U.S. 756, 766 (1999).

[10] The Commission notes that there have been reports of problematic practices by a range of for-profit colleges. *See, e.g.,* S. Comm. on Health, Education, Labor and Pensions, 112th Cong., For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success (Comm. Print 2012), *available at http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf.* Although the Guides specifically address only for-profit institutions that provide vocational and distance education, as described in section 254.0, the Commission believes that the Guides can also provide useful guidance to any for-profit colleges that engage in similar practices. As noted above, the Commission has authority to bring law enforcement actions to curb deceptive or unfair practices in this area regardless of whether an institution that is covered by section 5 of the FTC Act also falls within section 254.0.

(15 U.S.C. 45) to the advertising, promotion, marketing, and sale of, and the recruitment of students for, courses or programs of instruction offered by private vocational or distance education schools. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with these Guides may result in corrective action by the Commission under section 5 of the FTC Act if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

■ 3. Revise § 254.1 to read as follows:

§ 254.1 Definitions.

(a) *Accredited.* A school or program of instruction that has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

(b) *Approved.* A school or program of instruction that has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or program of instruction to which the term is applied. The term is not and should not be used interchangeably with ''Accredited.'' The term ''Approved'' is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented ''approval'' has been affirmatively required or authorized by State or Federal law.

(c) *Industry Member.* Industry Members are the persons, firms, corporations, or organizations covered by these Guides, as explained in § 254.0(a).

■ 4. Revise § 254.2 to read as follows:

§ 254.2 Deceptive trade or business names.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature of the school, its Accreditation, programs of instruction, methods of teaching, or any other material fact through the use of any trade or business name, label, insignia, or designation, or in any other manner.

(b) It is deceptive for an Industry Member to deceptively conceal in any way the fact that it is a school or to misrepresent, directly or indirectly, expressly or by implication, through the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, including, but not limited to, the U.S. Department of Education, or of any State, or civil service commission; or

(2) It is an employment agency or an employment agent or authorized training facility for any industry or business.

■ 5. Revise § 254.3 to read as follows:

§ 254.3 Misrepresentation of extent or nature of Accreditation or Approval.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature, extent, or purpose of any Approval by a State or Federal agency or Accreditation by an accrediting agency or association. For example, an Industry Member should not:

(1) Represent, without qualification, that its school is Accredited unless all courses and programs of instruction have been Accredited by an accrediting agency recognized by the U.S. Department of Education. If an Accredited school offers courses or programs of instruction that are not Accredited, all advertisements or promotional materials pertaining to those courses or programs, and making reference to the Accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not Accredited.

(2) Represent that its school or program of instruction is Approved, unless the nature, extent, and purpose of that Approval are disclosed.

(3) Misrepresent the extent to which a student successfully completing a course or program of instruction will be able to transfer any credits the student earns to any other postsecondary institution.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that a school or program of instruction has been Approved by a particular industry, or that successful completion of a course or program of instruction qualifies the student for admission to a labor union or similar organization or for receiving a State or Federal license to perform certain functions.

(c) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that its courses or programs of instruction are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students. It is deceptive for an Industry Member to use testimonials or endorsements that do not accurately reflect current practices of the school or current conditions or employment opportunities in the industry or occupation for which students are being trained.

Note to paragraph (c): The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that its courses or programs of instruction fulfill a requirement that must be completed prior to taking a licensing examination.

■ 6. Amend § 254.4 by:

■ a. Revising paragraphs (a) introductory text, (a)(2), and (a)(4) through (7).

■ b. Adding paragraphs (a)(8) through (11).

■ c. Revising paragraphs (b) through (d).

■ d. Adding paragraph (e).

The revisions and additions read as follows:

§ 254.4 Misrepresentation of facilities, services, qualifications of staff, status, and employment prospects for students after training.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, in advertising, promotional materials, recruitment sessions, or in any other manner, the size, location, services, facilities, curriculum, books and materials, or equipment of its school or the number or educational qualifications of its faculty and other personnel. For example, an Industry Member should not:

* * * * *

(2) Misrepresent, through statements or pictures, or in any other manner, the nature or efficacy of its courses, training devices, methods, or equipment.

* * * * *

(4) Misrepresent the availability, amount, or nature of any financial assistance available to students, including any Federal student financial assistance. If the cost of training is financed in whole or in part by loans, students should be informed that loans must be repaid whether or not they are successful in completing the program and obtaining employment.

(5) Misrepresent that a private entity providing any financial assistance to the students is part of the Federal government or that loans from the private entity have the same interest rate or repayment terms as loans received from the U.S. Department of Education.

(6) Misrepresent the nature of any relationship between the school or its

personnel and any government agency, or that students of the school will receive preferred consideration for employment with any government agency.

(7) Misrepresent that certain individuals or classes of individuals are members of its faculty or advisory board, have prepared instructional materials, or are otherwise affiliated with the school.

(8) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other service, including placement assistance and assistance overcoming language barriers or learning disabilities, it will provide students either during or after completion of a course.

(9) Misrepresent the extent to which a prospective student will receive credit for courses or a program of instruction already completed at other postsecondary institutions.

(10) Misrepresent the percentage of students who withdraw from a course or program of instruction, or the percentage of students who complete or graduate from a course or program of instruction.

(11) Misrepresent security policies or crime statistics that the school must maintain.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that it is a nonprofit organization or that it is affiliated or otherwise connected with any public institution or private religious or charitable organization.

(c) It is deceptive for an Industry Member that conducts its instruction by correspondence, or other form of distance education, to fail to clearly and conspicuously disclose that fact in all promotional materials.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that a course or program of instruction has been recently revised or instructional equipment is up-to-date, or misrepresent its ability to keep a course or program of instruction current and up-to-date.

(e) It is deceptive for an Industry Member, in promoting any course or program of instruction in its advertising, promotional materials, or in any other manner, to misrepresent, directly or indirectly, expressly or by implication, whether through the use of text, images, endorsements, or by other means, the availability of employment after graduation from a school or program of instruction, the specific type of employment available to a student after graduation from a school or program of instruction, the success that the Industry Member's graduates have realized in obtaining such employment, including the percentage of graduates who have received employment, or the salary or salary range that the Industry Member's graduates have received, or can be expected to receive, in such employment.

Note to paragraph (e): The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

■ 7. Revise § 254.5 to read as follows:

§ 254.5 Misrepresentations of enrollment qualifications or limitations.

(a) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the nature or extent of any prerequisites or qualifications for enrollment in a school or program of instruction.

(b) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or program of instruction or obtaining employment in the field for which the course or program of instruction provides training.

(c) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, the time required to complete a course or program of instruction.

(d) It is deceptive for an Industry Member to misrepresent, directly or indirectly, expressly or by implication, a student's likelihood of success in a school or program of instruction, including, but not limited to, misrepresenting the student's score on any admissions test.

■ 8. Revise § 254.6 to read as follows:

§ 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) It is deceptive for an Industry Member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, expressly or by implication, the subject matter, substance, or content of the course or program of instruction or any other material fact concerning the course or program of instruction for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an Industry Member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been Approved by the appropriate State educational agency or Accredited by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been Approved or Accredited by such an agency.

(c) It is deceptive for an Industry Member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and conspicuous disclosure in writing prior to enrollment, that the Industry Member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

■ 9. Revise § 254.7 to read as follows:

§ 254.7 Deceptive sales practices.

(a) It is deceptive for an Industry Member to use advertisements or promotional materials that misrepresent, directly or indirectly, expressly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such as, ''Men/women wanted to train for * * *,'' ''Help Wanted,'' ''Employment,'' ''Business Opportunities,'' and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an Industry Member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program of instruction and the school's refund policy if the student does not complete the program of instruction.

(c) It is deceptive for an Industry Member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program of instruction and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program of instruction.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–27195 Filed 11–15–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 8517]

RIN 1400–AD42

Visas: Documentation of Nonimmigrants—Visa Classification; T Visa Class

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule is being promulgated to add a new visa classification symbol to the nonimmigrant classification table in our regulations. This amendment is necessary to implement legislation that created an additional nonimmigrant classification as described herein.

DATES: This rule is effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street NW., Room L–603D, Washington, DC 20520–0106, (202) 663–1260.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Section 1221 of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4) amended Section 101(a)(15)(T)(ii)(III) of the Immigration and Nationality Act by adding a derivative ''T'' visa class. The T–6 visa would be available to eligible adult and minor children of a derivative beneficiary of a T–1 principal alien whom the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from trafficking or cooperation with law enforcement to accompany or follow to join the principal alien. This rule amends 22 CFR 41.12 to include the T–6 visa classification in the chart of nonimmigrant visa classification symbols.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rulemaking procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities, since it involves creating a nonimmigrant visa category for certain victims of trafficking.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and has determined that the benefits of this regulation, i.e., complying with a Congressional mandate and providing a nonimmigrant visa category for certain victims of trafficking, outweigh any cost. The Department does not consider this rule to be a significant rulemaking action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

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

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35 beyond what is already required of other nonimmigrant visa applicants.

List of Subjects in 22 CFR Part 41

Aliens, Foreign Officials, Immigration, Documentation of nonimmigrants, Passports and visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. Section 41.12 is revised to read as follows:

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided on the visa. The following visa symbols shall be used:

Symbol	Class	Section of law
A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family.	101(a)(15)(A)(i).
A2	Other Foreign Government Official or Employee, or Immediate Family.	101(a)(15)(A)(ii).
A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family.	101(a)(15)(A)(iii).
B1	Temporary Visitor for Business	101(a)(15)(B).
B2	Temporary Visitor for Pleasure	101(a)(15)(B).
B1/B2	Temporary Visitor for Business & Pleasure	101(a)(15)(B).
C1	Alien in Transit	101(a)(15)(C).
C1/D	Combined Transit and Crewmember Visa	101(a)(15)(C) and (D).
C2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	101(a)(15)(C).
C3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit.	212(d)(8).
D	Crewmember (Sea or Air)	101(a)(15)(D).
E1	Treaty Trader, Spouse or Child	101(a)(15)(E)(i).
E2	Treaty Investor, Spouse or Child	101(a)(15)(E)(ii).
E3	Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation.	101(a)(15)(E)(iii).
E3D	Spouse or Child of E3	101(a)(15)(E)(iii).
E3R	Returning E3	101(a)(15)(E)(iii).
F1	Student in an academic or language training program	101(a)(15)(F)(i).
F2	Spouse or Child of F1	101(a)(15)(F)(ii).
F3	Canadian or Mexican national commuter student in an academic or language training program.	101(a)(15)(F)(iii).
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	101(a)(15)(G)(i).
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	101(a)(15)(G)(ii).
G3	Representative of Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family.	101(a)(15)(G)(iii).
G4	International Organization Officer or Employee, or Immediate Family.	101(a)(15)(G)(iv).
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family.	101(a)(15)(G)(v).
H1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H1B1	Chilean or Singaporean National to Work in a Specialty Occupation.	101(a)(15)(H)(i)(b1).
H1C	Nurse in health professional shortage area	101(a)(15)(H)(i)(c).
H2A	Temporary Worker Performing Agricultural Services Unavailable in the United States.	101(a)(15)(H)(ii)(a).
H2B	Temporary Worker Performing Other Services Unavailable in the United States.	101(a)(15)(H)(ii)(b).
H3	Trainee	101(a)(15)(H)(iii).
H4	Spouse or Child of Alien Classified H1B/B1/C, H2A/B/R, or H–3	101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	101(a)(15)(I).
J1	Exchange Visitor	101(a)(15)(J).
J2	Spouse or Child of J1	101(a)(15)(J).
K1	Fiance(e) of United States Citizen	101(a)(15)(K)(i).
K2	Child of Fiance(e) of U.S. Citizen	101(a)(15)(K)(iii).
K3	Spouse of U.S. citizen awaiting availability of immigrant visa	101(a)(15)(K)(ii).
K4	Child of K3	101(a)(15)(K)(iii).
L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation).	101(a)(15)(L).
L2	Spouse or Child of Intracompany Transferee	101(a)(15)(L).
M1	Vocational Student or Other Nonacademic Student	101(a)(15)(M)(i).
M2	Spouse or Child of M1	101(a)(15)(M)(ii).
M3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student).	101(a)(15)(M)(iii).
N8	Parent of an Alien Classified SK3 or SN3	101(a)(15)(N)(i).
N9	Child of N8 or of SK1, SK2, SK4, SN1, SN2 or SN4	101(a)(15)(N)(ii).
NATO 1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.

Symbol	Class	Section of law
NATO 2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.
NATO 3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family.	Art. 14, 5 UST 1096.
NATO 4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family.	Art. 18, 5 UST 1098.
NATO 5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100.
NATO 6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO 7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family.	Arts. 12–20, 5 UST 1094–1098.
O1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics.	101(a)(15)(O)(i).
O2	Alien Accompanying and Assisting in the Artistic or Athletic Performance by O1.	101(a)(15)(O)(ii).
O3	Spouse or Child of O1 or O2	101(a)(15)(O)(iii).
P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group.	101(a)(15)(P)(i).
P2	Artist or Entertainer in a Reciprocal Exchange Program	101(a)(15)(P)(ii).
P3	Artist or Entertainer in a Culturally Unique Program	101(a)(15)(P)(iii).
P4	Spouse or Child of P1, P2, or P3	101(a)(15)(P)(iv).
Q1	Participant in an International Cultural Exchange Program	101(a)(15)(Q)(i).
Q2	Irish Peace Program Participant	101(a)(15)(Q)(ii)(I).
Q3	Spouse or Child of Q2	101(a)(15)(Q)(ii)(II).
R1	Alien in a Religious Occupation	101(a)(15)(R).
R2	Spouse or Child of R1	101(a)(15)(R).
S5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise.	101(a)(15)(S)(i).
S6	Certain Aliens Supplying Critical Information Relating to Terrorism	101(a)(15)(S)(ii).
S7	Qualified Family Member of S5 or S6	101(a)(15)(S).
T1	Victim of a severe form of trafficking in persons	101(a)(15)(T)(i).
T2	Spouse of T1	101(a)(15)(T)(ii).
T3	Child of T1	101(a)(15)(T)(ii).
T4	Parent of a T1 under 21 years of age	101(a)(15)(T)(ii).
T5	Unmarried Sibling under age 18 of T1 under 21 years of age	101(a)(15)(T)(ii).
T6	Adult or Minor Child of a Derivative Beneficiary of a T1	101(a)(15)(T)(ii).
TN	NAFTA Professional	214(e)(2).
TD	Spouse or Child of a NAFTA Professional	214(e)(2).
U1	Victim of criminal activity	101(a)(15)(U)(i).
U2	Spouse of U1	101(a)(15)(U)(ii).
U3	Child of U1	101(a)(15)(U)(ii).
U4	Parent of U1 under 21 years of age	101(a)(15)(U)(ii).
U5	Unmarried Sibling under age 18 of U1 under 21 years of age	101(a)(15)(U)(ii).
V1	Spouse of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa.	101(a)(15)(V)(i) or 101(a)(15)(V)(ii).
V2	Child of a Lawful Permanent Resident Alien Awaiting Availability Of Immigrant Visa.	101(a)(15)(V)(i) or 101(a)(15)(V)(ii).
V3	Child of a V1 or V2	203(d) & 101(a)(15)(V)(i) or 101 (a)(15)(V)(ii).

Dated: August 20, 2013.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2013–27303 Filed 11–15–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0918]

Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 during the San Diego Parade of Lights, held on December 8, 2013 and December 15, 2013. This event occurs on the San Diego Bay in San Diego, CA. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the parade, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 p.m. to 8:30 p.m. on December 8, 2013 and December 15, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11-PF-MarineEventsSanDiego@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 in support of the annual marine event, the San Diego Parade of Lights (Item 5 on Table 1 of 33 CFR 100.1101), held over two Sunday nights in December. The Coast Guard will enforce the special local regulations on the northern portion of San Diego Bay on December 8, 2013 and December 15, 2013 from 5:30 p.m. to 8:30 p.m. The parade route will commence at Shelter Island Basin and proceed east to the Embarcadero and Seaport Village, cross the federal channel in the vicinity of the Tenth Avenue Marine Terminal, and end on the north side of Coronado.

Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued pursuant to 5 U.S.C. 552 (a) and 33 CFR 100.1101. In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this notice, he or she may use a Broadcast Notice to Mariners or other communications coordinated by the event sponsor to grant general permission to enter the regulated area.

Dated: November 1, 2013.

S. M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–27582 Filed 11–15–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0914]

RIN 1625–AA00

Safety Zone: Vessel Removal From the Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Oakland Estuary just north of the Park Street Bridge in Alameda, CA in support of the Oakland Estuary Closure for the Vessel Removal Project on November 4, 2013 through November 22, 2013. This safety zone is established to ensure the safety of workers, mariners, and other vessels transiting the area from the dangers associated with cranes operating under heavy loads in close proximity to both sides of the Oakland Estuary. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on November 4, 2013 through November 22, 2013 and will be enforced for two 48-hour periods that will be announced via Broadcast Notice to Mariner.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0914. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the information about the vessel removal project on 17 October, 2013, and the vessel removal project would occur before the rulemaking process would be completed. Because of the dangers posed by the cranes operating under heavy loads in close proximity to both

sides of the Oakland Estuary, the safety zone is necessary to provide for the safety of the workers, mariners, and other vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

The Environmental Protection Agency will sponsor the Oakland Estuary Closure for Vessel Removal Project on November 4, 2013 through November 22, 2013, in the navigable waters of the Oakland Estuary just north of the Park Street Bridge in Alameda, CA. Crane operations to remove sunken vessels are scheduled to take place on November 4, 2013 through November 22, 2013 for two 48-hour periods. Upon commencement of the crane operations, the safety zone will encompass the navigable waters of the Oakland Estuary enclosed within the following points: 37°46′27″ N, 122°14′23″ W; 37°46′23″ N, 122°14′18″ W; 37°46′20″ N, 122°14′21″ W; and 37°46′24″ N, 122°14′28″ W (NAD83). The vessel removal project is necessary to remove vessels that sank in the estuary that pose a potential hazard to vessels in the navigable waterways. The safety zone is issued to establish a temporary restricted area on the waters surrounding the removal of the vessels. The safety zone is necessary to provide for the safety of workers, mariners, and other vessels transiting the area from the dangers associated with cranes operating under heavy loads in close proximity to both sides of the Oakland Estuary.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters of the Oakland Estuary enclosed within the following points: 37°46′27″ N, 122°14′23″ W; 37°46′23″ N, 122°14′18″ W; 37°46′20″ N, 122°14′21″ W; and 37°46′24″ N, 122°14′28″ W (NAD83) during the vessel removal project. Crane operations to remove sunken vessels in the Oakland Estuary scheduled are scheduled to take place from November 4, 2013 through November 22, 2013 for two 48-hour periods. At the conclusion of the crane operations the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the vessel removal project. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep mariners and vessels away from the immediate vicinity of the vessel removal operations to ensure the safety of workers, mariners, and other vessels transiting the area.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes and executive orders.

1. Regulatory Planning and Review

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

We expect the economic impact of this rule does not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) this rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–606 to read as follows:

§ 165.T11–606 Safety Zone; Vessel Removal from the Oakland Estuary, Alameda, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of the Oakland Estuary just north of the Park Street Bridge in Alameda, California as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. The safety zone will be enclosed within the following points: 37°46′27″ N, 122°14′23″ W; 37°46′23″ N, 122°14′18″ W; 37°46′20″ N, 122°14′21″ W; and 37°46′24″ N, 122°14′28″ W (NAD83).

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced on November 4, 2013 from 6 a.m. until 6 p.m. on November 5, 2013 and during another 48-hour period within the effective period of this rule that will be announced via broadcast. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: October 28, 2013.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2013–27580 Filed 11–15–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0385; FRL–9902–98-Region 4]

Approval and Promulgation of Implementation Plans; Florida; Approval of Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a change to the Florida State Implementation Plan (SIP) for the State of Florida. The change removes from the Florida SIP a provision entitled

''Synthetic Organic Fiber Production.'' EPA has determined that this provision was erroneously incorporated into the SIP. Therefore, EPA is taking final action to remove this rule from the federally-approved Florida SIP because the rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS).

DATES: This rule will be effective on December 18, 2013.

ADDRESSES: *EPA has established a docket for this action under Docket Identification No.* EPA–R04–OAR–2012–0385. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. This Action
II. Background
III. Final Action
IV. Statutory and Executive Order Review

I. This Action

EPA determined that rule 62–296.413, Florida Administrative Code (F.A.C.) entitled ''Synthetic Organic Fiber Production'' was inadvertently incorporated into the Florida SIP on June 16, 1999 (64 FR 32346). Therefore, EPA is taking final action to remove rule 62–296.413, F.A.C. from the federally-approved Florida SIP pursuant to section 110(k)(6) [1] of the Clean Air Act (CAA or Act) and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart K, section 52.520(c). EPA proposed approval of this correction on June 13, 2013. *See* 78 FR 35599. Comments on the proposed rulemaking were due on or before July 15, 2013. No comments, adverse or otherwise, were received on EPA's June 13, 2013, proposed rulemaking. A summary of the background for today's final action is provided below. For additional information concerning the rationale for today's final action refer to EPA's June 13, 2013, proposed rulemaking. *See* 78 FR 35599.

II. Background

On December 21, 1994, and April 15, 1996, the State of Florida through the Florida Department of Environmental Protection provided to EPA SIP submissions which included miscellaneous revisions and the recodification of F.A.C. Rule 62–296.413, F.A.C.,[2] was part of Florida's recodification and was included in these State submittals among other changes; however, it was never officially submitted for incorporation into the SIP.[3] When EPA took action on June 16, 1999 (64 FR 32346) to approve the recodification and miscellaneous changes and also to revise the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference into the SIP, EPA inadvertently incorporated rule 62–296.413, F.A.C., into the regulatory text at 40 CFR part 52, subpart K, section 52.520. EPA has determined that approval of rule 62–296.413, F.A.C., into the Florida SIP was an error, and is, therefore, taking final action to remove this rule from the federally-approved Florida SIP (pursuant to section 110(k)(6) of the CAA) because the rule is not related to the attainment and maintenance of the NAAQS.

III. Final Action

For the reasons stated above, EPA is taking final action to remove rule 62–296.413, F.A.C., from the federally-approved Florida SIP pursuant to section 110(k)(6) of the CAA and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart K, section 52.520(c).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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

[1] Section 110(k)(6) of the Act provides that, whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision was in error, the Administrator may in the same manner as the approval, disapproval or promulgation revise such action as appropriate without requiring further submission from the State. Such determination and the basis thereof must be provided to the state and public.

[2] This state rule was originally numbered subsection 17–2.600(13), and was adopted with a state effective date of July 9, 1989, for the sole purpose of controlling acrylonitrile emissions from synthetic organic fiber production facilities in northwest Florida. The rule was only concerned with emissions of toxic air pollutants and not attainment or maintenance of any NAAQS. The rule was in an April 15, 1996, SIP submission along with all other rules that had been simultaneously amended. However, it was not submitted for EPA's approval and incorporation into the SIP.

[3] EPA's records indicate that a November 23, 1992, SIP revision from Florida was approved on October 20, 1994 (59 FR 52916). However, the November 23, 1992, SIP did not include a revision to incorporate the rule entitled ''Synthetic Organic Fiber Production,'' 62–296.413, F.A.C., into the SIP.

application of those requirements would be inconsistent with the CAA; and

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

In addition, this 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).

List of Subjects in 40 CFR Part 52

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

Dated: November 5, 2013.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(c) is amended by removing the entry for ''62–296.413'' under Chapter 62–296 ''Stationary Sources—Emission Standards.''

[FR Doc. 2013–27443 Filed 11–15–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8307]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from

the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Hartford, Town of, Mason County	540247	April 29, 1975, Emerg; February 15, 1978, Reg; December 3, 2013, Susp.	December 3, 2013	December 3, 2013.
Henderson, Town of, Mason County.	540251	May 27, 1975, Emerg; May 15, 1978, Reg; December 3, 2013, Susp.	..... do*	Do.
Leon, Town of, Mason County	540113	July 16, 1975, Emerg; August 15, 1978, Reg; December 3, 2013, Susp.	..... do	Do.
Mason, Town of, Mason County ..	540248	May 21, 1975, Emerg; February 15, 1978, Reg; December 3, 2013, Susp.	..... do	Do.
Mason County, Unincorporated Areas.	540112	April 25, 1975, Emerg; January 2, 1980, Reg; December 3, 2013, Susp.	..... do	Do.
Region V				
Michigan:				
Dearborn Heights, City of, Wayne County.	260221	January 12, 1973, Emerg; May 2, 1983, Reg; December 3, 2013, Susp.	..... do	Do.
Huron, Township of, Wayne County.	260545	May 28, 1982, Emerg; October 17, 1986, Reg; December 3, 2013, Susp.	..... do	Do.
Inkster, City of, Wayne County	260232	February 23, 1973, Emerg; March 2, 1979, Reg; December 3, 2013, Susp.	..... do	Do.
Romulus, City of, Wayne County	260381	N/A, Emerg; May 24, 2012, Reg; December 3, 2013, Susp.	..... do	Do.
Sumpter, Township of, Wayne County.	260243	September 3, 1976, Emerg; May 5, 1981, Reg; December 3, 2013, Susp.	..... do	Do.
Taylor, City of, Wayne County	260728	November 25, 1986, Emerg; November 25, 1986, Reg; December 3, 2013, Susp.	..... do	Do.
Wayne, City of, Wayne County	260245	April 3, 1975, Emerg; August 15, 1980, Reg; December 3, 2013, Susp.	..... do	Do.
Westland, City of, Wayne County	260739	January 22, 1985, Emerg; January 22, 1985, Reg; December 3, 2013, Susp.	..... do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 30, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–27513 Filed 11–15–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8309]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR Part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Kentucky:				
Clay, City of, Webster County	210222	January 29, 1976, Emerg; August 19, 1986, Reg; December 17, 2013, Susp.	December 17, 2013 ...	December 17, 2013.
Providence, City of, Webster County.	210223	July 21, 1975, Emerg; September 1, 1986, Reg; December 17, 2013, Susp.	..... do*	Do.
Sebree, City of, Webster County	210224	July 7, 1975, Emerg; August 19, 1986, Reg; December 17, 2013, Susp.	..... do	Do.
Slaughters, City of, Webster County.	210225	February 17, 1976, Emerg; July 3, 1986, Reg; December 17, 2013, Susp.	..... do	Do.
Wheat Croft, Town of, Webster County.	210248	May 19, 2005, Emerg; N/A, Reg; December 17, 2013, Susp.	..... do	Do.
Region V				
Indiana:				
Angola, City of, Steuben County ..	180244	April 18, 1975, Emerg; June 17, 1986, Reg; December 17, 2013, Susp.	..... do	Do.
Clear Lake, Town of, Steuben County.	180247	October 7, 1976, Emerg; May 25, 1984, Reg; December 17, 2013, Susp.	..... do	Do.
Hamilton, Town of, Steuben County.	180248	November 20, 1975, Emerg; August 19, 1986, Reg; December 17, 2013, Susp.	..... do	Do.
Hudson, Town of, Steuben County.	180249	May 5, 1976, Emerg; November 15, 1985, Reg; December 17, 2013, Susp.	..... do	Do.
Steuben County, Unincorporated Areas.	180243	August 26, 1975, Emerg; July 3, 1986, Reg; December 17, 2013, Susp.	..... do	Do.
Region VI				
Oklahoma:				
Kay County, Unincorporated Areas.	400477	July 15, 1987, Emerg; March 5, 1990, Reg; December 17, 2013, Susp.	..... do	Do.
Osage County, Unincorporated Areas.	400146	February 23, 1987, Emerg; December 1, 1989, Reg; December 17, 2013, Susp.	..... do	Do.
Ponca City, City of, Kay County ...	400080	March 6, 1974, Emerg; July 2, 1980, Reg; December 17, 2013, Susp.	..... do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 30, 2013.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–27515 Filed 11–15–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–XC965

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

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

ACTION: Temporary orders; inseason orders.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate treaty and non-treaty (all citizen) commercial salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2013 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen commercial fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the

Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon tribal and non-tribal commercial fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by Regional Administrator, West Coast Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1) and in 77 FR 25915 (May 2, 2012). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2013 orders are being published in this single document to avoid fragmentation.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2013 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) and in 78 FR 25865 (May 3, 2013); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Fraser River Panel Order Number 2013–01: Issued 2 p.m., July 29, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open to drift gillnets 12 p.m. (noon), Tuesday, July 30, 2013, to 12 p.m. (noon), Saturday, August 3, 2013.

Fraser River Panel Order Number 2013–02: Issued 12:30 p.m., August 2, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 3, 2013, to 12 p.m. (noon), Wednesday, August 7, 2013.

Fraser River Panel Order Number 2013–03: Issued 2:30 p.m., August 6, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 7, 2013 to 12 p.m. (noon), Saturday, August 10, 2013.

Fraser River Panel Order Number 2013–04: Issued 2:30 p.m., August 23, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon), Saturday, August 24, 2013 to 12 p.m. (noon), Wednesday, August 28, 2013.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Sunday, August 25, 2013 to 9 a.m., Tuesday, August 27, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye salmon from 5 a.m. to 9 p.m., Saturday, August 24, 2013 and Sunday, August 25, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 5 a.m. to 9 p.m., Tuesday, August 27, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8 a.m. to 11:59 p.m. (midnight), Tuesday, August 27, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Fraser River Panel Order Number 2013–05: Issued 2:05 p.m., August 27, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday August 28, 2013 to 12 p.m. (noon), Friday August 30, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Wednesday, August 28 through 9 a.m., Friday, August 30, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia. Purse seines must release all sockeye. Gillnets may retain sockeye for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., Wednesday, August 28, 2013, Thursday, August 29, 2013 and Friday, August 30, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 5 a.m. to 9 p.m., Friday, August 30, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8 a.m. to 11:59 p.m. (midnight), Friday, August 30, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Fraser River Panel Order Number 2013–06: Issued 1:35 p.m., August 29, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Friday August 30, 2013 to 12 p.m. (noon), Wednesday, September 4, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Saturday, August 31 through 9 a.m., Monday, September 2, 2013, and from 5 a.m., Tuesday, September 3 through 9 a.m., Wednesday, September 4 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., Saturday, August 31, 2013, Sunday, September 1, 2013, Monday, September 2, 2013, and Tuesday, September 3, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 5 a.m. to 9 p.m., Monday, September 2, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8 a.m. to 11:59 p.m. (midnight), Monday, September 2, 2013 in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Fraser River Panel Order Number 2013–07: Issued 3 p.m., September 3, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, September 4, 2013 to 12 p.m. (noon), Saturday, September 7, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Wednesday, September 4, 2013 through 9 a.m., Thursday, September 5, 2013 and open from 5 a.m., Friday, September 6, 2013 through 9 a.m., Saturday, September 7, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., Wednesday, September 4, 2013, Thursday, September 5, 2013, and Friday, September 6, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 5 a.m. to 9 p.m., Thursday, September 5, 2013.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8:10 a.m. to 11:59 p.m. (midnight), Thursday, September 5, 2013.

Fraser River Panel Order Number 2013–08: Issued 12:30 p.m., September 6, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, September 7, 2013 through 12 p.m. (noon), Wednesday, September 11, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Saturday, September 7, 2013 through 9 a.m., Monday, September 9, 2013, and open for net fishing from 5 a.m., Tuesday, September 10 through 9 a.m., Wednesday, September 11, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., Saturday, September 7, 2013, Sunday September 8, 2013, Monday, September 9, 2013, and Tuesday, September 10, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 5 a.m. to 9 p.m., Monday, September 9, 2013.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8:15 a.m. to 11:59 p.m. (midnight), Monday, September 9, 2013.

Fraser River Panel Order Number 2013–09: Issued 12:25 p.m., September 10, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, September 11, 2013 through 12 p.m. (noon), Saturday, September 14, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Wednesday, September 11, 2013 through 9 a.m., Friday, September 13, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., Wednesday, September 11, 2013, Thursday, September 12, 2013, and Friday, September 13, 2013.

Areas 7 and 7A: Open to purse seines with non-retention of sockeye from 8:30 a.m. to 4:30 p.m., Friday, September 13, 2013.

Areas 7 and 7A: Open to gillnets with non-retention of sockeye from 8:20 a.m. to 11:59 p.m. (midnight), Friday, September 13, 2013.

Fraser River Panel Order Number 2013–10: Issued 3:45 p.m., September 13, 2013

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, September 14, 2013 through 12 p.m. (noon), Wednesday, September 18, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Saturday, September 14, 2013 through 12 p.m. (noon), Tuesday, September 17, 2013. Sockeye may be retained for ceremonial and subsistence purposes only.

All Citizen Fishery

Area 7: Open to reefnets with non-retention of sockeye from 5 a.m. to 9 p.m., daily from Saturday, September 14, 2013 until further notice.

Fraser River Panel Order Number 2013–11: Issued 12:30 p.m., September 17, 2013

Treaty Indian and All Citizen Fisheries

Areas 4B, 5, and 6C: Relinquish regulatory control effective 12:01 p.m., Wednesday September 18, 2013.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 13, 2013.

Kelly Denit,

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

[FR Doc. 2013–27493 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 222
Monday, November 18, 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.

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

[Docket Number: OFR–2013–0001]

RIN 3095–AB78

Incorporation by Reference

AGENCY: Office of the Federal Register, National Archives and Records Administration.

ACTION: Extension of comment period; correction.

SUMMARY: On October 2, 2013, the Office of the Federal Register published a proposal to amend our regulations governing the approval of agency requests to incorporate material by reference into the Code of Federal Regulations. Given the recent government shutdown and technical issues with Regulations.gov, we are extending the comment period. We are also correcting the docket number and adding a link to the docket.

DATES: Comments must be received on or before January 31, 2013.

ADDRESSES: You may submit comments, identified using the subject line of this document, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov/#!docketDetail;D=OFR-2013-0001.* Follow the instructions for submitting comments.
- Email: *Fedreg.legal@nara.gov.* Include the subject line of this document in the subject line of the message.
- Mail: the Office of the Federal Register (NF), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD.
- Hand Delivery/Courier: Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001.

Docket materials are available at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20001, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, at *Fedreg.legal@nara.gov,* or 202–741–6030.

SUPPLEMENTARY INFORMATION: On October 2, 2013, the Office of the Federal Register published a proposal to amend our regulations governing the approval of agency requests to incorporate material by reference into the Code of Federal Regulations (77 FR 11414 (February 27, 2012)). Given the recent government shutdown and technical issues with Regulations.gov, we are extending the comment period. We are also correcting the docket number and adding a link to the docket.

Correction

In proposed rule FR Doc. 2013–24217, beginning on page 60784 in the issue of October 2, 2013, make the following corrections:

a. in the Document Heading on page 60784 in the first column between the brackets, remove and replace the docket number as follows:

''Docket Number: OFR–2013–0001''

b. in the **ADDRESSES** section on page 60784 in the first column, remove and replace the first bullet as follows:

''Federal eRulemaking Portal: *http://www.regulations.gov/#!docketDetail;D=OFR-2013-0001.* Follow the instructions for submitting comments.''

Dated: November 13, 2013.

Charles A. Barth,

Director, Office of the Federal Register.

[FR Doc. 2013–27541 Filed 11–14–13; 11:15 am]

BILLING CODE 1505–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 112

[Docket No. FDA–2011–N–0921]

RIN 0910–AG35

Environmental Impact Statement for the Proposed Rule: Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Extension of comment period for the Environmental Impact Statement for the proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the ''Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Rule: Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' that appeared in the **Federal Register** of August 19, 2013. We are taking this action to allow interested persons an opportunity to provide comment on the scope of issues the Agency should include in the Environmental Impact Statement (EIS), including their significance, as part of the scoping process for the EIS.

DATES: The date(s) and location(s) of any scoping meetings, if determined to be necessary, will be announced at least 15 days in advance through FDA Web site's at *http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm.* Comments on the scope of issues the Agency should include in the EIS may be submitted in writing until March 15, 2014.

ADDRESSES: You may submit comments on the scope of issues the Agency should include in the EIS, identified by Docket No. FDA–2011–N–0921 and/or Regulatory Information Number (RIN) 0910–AG35, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0921, and RIN 0910–AG35 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Annette McCarthy, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 19, 2013 (78 FR 50358), we published a notice of intent entitled ''Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Rule: Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' with a comment period extending through November 15, 2013, to announce the beginning of the scoping process. We solicited public comments and requested public input to identify issues to be analyzed in an EIS.

The purpose of the public scoping process for the EIS is to determine relevant issues that will influence the scope of the environmental analysis, including potential alternatives, and the extent to which those issues and impacts will be analyzed in the EIS. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the produce safety rule are invited to participate in the scoping process. FDA has previously sought comment on potential environmental effects as part of the public comment period for the proposed rule, including specific questions regarding agricultural water, biological soil amendments of animal origin, and wildlife (78 FR 3504 at 3616, 3619–3620; January 16, 2013). FDA believes that these questions are still relevant to the environmental analysis and will consider comments received.

FDA is granting an extension of the public scoping period to allow the public additional time to provide comment and for FDA to hold, as appropriate, one or more public scoping meetings during this time period. As part of the scoping process, the Agency will determine the range of actions, alternatives, and impacts to be considered in the EIS. This notice does not extend the comment period on the produce safety proposed rule published on January 16, 2013 (78 FR 3504). As previously announced (78 FR 48637, August 9, 2013), the comment period on the produce safety proposed rule closes on November 15, 2013.

II. Request for Comments

Interested persons may submit either electronic comments regarding the issues to be included in the EIS for the proposed rule 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: November 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27479 Filed 11–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0361]

RIN 1625–AA08

Special Local Regulations; Eleventh Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update the list of marine events that occur annually within the Eleventh Coast Guard District. These updates include adding specific marine events to the list of marine events held annually in the Eleventh Coast Guard District as well as removing marine events that no longer occur. In addition to updating the list of marine events held annually in the Eleventh Coast Guard District, the Coast Guard proposes to amend the special local regulations by standardizing the language and format of listed events. When these special local regulations are activated, and thus subject to enforcement, this proposed rule would restrict vessels from transiting inside the regulated area.

DATES: Comments and related material must be received by the Coast Guard on or before December 18, 2013. Requests for public meetings must be received by the Coast Guard on or before December 2, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0361 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these three methods.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Junior

Grade Blake Morris, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, U.S. Coast Guard; telephone 510–437–3801, email *Blake.J.Morris@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2013–0361), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number ''USCG–2013–0361'' in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number ''USCG–2013–0361'' in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this proposed rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1233.

Specific marine events are annually held on a recurring basis on the navigable waters within the Eleventh Coast Guard District and require special local regulations to keep spectators and vessels a safe distance away from the vessels and individuals that are participating in the specified events. These events include sailing regattas, powerboat races, rowboat races, parades, and swim events. Some of these marine events are not currently listed in 33 CFR 100 sections 1101, 1102 and 1104 or many of the annual events that are listed in these sections do not correctly reflect the date or approximate date of the event or do not correctly identify other important information specific to the event.

The effect of these proposed special local regulations will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the specified events to help ensure the safety of participants, spectators, and transiting vessels.

C. Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 100.1101, Southern California annual marine events for the San Diego Captain of the Port zone, by adding 12 new events and updating 1 event with correct verbiage. The 12 new events in this section are as follows: ''ITU World Triathlon'' occurring late April or early May at Bonita Cove and Ventura Cove in Mission Bay, San Diego; ''Fearless Triathlon'' occurring in March at the South Shores Boat Ramp in Mission Bay, San Diego; ''Bay to Bay Rowing and Paddling Regatta'' occurring in July from Mission Bay to San Diego Bay; ''San Diego Sharkfest Swim'' occurring one Saturday in September or October in the waters from Seaport Village across the federal channel to the Coronado Ferry Landing; ''San Diego TriRock Triathlon'' occurring on a Saturday in March in the East Embarcadero Marina Basin; ''San Diego Bayfair'' occurring the second or third weekend in September at Mission Bay, San Diego; ''Oceanside Harbor Days Tiki Swim'' occurring on one Saturday in late September or early October in Oceanside Harbor, Oceanside; ''U.S. Open Ski Racing Nationals'' occurring one weekend in October at Mission Bay, San Diego; ''San Diego Maritime Museum Tall Ship Festival of Sail'' occurring one weekend in September in San Diego Bay; ''Hanohano Ocean Challenge'' an outrigger canoe race occurring on a Saturday in January in Mission Bay, San Diego; ''Crystal Pier Outrigger Race'' an outrigger canoe race occurring in Mission Bay and Mission Bay Entrance Channel on a Saturday in May, Mission Bay, San Diego; and the ''San Diego Ho'olaule'a & Keiki Heihei Wa'a Stand Up for the Kids Race'' occurring on a weekend in May in Mission Bay, San Diego. We also propose to update the information specific to the ''San Diego Parade of Lights'' by inserting a new event sponsor, date, and regulated area.

The Coast Guard proposes to update 33 CFR 100.1102, annual marine events on the Colorado River, between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ) within the San Diego Captain of the Port zone, by adding 9 new events and updating 1 event with

correct verbiage. The 9 new events in this section are as follows: ''BlueWater Resort and Casino Southwest Showdown'' occurring one weekend in March in the waters of the Colorado River between BlueWater Resort and Casino and just north of Headgate Rock Dam in Parker, AZ; ''BlueWater Resort and Casino West Coast Nationals'' occurring one weekend in April in the Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ; ''Great Western Tube Float'' occurring one Saturday in early June in the navigable waters of the Colorado River from La Paz County Park to the BlueWater Resort and Casino, immediately before the Headgate Dam; ''Mark Hahn Memorial 300 PWC Endurance Race'' occurring in late February at Lake Havasu; ''Lake Havasu Triathlon'' occurring in March at Lake Havasu; ''Bullhead City River Regatta'' occurring one Saturday in August in the Colorado River from Camp Davis to Rotary Park; ''BlueWater Triathlon'' occurring one Saturday in October in the waters of the Colorado River between Blue Water Resort and Casino Amphitheater and just north of Headgate Rock Dam in Parker, AZ; ''BlueWater Resort and Casino 300 Enduro'' occurring in late October at river mile markers 179 and 185 in the Colorado River; and ''Another Dam Race'' occurring one Saturday in November in the waters of the Colorado River between Blue Water Resort and Casino Amphitheater and just north of Headgate Rock Dam in Parker, AZ. We also propose to update the information specific to the ''Lake Havasu City Boat Parade of Lights'' by inserting a new regulated area.

Lastly, the Coast Guard proposes to reinstate the 16 annually recurring marine events previously listed in 33 CFR 100.1104, Captain of the Port zone Los Angeles—Long Beach. The 16 marine events being reinstated were mistakenly deleted in 2011 and are not new events. By reinstating these 16 marine events, table 1 of this section will accurately reflect the 17 annually recurring events that are held in the Captain of the Port zone Los Angeles—Long Beach.

The proposed changes will effectively update special local regulations with annually occurring marine events in the Eleventh Coast Guard District. Table 1 for each of the listed sections will reflect current information. This rulemaking limits the unnecessary burden of continually establishing temporary special local regulations every year for events that occur on an annual basis. These events include swimming competitions, sailboat and power boat races and rowing events within the San Diego and Los Angeles—Long Beach Captain of the Port zones.

Regulated areas listed in these events are needed to protect both the event participants, spectators, and other mariners and provide on-water awareness for safety. To reduce associated safety risks, special local regulations will restrict vessels and water craft around the location of each marine event. Within the regulated areas of the listed marine events, persons and vessels not associated with the event will be prohibited from entering, transiting through, remaining, anchoring ormooring within the regulated area unless specifically authorized by the Captain of the Port (COTP) or designated representative. Persons or vessels would be able to request authorization to enter, transit through, remain, anchor or moor within the regulated areas by contacting the Captain of the Port for the respective location, COTP San Diego 619–278–7033 and COTP Los Angeles—Long Beach 310–521–3801 or designated representative on VHF radio channel 16. If any person is authorized to enter, transit through, remain, anchor or moor within any of the regulated areas, the individual would be required to comply with the instructions of the COTP or designated representative.

Designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. The Coast Guard may also be assisted by other federal, state, and local agencies in the enforcement of these regulated areas.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rulemaking is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Further, individuals and vessels desiring to use the affected portion of the waterways may, upon permission from the Patrol Commander, use the affected areas.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

We expect this proposed rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to fish, transit, or anchor in the waters affected by these special local regulations. These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of these special local regulations via public notice to mariners or notice of implementation published in the **Federal Register**.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rulemaking is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—MARINE EVENTS

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

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.1101 to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard or other vessel assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator

located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1101

[All coordinates referenced use datum NAD 83]

1. San Diego Fall Classic	
Sponsor	San Diego Rowing Club.
Event Description	Competitive rowing race.
Date	Sunday in November.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
2. California Half Ironman Triathlon	
Sponsor	World Triathlon Corporation.
Event Description	Swimming Portion of Triathlon Race.
Date	Saturday in late March or early April.
Location	Oceanside Harbor, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
3. San Diego Crew Classic	
Sponsor	San Diego Crew Classic.
Event Description	Competitive rowing race.
Date	First Saturday and Sunday in April.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
4. Dutch Shoe Regatta	
Sponsor	San Diego Yacht Club.
Event Description	Sailboat Race.
Date	Friday in late July.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, from Shelter Island to Glorietta Bay.
5. San Diego Parade of Lights	
Sponsor	San Diego Bay Parade of Lights.
Event Description	Boat Parade.
Date	Two Sunday nights in December.
Location	San Diego Bay, CA.
Regulated Area	A pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the federal navigable channel and ending off of Coronado Island.
6. Mission Bay Parade of Lights	
Sponsor	Mission Bay Yacht Club.
Event Description	Boat Parade.
Date	December.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, and Fiesta Bay.
7. ITU World Triathlon	
Sponsor	Lagardere Unlimited Upsolut USAT LLC.
Event Description	Swimming Portion of Triathlon Race.
Date	Late April or early May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Bonita Cove San Diego, CA and Ventura Cove, Mission Bay, San Diego, CA.

TABLE 1 TO § 100.1101—Continued

[All coordinates referenced use datum NAD 83]

8. Fearless Triathlon	
Sponsor	Fearless Races, LLC.
Event Description	Swimming Portion of Triathlon Race.
Date	Weekend in March.
Location	Mission Bay, San Diego, CA.
Regulated Area	South Shores Boat Ramp, Mission Bay.
9. Bay to Bay Rowing and Paddling Regatta	
Sponsor	Peninsula Family YMCA.
Event Description	Kayak, surfboard, and stand up paddle board paddling race.
Date	Saturday in July.
Location	San Diego, CA.
Regulated Area	The waters of Mission Bay, CA, to San Diego Bay, CA.
10. San Diego Sharkfest Swim	
Sponsor	Enviro-Sports Productions Inc.
Event Description	Swim race.
Date	Saturday in September or October.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, from Seaport Village to Coronado Ferry Landing.
11. San Diego TriRock Triathalon	
Sponsor	Competitor Group Inc.
Event Description	Swim race.
Date	Saturday in September.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, off the East Basin of Embarcadero Park.
12. San Diego Bayfair	
Sponsor	Thunderboats Unlimited Inc.
Event Description	Professional High-speed powerboat race, closed course.
Date	Second or third weekend in September (Friday thru Sunday).
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include Fiesta Bay, the east side of Vacation Isle, and Crown Point shores.
13. Oceanside Harbor Days Tiki Swim	
Sponsor	City of Oceanside.
Event Description	Swim race.
Date	Saturday in late September or early October.
Location	Oceanside Harbor, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
14. U.S. Open Ski Racing Nationals	
Sponsor	National Water-ski Race Association.
Event Description	Professional High-speed water ski powerboat race, closed course.
Date	One weekend in October.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include Fiesta Bay, the east side of Vacation Isle.
15. San Diego Maritime Museum Tall Ship Festival of Sail	
Sponsor	San Diego Maritime Museum.
Event Description	Tall ship festival.
Date	Annually over a weekend in September (3 day event).
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay Harbor.
16. Hanohano Ocean Challenge	
Sponsor	Hanohano Outrigger Canoe Club.
Event Description	Outrigger canoes and kayak race.
Date	Saturday in January.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Bonita Cove, South Shores Cove.

TABLE 1 TO § 100.1101—Continued

[All coordinates referenced use datum NAD 83]

17. Crystal Pier Outrigger Race	
Sponsor	Hanohano Outrigger Canoe Club.
Event Description	Outrigger canoe race.
Date	Saturday in May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, Fiesta Bay, South Shore Channel, and waters adjacent to Crown Point Beach Park.

18. San Diego Ho'olaule'a and Keiki Heihei Wa'a Stand Up For the Kids Race	
Sponsor	Na Koa Kai Canoe Club.
Event Description	Outrigger Canoe and Stand Up Paddle Board race.
Date	Weekend in May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, De Anza Cove, and North Pacific Passage.

■ 3. Revise § 100.1102 to read as follows:

§ 100.1102 Annual Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property. A Coast Guard-National Park Service agreement exists for both the Glen Canyon and Lake Mead National Recreational Areas; applicants shall contact the cognizant authority for approval of events in these areas.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1102

[All coordinates referenced use datum NAD 83.]

1. Lake Havasu Winter Water-Ski Race	
Sponsor	National Water-ski Racing Association.
Event Description	Water-ski races.
Date	Saturday and Sunday in late February or early March.
Location	Lake Havasu, AZ.
Regulated Area	That portion of the lower Colorado River on the Arizona side between Thompson Bay and Copper Canyon.

2. Havasu Landing Regatta	
Sponsor	Southern Outboard Association.
Event Description	Boat Races on closed course.
Date	Saturday and Sunday in February.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Location	Havasu Lake, CA.
Regulated Area	That portion of the lower Colorado River on the California side at Havasu Landing Resort and Casino.
3. Parker International Water-ski Race	
Sponsor	International Water-ski Race Association.
Event Description	Water-ski Show.
Date	Second Saturday and Sunday in March.
Location	Parker, AZ.
Regulated Area	The entire water area of the Colorado River beginning at BlueWater Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park.
4. Desert Storm	
Sponsor	Lake Racer LLC.
Event Description	Boat Poker Run and Exhibition Runs.
Date	April weekend (3 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed from the eastern line off of Algoma Pier Head Lighthouse to the Split Rock Lighthouse as the western line, with the following boundaries: Eastern Boundary Line: 34°26′51″ N, 114°20′41″ W to 34°27′17″ N, 114°20′51″ W. Western Boundary Line: 34°27′18″ N, 114°22′34″ W to 34°26′55″ N, 114°22′59″ W.
5. Lake Havasu Grand Prix	
Sponsor	Pacific Offshore Powerboat Racing Association (POPRA).
Event Description	Boat Races on closed course.
Date	April weekend (2 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50″ N, 114°18′52″ W.
6. BlueWater Resort and Casino Spring Classic	
Sponsor	Southern California Speedboat Club.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River in Parker, AZ.
7. BlueWater Resort and Casino Southwest Showdown	
Sponsor	Arizona Drag Boat Association.
Event Description	Professional High-speed powerboat drag race, on a measured course.
Date	Saturday and Sunday in March.
Location	Parker, AZ.
Regulated Area	Adjacent to the BlueWater River Casino, Arizona side of the Colorado River in Parker, AZ.
8. BlueWater Resort and Casino West Coast Nationals	
Sponsor	RPM Racing Enterprises.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ.
9. Great Western Tube Float	
Sponsor	City of Parker, AZ.
Event Description	River float.
Date	One Saturday in June.
Location	Parker, AZ.
Regulated Area	The navigable waters of the Colorado River from La Paz County Park to the BlueWater Resort and Casino, immediately before the Headgate Dam.
10. IJSBA World Finals	
Sponsor	International Jet Sports Boating Association (IJSBA).
Event Description	Personal Watercraft Race.
Date	Second Saturday through third Sunday of October (10 Days).

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Location	Lake Havasu City, AZ.
Regulated Area	The navigable waters of Lake Havasu, AZ in the area known as Crazy Horse Campgrounds.
11. Parker Enduro	
Sponsor	Parker Area Chamber of Commerce.
Event Description	Hydroplane, flatbottom, tunnel, and v-bottom powerboat race.
Date	Late October.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
12. BlueWater Resort and Casino Thanksgiving Regatta	
Sponsor	Southern California Speedboat Club.
Event Description	Boat Races.
Date	Thursday, Friday, Saturday, and Sunday during Thanksgiving week.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ.
13. Lake Havasu City Boat Parade of Lights	
Sponsor	London Bridge Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated vessel and then transit through the London Bridge Channel.
Date	First Saturday and Sunday in December.
Location	Lake Havasu, AZ.
Regulated Area	A pre-determined course that travels through the waters of North Lake Havasu, London Bridge Channel and Thompson Bay.
14. Mark Hahn Memorial 300 PWC Endurance Race	
Sponsor	DSM Events.
Event Description	300 Nautical Mile PWC Race Loop Track.
Date	Late February.
Location	Lake Havasu City, AZ.
Regulated Area	A 10 mile course on Northern Lake Havasu from London Bridge to North Lake Havasu Landing.
15. Lake Havasu Triathlon	
Sponsor	Tucson Racing.
Event Description	Swim race.
Date	March.
Location	Lake Havasu, AZ.
Regulated Area	Waters North of London Bridge to waters just north of Crazy Horse Camp Ground.
16. Bullhead City River Regatta	
Sponsor	Bullhead City.
Event Description	River float.
Date	One Saturday in August.
Location	Bullhead City, AZ.
Regulated Area	The navigable waters of the Colorado River from Camp Davis to the Rotary Park.
17. BlueWater Triathlon	
Sponsor	Blue Water Resort & Casino
Event Description	Swimming Portion of Triathlon Race.
Date	One Saturday in October.
Location	Parker, AZ.
Regulated Area	The waters of the Colorado River between river between the BlueWater Resort & Casino Amphitheater and just North of Headgate Rock Dam in Parker, AZ.
18. BlueWater Resort and Casino 300 Enduro	
Sponsor	RPM Racing Enterprises.
Event Description	Boat Race.
Date	Late October.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
19. Another Dam Race	
Sponsor	Blue Water Resort and Casino.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Event Description	Kayak, surbboard, surfski, stand up paddle board race.
Date	A Saturday in November.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).

■ 4. Revise § 100.1104 to read as follows:

§ 100.1104 Southern California Annual Marine Events for the Los Angeles Long Beach Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1104

[All coordinates referenced use datum NAD 83.]

1. Newport to Ensenada Yacht Races	
Sponsor	Newport Ocean Sailing Association.
Event Description	Sailing vessel race; open ocean.
Date	Fourth Friday in April.
Location	Newport Beach, CA.
Regulated Area	Starting area only. All waters of the Pacific Ocean near Newport Beach, CA bounded by a line starting 33°35′18″ N, 117°53′18″ W thence to 33°34′54″ N, 117°53′18″ W thence to 33°34′54″ N, 117°54′30″ W thence to 33°35′18″ N, 117°54′30″ W thence returning to the point of origin.
2. Congressional Cup	
Sponsor	Long Beach Yacht Club.
Event Description	Competitive sailboat race series.
Date	Annually in March.
Location	Long Beach Harbor, CA.
Regulated Area	The waters of Long Beach Harbor surrounded by Island White, Island Freeman, and Island Chaffee. The race area is designated at Congressional Cup Stadium.
3. Transpac	
Sponsor	Transpac Yacht Club.
Event Description	Competitive long distance sailboat race from Los Angeles to Honolulu.
Date	Bi-annually in early Summer.
Location	Long Beach Harbor, CA.
Regulated Area	All navigable waters from the surface to the sea floor within positions 33°-41.939′ N 118°-18.747′ W, 34°-41.205′ N 118°-18.747′ W, 33°-41.205′ N 118°-17.553′ W, and 33°-41.939′ N 118°-17.553′ W.

TABLE 1 TO § 100.1104—Continued

[All coordinates referenced use datum NAD 83.]

4. Dana Point Tall Ship Festival	
Sponsor	Dana Point Marine Institute
Event Description	Tall ship festival.
Date	Annually in September.
Location	Dana Point Harbor, CA.
Regulated Area	The waters of Dana Point Harbor.
5. Morro Bay Holiday Boat Parade	
Sponsor	City of Morro Bay.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Morro Bay Harbor, CA.
Regulated Area	The waters of Morro Bay Harbor.
6. Santa Barbara Holiday Boat Parade	
Sponsor	City of Santa Barbara.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Santa Barbara Harbor, CA.
Regulated Area	The waters of Santa Barbara Harbor.
7. Ventura Harbor Holiday Boat Parade	
Sponsor	Ventura Harbor District.
Event Description	Holiday lighted boat parade.
Date	Two nights annually in mid December.
Location	Ventura Harbor, CA.
Regulated Area	The waters of Ventura Harbor.
8. Channel Islands Harbor Holiday Boat Parade	
Sponsor	Channel Islands Harbor District.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Channel Islands Harbor, CA.
Regulated Area	The waters of Channel Islands Harbor.
9. Marina del Rey Holiday Boat Parade	
Sponsor	Los Angeles County Department of Beaches and Harbors.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Marina del Rey, CA.
Regulated Area	The waters of Marina del Rey.
10. King Harbor Holiday Boat Parade	
Sponsor	King Harbor Yacht Club.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	King Harbor, CA.
Regulated Area	The waters of King Harbor.
11. Port of Los Angeles Holiday Boat Parade	
Sponsor	Port of Los Angeles.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Port of Los Angeles, CA.
Regulated Area	The waters of the Port of Los Angeles.
12. Parade of 1,000 Lights	
Sponsor	Shoreline Yacht Club.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Long Beach Harbor, CA.
Regulated Area	Queensway Bay, Rainbow Harbor.

TABLE 1 TO § 100.1104—Continued

[All coordinates referenced use datum NAD 83.]

13. Naples Island Holiday Boat Parade	
Sponsor	Naples Island Improvement Association.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Naples Island, CA.
Regulated Area	The waters of Alamitos Bay.
14. Huntington Harbor Holiday Boat Parade	
Sponsor	Huntington Philharmonic Association.
Event Description	Holiday lighted boat parade.
Date	Two nights annually in December.
Location	Huntington Harbor, CA.
Regulated Area	The waters and canals of Huntington Harbor.
15. Newport Beach Holiday Boat Parade	
Sponsor	Newport Beach Chamber of Commerce.
Event Description	Holiday lighted boat parade.
Date	Five nights annually in mid December.
Location	Newport Beach Harbor, CA.
Regulated Area	The waters of Newport Beach Harbor.
16. Dana Point Holiday in the Harbor	
Sponsor	Dana Point Harbor.
Event Description	Holiday festival and lighted boat parade.
Date	4 nights annually in December.
Location	Dana Point Harbor, CA.
Regulated Area	The waters of Dana Point Harbor.
17. Catalina Ski Race	
Sponsor	Long Beach Waterski Club.
Event Description	Competitive high speed waterski race.
Date	Annually in July.
Location	Long Beach Harbor, CA, to Santa Catalina Island, CA and back.
Regulated Area	The waters of Long Beach Harbor bordered by Queens Way Bridge, the Long Beach Breakwater, and the Alamitos Bay West Jetty.

Dated: September 6, 2013.

K. L. Schultz,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2013–27557 Filed 11–15–13; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 13–239; PS Docket No. 11–60; FCC 13–125]

Improving the Resiliency of Mobile Wireless Communications Networks; Reliability and Continuity of Communications Networks, Including Broadband Technologies

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this document, the Federal Communications Commission seeks comment on measures to promote the resiliency and transparency of mobile wireless networks. This document considers and seeks comment on, among other measures, a requirement that mobile wireless network providers report for public disclosure on a daily basis during major disasters the percentages of their cell sites that are operational. This document also seeks comment on alternative informational disclosures and on other approaches to improving network resiliency.

DATES: Submit comments on or before January 17, 2014 and reply comments by February 18, 2014. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 17, 2014.

ADDRESSES: Submit comments to the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Comments may be submitted electronically through the Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/*. In addition to filing comments with the Secretary, a copy of any comments on the proposed Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in section 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

FOR FURTHER INFORMATION CONTACT: Renee Roland, Special Counsel, Public Safety and Homeland Security Bureau, (202) 418–2352 or *renee.roland@fcc.gov;* Brian Hurley, Attorney Advisor, Public Safety and Homeland Security Bureau, (202) 418–2220 or *brian.hurley@fcc.gov*. For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, or send an email to *PRA@fcc.gov* or to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in PS Docket No. 13–239 and PS Docket No. 11–60, released on September 27, 2013, as FCC 13–125. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://www.fcc.gov/document/improving-resiliency-mobile-wireless-communications-networks*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Improving the Resiliency of Mobile Wireless Communications Networks.

Type of Review: New Collection.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 60 respondents, 660 responses.

Estimated Time per Response: 0.1 hr.–0.5 hr. per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Section 201(b) of the Communications Act, as amended, among other statutory provisions.

Total Annual Burden: 1,570 hours.

Total Estimated Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information will be made available to the public so there is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is requesting approval to require mobile wireless providers to report to the Commission for public disclosure, once each day during major disasters, the percentages of their cell sites that are operational in each affected county. The Commission would then disclose this information on its Web site. Such disclosures will give consumers a ''yardstick'' for comparing the performance of various providers during emergencies, which may influence their choice of provider. Also, by holding providers accountable for their performance, such disclosures could spur improvements to mobile wireless networks to enhance their resiliency. Improving the resiliency of these networks would contribute greatly to the safety of the public, as Americans increasingly rely on mobile wireless networks to communicate during emergencies and to access 9–1–1 for emergency assistance. *See* Improving the Resiliency of Mobil Wireless Communications Networks, PS Docket No. 13–239, FCC 13–125, Section 4.15 (Disaster Reporting Requirements for Commercial Mobile Radio Services Providers).

I. Introduction

1. In this *Notice of Proposed Rulemaking* (*NPRM*), the Federal Communications Commission (Commission) considers measures to promote transparency to consumers as to how mobile wireless service providers compare in keeping their networks operational in emergencies, which could in turn encourage competition to improve the resiliency of mobile wireless communications networks during emergencies. Specifically, we seek comment on a proposal to require facilities-based Commercial Mobile Radio Service (CMRS) providers to submit to the Commission for public disclosure, on a daily basis during and immediately after major disasters, the percentage of cell sites within their networks that are providing CMRS. These disclosures would be made with respect to each county in the designated disaster area. We seek comment on whether public disclosure of this information, which can be derived from information many providers already report to the Commission voluntarily, could provide consumers with a reasonable ''yardstick'' for measuring how well mobile wireless networks maintain service during disasters. We also seek comment on whether other measures of service outages may be appropriate, and on certain other approaches to resiliency.

2. In particular, we seek comment on the following issues:

- Whether the proposed reporting and disclosures would provide consumers with useful information for making comparisons about mobile wireless products and services;
- Whether such disclosures, by holding providers publicly accountable, could incentivize improvements to network resiliency while allowing providers flexibility in implementing such improvements;
- Whether such information would be useful to policymakers at state and local levels;
- Whether the proposed disclosures comport with ''smart disclosure'' principles;
- Whether the proposed disclosure would lead to adverse unintended consequences for consumers and mobile wireless providers;
- Whether the Commission should consider other measures, including alternative informational disclosures,

performance standards or voluntary measures, or refer issues of what information would be helpful to consumers to an advisory committee before acting.

II. Background

3. In recent years, a number of major storms, including Superstorm Sandy in 2012, have impaired mobile wireless service in affected regions. Hurricane Isaac hit the Gulf Coast, resulting in more than twenty percent of area cell sites out of service in the aggregate in the designated reporting area. Superstorm Sandy disabled at its peak more than twenty-five percent of cell sites in 158 counties in all or part of ten states and the District of Columbia. The most extensive wireless service impairments from Superstorm Sandy were heavily concentrated in New Jersey and in the New York City metropolitan area, where millions of residents found themselves without reliable and continuous access to mobile wireless communications throughout the storm and its aftermath. Several counties had outages more than double the twenty-five-percent figure for the larger area—some much more—and for the State of New Jersey, all of which was included in the reporting area, aggregated cell site outages were on the order of forty percent. Of course, some service disruption may be unavoidable during major disasters, and surges in demand present added challenges. However, data that mobile wireless service providers submitted to the Commission via the Disaster Information Reporting System (DIRS) and in follow-up meetings with Public Safety and Homeland Security Bureau staff revealed that, as during previous storms such as Hurricane Isaac and others before that, service impacts during Superstorm Sandy and in its aftermath were not evenly distributed among mobile wireless service providers. Moreover, the operational choices and practices of different mobile wireless service providers may account for much of this variation. For example, practices regarding the provision of back-up power supplies at otherwise similar cell sites appear to vary among mobile wireless service providers, which may contribute to the ability of some mobile wireless service providers to provide more continuous and reliable service during the storm than others.

4. To address these types of questions, the Commission launched a *Notice of Inquiry* (*Reliability NOI*) in 2011 to ''initiate a comprehensive examination of issues regarding the reliability, resiliency and redundancy of communications networks, including broadband technologies.'' The Commission asked a broad range of questions in the *Reliability NOI* on how to ensure continuity of communications services during major emergencies such as large scale natural and man-made disasters. For example, it sought comment on the need for reinstatement of emergency back-up power requirements of some form on communications providers ''to ensure adequate levels of service continuity during major emergencies.'' It also asked questions about the impact of inadequate backhaul redundancy on network operations during major emergencies.

5. More recently, in the months following Superstorm Sandy, the Commission held field hearings in New York and New Jersey to further explore the communications impacts of Superstorm Sandy and consider lessons learned. It then held a follow-up field hearing in California to look, in part, at emerging technological solutions for improving communications during such emergencies. Among the concerns raised at these hearings was the lack of information made publicly available during Superstorm Sandy about the operational status of communications networks and the progress being made to rectify service outages.

6. In a May 13, 2013 letter to the Commission, Consumers Union urged the Commission to conduct a rulemaking proceeding to ''establish appropriate metrics for measuring a wireless carrier's network performance,'' such as ''the number of a wireless carrier's non-functioning cell towers in each county'' within a disaster area, ''and the percentage of the carrier's cell towers in that county that the number represents.'' Further, it urged the Commission to disclose such information to the public and to use it ''to set a schedule for phasing in improved performance standards [for wireless networks] as rapidly as practicable, with appropriate incentives for achieving them and appropriate penalties for unexcused failure to achieve them.'' In *ex parte* presentations filed July 17 and July 19, 2013, respectively, CTIA-The Wireless Association (CTIA) and the Competitive Carriers Association (CCA) argued that the Commission should gather more information before proceeding to a rulemaking on such matters. PCIA-The Wireless Infrastructure Association (PCIA) filed an *ex parte* presentation on August 5, 2013, raising similar concerns.

7. More generally, the Commission relies on periodic reporting from communications providers to gauge network reliability. Part 4 of the Commission's rules, established in 2004, requires, *inter alia,* mobile wireless service providers to apprise the Commission of network outages that exceed certain quantitative thresholds, dependent on the type of services provided. The Commission collects this information in its Network Outage Reporting System (NORS), and then uses the information to identify larger trends and vulnerabilities in the nation's communications infrastructure. In addition, the Commission operates DIRS, created in 2007, which is activated during emergencies to collect near ''real-time'' status information from mobile wireless and other providers to improve the situational awareness of federal agencies, including the Federal Emergency Management Agency (FEMA), and streamline emergency response. Reporting in DIRS is voluntary; however, the Commission generally suspends the otherwise mandatory NORS reporting obligations of DIRS participants throughout periods when the latter system is fully activated. Information reported to the Commission in either of these reporting systems is afforded a presumption of confidential treatment, a policy the Commission adopted to protect filing parties from competitive harm and prevent terrorist targeting of vulnerable communications assets.

8. To complement these efforts, the Commission has tasked federal advisory committees, chiefly the Communications Security, Reliability and Interoperability Council (CSRIC), with developing and recommending industry best practices to advance, among other objectives, the ''security, reliability, and interoperability of communications systems.'' CSRIC has developed and recommended to the Commission specific actions to facilitate industry-wide improvements in these areas. The Commission generally encourages mobile wireless service providers, a significant cross-section of which participate in CSRIC, to implement these recommended best practices within their networks to the extent technically and economically feasible. The Commission relies primarily on NORS and DIRS reporting to assess whether network reliability best practices are being effectively implemented or are in need of refinement. The Technological Advisory Council, which is chartered to advise the Commission more broadly on technical matters, is also exploring approaches for improving broadband network resiliency.

III. Discussion

9. Promoting the ''safety of life and property'' through the use of radio communications is part of the Commission's foundational mission. Whether, and how quickly, emergency calls get through and a first responder arrives might make the difference between life and death, so it is imperative that the public be able to reliably access 911, including with wireless phones. The proceeding we initiate today to improve the resiliency of mobile wireless networks builds upon information gathered through extensive prior efforts to address the resiliency of mobile wireless networks. As noted, these efforts began with the Hurricane Katrina panel in 2006, have included the adoption and subsequent withdrawal of mandatory back-up power requirements, followed by our 2011 *Reliability NOI* that sought broad and detailed comment on back-up power and other elements of network resiliency. We have gathered further information in our inquiry into the June 2012 ''derecho,'' and in our Superstorm Sandy field hearings held earlier this year. While we proceed to consideration of the proposals contained in this *NPRM,* we note that CTIA, CCA and PCIA have raised concerns about some of the proposals. We seek comment on these concerns in the discussion that follows. Ultimately, our objective is to ensure that any disclosure rules adopted in this area are tailored to the needs of consumers, do not impose undue burdens on service providers, and provide incentives that are most likely to lead to improvements in network reliability during emergencies.

A. Costs and Benefits of the Proposal

10. We seek to determine the benefits to consumers and other communications users that would result from each proposal and any associated burden on mobile wireless service providers. We therefore request comment on a range of questions that will help us to weigh the costs and benefits of the reporting obligations we propose, as well as the alternative measures we put forward for consideration. For each cost or benefit addressed, we ask that commenters provide specific data and information such as actual or estimated dollar figures, including a description of how the data or information was calculated or obtained and any supporting documentation. All comments will be considered and given appropriate weight; vague or unsupported assertions regarding costs or benefits generally will receive less weight and be less persuasive than the more specific and supported statements.

11. Quantifying specific benefits and costs of implementing the proposed rule and other proposals involves challenges. These costs and benefits can have many dimensions, including and beyond cost and revenue implications for industry and financial benefits to consumers. We also must consider other less tangible benefits, such as the value of more informed consumer choice and the value of any lives saved or health outcomes improved due to the completion of calls for help due to infrastructure hardening that could result from the increased competitive pressure to deliver reliable service during natural disasters and immediately thereafter. To assess the expected burden on providers, we seek comment on the nature and magnitude of the costs. In complying with the Paperwork Reduction Act, we recently estimated the annual reporting costs to be approximately $190,000 for all providers inputting wireless county cell site information in DIRS. That figure, however, comprised an estimate for DIRS reporting for considerably more information than is sought here. Moreover, because these carriers are already reporting needed information, they have already incurred the startup costs associated with any reporting system.

12. We estimate that there are fewer than fifty additional providers that are not currently reporting DIRS data. Moreover, we believe that the non-reporting providers mostly are very small companies that typically serve only one or two counties. Therefore, even if we were to require all wireless providers in the disaster areas to file transparency reports—which is a question on which we are seeking comment—we expect the number of additional reporting providers to be below fifty and the counties involved to be relatively few. We estimate the total annual reporting cost for these providers to be $78,000, consisting of three elements. First is a $2,000 cost incurred if fifty providers each spend a half hour, at $80 per hour, to create and enter a user identification when first logging in to our Web site (*i.e.,* $50 \times 0.5 \times \$80 = \$2,000$). Second is a $4,000 cost incurred if fifty providers each spend a half hour, at $80 per hour, to file the initial reports on two counties (*i.e.,* $50 \times 0.5 \times \$80 \times 2 = \$4,000$). Third is a $72,000 cost incurred if fifty providers each spend an hour, at $80 per hour, to verify and file daily follow-up reports on the two counties for nine additional days of DIRS reporting (*i.e.,* $50 \times 1 \times \$80 \times 2 \times 9 = \$72,000$). We seek comment on these estimates and their underlying assumptions. We are particularly interested in receiving carrier data that would improve the accuracy of these estimated costs.

13. To assess the expected benefits, we seek comment on the nature and magnitude of the benefits of the proposed rule. If public disclosure increases competitive pressure sufficiently to encourage providers to significantly harden their networks, we assume a likely result will be at least one life saved every five years. We also assume a life has a statistical value of $9.1 million. We seek comment on these two assumptions because, if they are reasonably accurate, they imply public disclosure would produce an annual benefit of $1.82 million (*i.e.,* $9.1 million divided by 5) in lives saved.

14. Moreover, the potential benefits of public disclosure may not be limited to the value of human lives saved if infrastructure is enhanced. Medical outcomes also may be improved and considerable pain and suffering avoided when emergency service providers are able to respond to E–911 calls. The total medical benefits from preserving E–911 services may be substantially greater than the value of lives saved. Further, another benefit of public disclosure may be to enable consumers to better assess the performance of mobile wireless service providers during major emergency events and, thus, enable consumers to make informed decisions that conform better to their preferences when selecting mobile wireless products and services.

15. An alternative way to estimate the potential benefits of public disclosure is to consider the value of services lost each year in storms. Superstorm Sandy, for example, caused a substantial loss of wireless services. We believe that had providers done more to improve infrastructure prior to Superstorm Sandy, a significant number of cell site outages could have been prevented, allowing a substantial number of wireless subscribers in the path of the storm to avoid loss or serious impairment of service. We cannot readily determine the value of that lost service, because we cannot know the value of being able to call more easily loved ones and friends, among others, during the Superstorm and in the days following the destruction. Nor can we know the value of more easily reaching firemen, police, repairmen, and other first responders.

16. We can estimate, however, a floor value for lost consumer surplus, a portion of which could have been saved had outages been avoided. Given the average-revenue-per-subscriber data

reported by the four major wireless providers for the DIRS reporting counties, we estimate very conservatively that cell-site outages connected to Superstorm Sandy caused a loss of service for which subscribers had paid $25.8 million. This $25.8 million could represent what subscribers would normally pay for the lost services, not what those services were worth to them. The net benefit of a good to consumers (*i.e.,* the consumer surplus) can easily exceed what they pay for it. Indeed, a 2012 CTIA study estimates that at the end of 2010, consumer surplus was 3.08 times what consumers pay for wireless service. Based on these payments estimates and the CTIA study, the value of the lost service during Superstorm Sandy alone was at least $77.4 million (*i.e.,* $25.8 million × 3 = $77.4 million). Because this loss represents the value of such services during normal weather conditions, it likely substantially understates the loss of value during (and a few days after) a storm, at which time the value of access to emergency services and ability to connect with family and friends may be much greater. We invite comment on this analysis and the reasonableness of its underlying assumptions.

B. The Growing Reliance of the American Public on Mobile Wireless Networks

17. Mobile wireless communications are becoming increasingly central to the day-to-day lives of Americans. In its annual Mobile Competition Reports, the Commission has documented the tremendous growth of the U.S. mobile wireless sector, which now supports over 300 million user connections. Mobile data traffic in particular ''increased 270 percent from 2010 to 2011'' in the United States and ''has more than doubled each year for the past four years,'' during which time mobile wireless service providers have continued to upgrade and expand their networks and offer their customers an increasing array of ''smartphones'' and data-centric devices, such as tablets and e-readers. As mobile wireless technologies have continued to proliferate and evolve, consumers of these services have become increasingly likely to ''cut the cord''—to live without residential wireline telephone service, as thirty-eight percent of American households already do.

18. This growing reliance on wireless communications has brought these technologies to the forefront of emergency response. As CTIA noted in its comments on the *Reliability NOI,* ''[d]uring the aftermath of major disasters, many individuals rely on wireless as their sole means of communication because of its mobile nature and the speed in which carriers restore service to affected areas.'' With an increasing percentage of 911 calls—already measured at 75 percent within the State of California—originating on wireless networks, the need for reliable wireless service during emergencies is a major public safety priority.

19. While consumers value overall network reliability and quality in selecting mobile wireless service providers, they may not be able to compare how well different mobile wireless service providers' networks withstand and recover from disaster conditions. As previously noted, the information made available to the Commission on a non-public basis following Superstorm Sandy and Hurricane Isaac revealed that not all mobile wireless service providers' networks fared the same during the storms, and preparatory efforts and investments to harden networks may account for some of this discrepancy. We thus seek comment on whether mobile wireless customers have adequate means of assessing the resiliency and reliability of mobile wireless networks in disaster conditions, and whether they have reliable basis for evaluating and comparing the network resilience of different mobile wireless service providers.

C. The Use of Informational Disclosures To Improve Consumer Choice

20. We seek comment in this *NPRM* on the reporting and disclosure of information to enable consumers to compare how well various mobile wireless networks are able to withstand and recover from disaster conditions. There is precedent in the telecommunications sector and in other industry contexts for using informational disclosures of this sort to enhance consumer welfare and drive product and service improvements. A significant recent initiative along these lines is the Commission's Measuring Broadband America (MBA) Program, under which the Commission tests the actual network speeds delivered to consumers by major wireline broadband providers and discloses its findings in a series of reports. Those providers that have tested favorably have touted the reports' findings in public statements, while at least one provider that performed poorly during the initial round of testing dramatically improved its performance in time for the second round. In this context and others, the disclosure of targeted information appears to have driven service improvements, even where the disclosed information pertains only to a limited range of the many considerations that influence consumer decisionmaking.

21. Moreover, the Executive Branch has issued guidance on the use of informational disclosures as a regulatory tool. A recent executive order directed executive branch federal agencies to focus on efforts ''to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice.'' The OMB Office of Information and Regulatory Affairs then issued a memorandum providing guidance on the use of ''smart disclosure,'' a regulatory approach defined as ''the timely release of complex information and data in standardized, machine-readable formats in ways that enable consumers to make informed decisions.'' Such information can be made available directly to consumers or be used by third parties to create tools, such as mobile phone applications, that can ''greatly reduce the cost to consumers of seeking out the relevant information from individual companies.'' The purpose of ''smart disclosure'' is to make information ''not merely available, but also accessible and usable,'' and the memorandum suggested that when designing related regulatory initiatives, agencies should consider making information as accessible as possible to consumers; making the underlying data available in machine-readable formats; standardizing the information; providing the information to the consumer in a timely manner; ensuring that disclosures keep pace with market innovation; promoting interoperability among data sets; and preventing disclosure of personally identifiable information. We seek comment on whether the proposal we set forth and seek comment on below comports with these principles.

22. If the information disclosed is simple and easy to understand, that could make it more relevant and accessible to consumers than more complex and technical information. We seek comment on these matters. The proposal focuses disclosure on a single percentage figure that may provide a snapshot of service capabilities in a particular area at a given time. This information is collected by the Commission from the wireless service providers and considered useful to provide situational awareness to federal participants in disaster response, and the metric in the disclosures that we propose also has precedent in the information that mobile wireless

providers have chosen to highlight in their own public statements. During the course of an emergency in which service is lost, mobile wireless providers in the United States often report the percentages of operational sites as a means of publicizing their progress in restoring service, although such reporting is not standardized.

D. Proposals To Improve Mobile Wireless Network Transparency and Resiliency

23. In this section, we seek comment on specific elements of a proposal to improve the transparency and underlying resiliency of networks that provide mobile wireless services, by requiring providers of these services to provide for public disclosure the percentages of sites operational in their networks during major emergencies. We also seek comment on possible alternative or complementary measures that could improve wireless network resiliency.

1. Proposed Reporting and Disclosure of Percentages of Mobile Wireless Network Sites in Operation During Emergencies

24. The proposed rule in this *NPRM* would require facilities-based CMRS providers to report to the Commission daily on a county-by-county basis the percentage of their cell sites that are operational for counties in which the Commission has activated DIRS. Under this proposal, operational site percentages submitted by each mobile wireless service provider would be made available by the Commission on its Web site, where consumers could access it directly or where third parties could access it for the purpose of incorporating the data into private sector platforms, such as news reports or mobile phone applications. Appendix A of the NPRM contains draft language of a proposed rule. We seek comment on whether this metric provides a reasonable means of comparing how well networks withstand emergency conditions.

25. We first seek comment on the extent to which informational disclosures of this sort would enhance consumer choice and facilitate network improvements. Will consumers value having access to this information? Could the information be meaningful and useful to consumers in making the choice among mobile wireless service providers, and if so, how would it affect their decision making? Would the reported information be particularly important to consumers who may have heightened concerns about maintaining communications during emergencies, such as individuals with serious medical conditions and their families? In the absence of the disclosures discussed below, do consumers already have sufficient information about service reliability, as CTIA suggests?

26. We also seek comment on whether providing consumers with such information would incentivize mobile wireless service providers to improve the capability of their network infrastructures to survive and continue operating during and after disasters. Is that correct? Would the potential that public disclosure would affect consumers' choice of mobile wireless service provider cause providers to view additional investment in networks as being competitively necessary to attract and retain customers? Could press coverage and knowledge by policymakers of this information foster improved performance by mobile wireless service providers, even if the elasticity of consumer demand for greater network reliability during emergencies is difficult to quantify or is perceived to be small? In other words, would providers nevertheless respond by seeking to improve their performance as a matter of risk management, *e.g.,* to avoid reputational risk in both the business and consumer markets?

27. On the other hand, would disclosure of network performance, in conjunction with outage reporting, lead to unintended negative consequences, such as a reduction of cooperation among providers during emergencies or disincentives to build out facilities, particularly in areas subject to severe weather? For example, would such disclosures favor large-tower architectures over small-cell and other heterogeneous architectures where there may be more towers, each more likely to fail but more resilient in the aggregate? We seek comment on any unintended consequences of adopting such disclosures, with examples of such consequences. We ask commenters to explain how likely and widespread those consequences would be and describe in detail the anticipated impact on consumers and public safety.

28. *Scope.* The proposed disclosures apply only to facilities-based CMRS providers with respect to sites used to provide CMRS. Is this scope reasonable given that the factual basis for the proposal is an observed variation in performance among mobile wireless networks in particular in their ability to withstand disaster conditions? Moreover, because the same companies provide most of the CMRS and mobile data services (*i.e.,* mobile broadband) consumed by the U.S. public, using much of the same underlying infrastructure, would the proposed reporting on CMRS infrastructure enable reasonable judgments to be made about the operational status of providers' mobile wireless services more generally?

29. In proposing a reporting requirement applicable only to mobile wireless providers, we observe that the great majority of emergency 911 calls originate on mobile wireless networks, and there has been an upward trend in such calls, making mobile wireless service of pre-eminent importance as the preferred method for U.S. consumers to reach out for help when they need it the most. Furthermore, given that most markets across the country are served by multiple mobile wireless service providers, could disclosures based on the proposed metric have a competitive impact that will drive improvements in communications infrastructure? Finally, because the metric tracks the performance of portions of the network that are within mobile wireless service providers' direct control during major emergency events, as opposed to outages that are due to consumers' loss of electric power, is this proposed application to mobile wireless service providers reasonable? We seek comment on our proposed adoption of a reporting metric applicable only to CMRS providers. Should we consider changing the scope of our proposed reporting and disclosure requirements, or developing a separate program, to cover providers in other telecommunications sectors, such as wireline telephone or cable providers? Are some of those services different in important respects, such as whether customer outages are likely to continue due to loss of commercial power at the customer's home, rather than within the service provider's facilities and network? If so, what would be the rationale for applying outage-based reporting obligations to such providers? Is there a simple and easily understood metric that could be used for such disclosures? Are there better alternatives to foster reliability of these other services?

30. Moreover, as noted above, we use the term ''cell site'' throughout this *NPRM* to refer to any land station used to provide CMRS, irrespective of the network configuration under which the site is deployed. We seek comment on this usage, which is incorporated into the definitions of ''network site'' and ''operational site'' in our proposed rule. Do these terms, as defined therein, leave any ambiguity as to whether certain facilities would qualify as ''sites'' for purposes of calculating percentages of sites in operation? We further observe that, as written, the proposal could

apply to providers that operate networks not deployed under a cellular-based network architecture. We seek comment on the potential applicability of the proposed requirements to such providers. Are the requirements well-suited to such providers, particularly any that rely on only a small number of sites to provide service in a given area? Should we consider exempting certain mobile wireless service providers or classes of providers from the proposed requirements? If so, how should we determine which providers or classes of providers should be exempted?

31. We also propose that the requirements apply only to facilities-based mobile wireless providers, *i.e.,* those that own or control at least part of the network infrastructure they use to provide service, as opposed to merely purchasing and reselling service from other providers. We seek comment on this limitation of the scope of the proposed requirement. Should mobile virtual network operators (MVNOs) or other non-facilities-based providers also be required to report outage or other information of some kind for public disclosure during emergencies? Could the disclosure of information about facilities-based providers but not resellers suggest to consumers that facilities-based providers are less reliable than MVNOs (even though MVNOs rely on facilities-based providers for service)? Would it be feasible for non-facilities-based providers to ascertain and report percentages of sites in operation by county for the underlying network infrastructure they use to deliver service? Should such providers instead be required simply to disclose with which facilities-based mobile wireless service providers they have contracted to provide service in a given area? Would extending the reporting obligations and associated disclosures to non-facilities-based providers result in additional incentives for their underlying facilities-based providers to improve the resiliency of their networks?

32. *Reporting Metric.* For consumers to make fair and reasonable comparisons across providers and services, the information must be presented in an accessible and usable form that consumers can process and interpret easily without formal training or technical expertise and that third parties can incorporate into various informational platforms and applications. Our proposal accordingly uses as a standard reporting metric the percentage of a mobile wireless service provider's sites that are operational, *i.e.,* not put out of service as the result of power loss, damage, interruption of transport, or other causal factors. We seek comment on the appropriateness of this standardized reporting metric as defined. Is there a need to clarify with greater precision what it means for a site to be considered ''operational''? Are there ambiguous or borderline cases in which a site may or may not be considered ''operational'' or ''providing service'' as such terms are commonly used? Should providers report percentages rounded to the nearest percentage point?

33. We seek comment on requiring mobile wireless service providers to report for public disclosure percentages of operational sites on a per-county basis. This is how this information is currently reported in DIRS. Reporting by county enables the geographic scope of reporting to expand or contract (*i.e.,* by adding or subtracting counties) as a disaster unfolds, while preserving a clear baseline for making comparisons among providers. We seek comment on whether it is more useful to require reporting on a more or less granular level than per-county, and if so, what level? We also seek comment on whether it would be sufficient for reporting providers to specify a single percentage of sites operational for a broader affected area than county level, such as an aggregate of all of the counties selected for reporting in the state?

34. Should mobile wireless service providers also provide the underlying calculation basis to the FCC? Should that happen on a presumptively confidential basis? What additional information, if any, should providers be required to report for disclosure? Should there be a minimum number of cell sites operated by a mobile wireless service provider in a county for reporting of the information to be required? For example, if a provider has only three sites in a county, would the fact that one of these sites is out be probative as a percentage? Should the required reporting further take into account variations in the types of cell sites a provider deploys, *i.e.,* traditional ''macro'' cells vs. femtocells or other types of ''small'' cells. If so, how? Does comparing the overall percentage of each wireless service provider's sites that are operating adequately address this potential concern since each provider could have sites of various types? In seeking comment on these matters, we observe that providers themselves generally decline to distinguish among various cell site types when they report publicly during emergencies the percentages of their sites in operation in an affected area.

35. Should we consider alternative metrics? If so, what are the relative costs and benefits of such alternatives in comparison to the proposed metric, keeping in mind our stated objectives in this proceeding? Should we consider requiring reporting for disclosure along more than one metric, or granting mobile wireless service providers more flexibility to tailor the content of their reporting to particular circumstances? Would such flexibility undermine the ability of consumers to compare provider performance readily, thereby defeating one of the critical functions of the disclosure requirement? Could the proposed requirements foster behavior from mobile wireless service providers aimed at ''scoring well'' on the reporting metric, even where doing so comes at the expense of allocating resources most effectively? How and why might such behavior realistically occur and to what extent? Are there likely to be trade-offs in practice between restoration of the greatest possible number of sites and restoration of those most critical to serving customers? If so, if the proposed metric is used, would providers actually delay restoration of the sites that are most critical to their customers, notwithstanding that their customers will be able to detect whether or not their service is improving? If so, under what circumstances would providers engage in these sorts of behaviors? Please include specific examples in your comments.

36. Should we allow a mobile wireless service provider to count as a site ''within'' its network any site it actually uses to provide service during an emergency, regardless of whether it owns or controls the site? What effect would counting sites gained through sharing in both the numerator and the denominator of the percentage have on providers' incentives to share? Would this counting result in better or worse service for consumers as providers work to increase their own resiliency? For example, if Provider A has sixty of ninety cell sites operating in a certain county, where Provider B has seventy-five of ninety operating, they would respectively report that sixty-seven percent and eighty-three percent of their sites are operational in that county. If each provider granted the other access to its operational sites in that county, however, both providers' reported percentages would increase substantially: Provider A would report seventy-seven percent ((60 + 75) divided by (90 + 75) = 135/165) and Provider B would report ninety percent ((75 + 60) divided by (90 + 60) = 135/150) of sites operational in the county. We seek

comment on whether this is the best method for counting such cell sites that are provided from one competitor to another. Would such a provision appropriately account for sharing arrangements of the sort mobile wireless service providers are likely to implement in practice? To the extent a ''borrowed'' site effectively replaces a site used during normal periods to provide service, should a mobile wireless service provider be permitted or required to discount the latter site when calculating its percentages of sites in operation? Should a mobile wireless service provider be afforded only partial credit for its use of a borrowed site, given that it must share use of the site with the site's operator (and perhaps with other mobile wireless service providers) and the site may not be optimally positioned to perform as a site within its network? Should such a site be counted as one-half site for purposes of calculating the roaming provider's percentage of sites in service?

37. Rather than include such sites as part of its percentage calculations, should a mobile wireless service provider instead report separately the extent to which it used roaming or similar arrangements to augment its provision of service during an emergency? If so, should providers report percentages both with and without adjustments made to reflect such arrangements? If a facilities-based mobile wireless service provider uses roaming on a routine basis to expand its coverage footprint or network capacity in the counties designated for reporting during a disaster, should sites operated or controlled by its roaming partner within the affected area be counted as part of its network for purposes of calculating percentages of sites operational? Are mobile wireless service providers likely to have visibility into the operational status of individual sites they routinely use on a roaming basis to provide service to their customers?

38. Additionally, the proposal would allow providers to count as sites within their network any temporary sites, *e.g.,* Cells on Wheels (COWs) and Cells on Light Trucks (COLTs), that they have deployed to provide supplementary coverage and capacity during an emergency. We seek comment on this proposed treatment of temporarily deployed sites. Rather than be counted as full sites, should such sites be counted on a fractional basis, *e.g.,* as one-half of a site, given any attributes of COWs and COLTs such as coverage limitations? If a mobile wireless service provider uses a COW or a COLT to replace a disabled site entirely, should it be required to count the disabled site in the percentage? Given the operational complexities involved in deploying these sites, and their provisional and temporary nature, would it be more appropriate for mobile wireless service providers to report separately the extent to which temporary infrastructure is being used to augment their provision of service during an emergency?

39. We seek comment on the appropriateness of the proposed metric. First, we seek comment on whether consumers are likely to find the metric useful or if a different metric better serve consumer needs. Could the proposed metric unintentionally mislead consumers? For example, might consumers think that the percentage of inoperable sites within a county equals the percentage of lost coverage? Could the presence of overlapping coverage, heterogeneous architectures, and roaming arrangements with other carriers and other factors like Wi-Fi offload mean there is no one-to-one correlation between inoperable sites and lost coverage or capacity? If so, could reporting lead consumers to think that some carriers perform particularly well or particularly poorly even if both carriers end of with effectively the same coverage and capacity as one another throughout a disaster? How likely is it that providers reporting widely diverging percentages of sites in operation in a given county would be providing their customers with comparable levels of service within that county?

40. Second, will consumers find this metric easy to understand, given that all mobile wireless service providers would report a single number on a one-hundred-point scale, with higher reported numbers representing a higher proportion of sites in service? Does the metric require only minimal effort from consumers to process such information and use it to make comparisons among mobile wireless service providers?

41. Third, we seek comment on whether the percentage of cell sites that are operational would provide a substantively reasonable metric that consumers can use to compare the resiliency of wireless networks and services. Although the percentage of operational cell sites may not correlate precisely to the availability of service, as a general matter, the disabling of any site may at least marginally impair the ability of a network to deliver service to customers in the area covered by the site, and the cumulative impairment of service is likely to increase as the percentage of operational cell sites decreases. Thus, are significant differences in percentages between providers likely to reflect real differences in the level of service provided to customers? Moreover, are such differences likely to be most apparent during major disasters? Are such circumstances likely to coincide with increases in attempts to communicate over mobile wireless networks, which would amplify the significance of any disparities among providers in the percentages of sites they have in operation? On the other hand, is it possible that the proposed metric risks overstating the degree to which cell site outages affect service availability? If so, are there potential modifications that could be made to the metric to avoid this potential risk?

42. The reporting of *percentages* rather than absolute numbers of sites in operation seems likely to provide a better means for comparing relative performance across mobile wireless service providers because it can account for variations in the propagation characteristics of the spectrum bands in which they operate and the boundaries of mobile wireless service provider service territories. We seek comment on this issue.

43. We recognize that the proposed metric potentially has its limitations. Modern mobile wireless networks are complex enterprises, and the technologies that support them continue to evolve at a rapid pace. If we adopt a rule like the proposal, we would expect to review it periodically as technologies evolve to assess its continued effectiveness, and to determine if there are complementary or better ways to obtain and provide useful information for comparing the resiliency of mobile wireless networks. The proposed metric does not specifically address emerging trends in network design that PCIA identifies, such as the proliferation of ''small'' cells or distributed antenna systems (DAS), that could improve network performance. As providers continue to deploy a more diverse mix of cell types in their networks, there could be increasing numbers of cell sites that cannot feasibly be equipped with generators or dedicated sources of backup power. That said, is it clear whether such design attributes are being developed and implemented widely throughout the industry, or whether there currently are significant divergences among providers in how they design and configure their networks that would suggest the need for more or more complex metrics that specifically take these potential complications into account as PCIA suggests? Along the same lines, providers uniformly cite the need to prioritize restoration of their most critical sites when responding to a

disaster; would the proposed metric affect this practice. Also, as noted, providers themselves continue to provide the percentage of sites operational to the public from time to time during disasters, and federal agencies continue to use these figures to provide situational awareness. We seek comment on these issues. Could such disclosures provide a reasonable basis for making comparisons among providers even if the metric is not perfectly suited to informing consumers exactly how providers would compare in serving them at any specific location?

44. We seek comment on what metric would provide consumers with the best picture of a network's operational status. For instance, could the proposed metric provide a better indication of overall network health than would a purely coverage-based metric—even if accompanied by detailed coverage maps, *etc.*—given that the mere availability of coverage in an area does not guarantee network capacity sufficient to provide reliable service? What about a metric that focuses on the volume or percentage of access failures (*i.e.,* ''blocked calls'') experienced by a network? Is such a metric feasible, given that increases in the volume of traffic in the radio access network can limit the extent to which such measurements can be taken reliably? Does the proposed metric, on the other hand, provide information relevant to assessing both network coverage and the probability of completing a call? As the percentage of its cell sites in service decreases significantly, is a provider increasingly likely to experience both gaps in coverage and diminished capacity? Are providers suffering extensive site outages likely to avoid noticeable deteriorations in service, particularly in relation to competitors that are operating at significantly closer to full capacity? Are there more technically precise or sophisticated informational disclosures the Commission should consider that as easily enable consumers to make comparisons in disasters, in combination with or instead of the proposed metric?

45. *Timing and Frequency.* Under the proposal, DIRS activation would be the trigger for the reporting obligations. That is, beginning with the activation of DIRS and for the period that DIRS is active, mobile wireless service providers operating in counties subject to the DIRS activation would be required to report for public disclosure on a daily basis the percentage of their sites within such counties that are ''operational'' as we have defined that term. In effect, DIRS activation could define both the temporal and geographic scope of ''emergencies'' under which mobile wireless service providers would be required to report this information. The proposal would require such information to be submitted during any DIRS activation that is announced by means of a public notice, whether considered a full or partial activation. This may be appropriate, given DIRS's function as a forum for ''report[ing] communications infrastructure status and situational awareness information during times of crisis.'' Moreover, DIRS is a well-established reporting system in which almost all major mobile wireless service providers widely participate; those providers that have contact information on file are notified directly of activations, while others can be notified by means of public notice. In addition, the overall extent of communications outages and impacts encountered during an event is a primary factor that drives the decision to activate DIRS; accordingly, we would expect that tying the proposed reporting to activation of DIRS would focus the reporting on circumstances in which it is most likely to generate meaningful information for consumers on the comparative resiliency of mobile wireless networks. As a practical matter, it is not atypical for DIRS to be activated only a few times each year; in the latter half of 2012, for instance, DIRS was activated in whole or in part only in connection with the ''derecho'' storm, Hurricane Isaac, and Superstorm Sandy. We seek comment on the proposal to use activation of DIRS as a trigger for the reporting we propose in this *NPRM.* Given the projected frequency of DIRS activations based on past experience, should we consider modifying the obligation so that reporting would be triggered more frequently? What would be the advantages, if any, of more frequent reporting? Would such advantages outweigh the benefits of tying the reporting to activation of DIRS? If so, how?

46. If reporting and disclosures are tied to DIRS activation, the proposal would require providers to report the specified information once every twenty-four hours while the DIRS system remains active. These daily updates would enable consumers to assess the overall trajectory of a mobile wireless service provider's network outages and restoration efforts during an emergency without subjecting the mobile wireless service provider to overly burdensome reporting obligations. We seek comment on this frequency of reporting. Would such reporting fail to capture ''critical factors'' such as those CTIA identifies, including ''a provider's service restoration practices that can make the information outdated in a matter of hours and the reliability of the network during the overwhelming majority of time that DIRS is not activated?'' Would reporting on a daily basis provide a sufficiently detailed picture for the overall recovery progress of a provider in responding to a disaster? Could the reporting provide valuable information about network resiliency during major disasters, even if does not address network performance during normal periods of operation? On the other hand, would making the proposed reporting less frequent than once a day discourage providers from keeping up with the daily cycle established for DIRS reporting, leading to reduced situational awareness during disasters?

47. DIRS participants typically provide status updates in DIRS once each day, so adopting a similar schedule for the proposed reporting may generate efficiencies for mobile wireless service providers that participate already in DIRS. To further standardize such reporting and align it with DIRS reporting practices, all reports of operational site percentages would be submitted at a time of day specified by the Commission in the public notice announcing the DIRS activation. We seek comment on these aspects of the proposal.

48. Recognizing that service restoration during an emergency is a complex and dynamic process, should we require providers to make ''reasonable efforts'' to ensure that submitted information is current and accurate as of the time of filing. To what extent would it differ from carriers do now in reporting under DIRS? Should we consider specifying in more detail the ''reasonable efforts'' required from providers in verifying the currency and accuracy of submitted information? Should we require providers to submit unsworn declarations attesting to the accuracy of their submissions? We seek comment on this aspect of the proposal.

49. We seek comment on this proposed frequency and schedule for reporting of percentages of sites in operation. Would a requirement to report operational site percentages during an emergency, notwithstanding the voluntary reporting that providers already engage in on the same timetable, significantly divert resources away from service restoration or other emergency response activities? If so, how? Should the Commission consider granting providers additional time to report this information? If so, how long? Would delay in publication of such information diminish its significance and utility for

consumers or impact whether its disclosure would likely drive provider improvements in reliability during disasters? Are consumers more likely to consider such information as a basis for comparing and selecting among providers if the information is made available to them during or shortly after a disaster?

50. Finally, the proposal's reporting and associated disclosures would be programmatically separate from DIRS, and their implementation would leave intact the scope, confidentiality presumptions, and other operational parameters of DIRS. The proposal would make public only a subset of information that can be derived from information contained in DIRS filings, *i.e.,* percentages of sites in operation by county, but they would not make publicly available any DIRS information *per se.* Would the proposal's disclosures be consistent with the overarching purposes of DIRS? Would they threaten the effectiveness of this important, voluntary program? If so, how? The Commission established a presumption of confidentiality protection for DIRS information when it created the program in 2007 in recognition of the fact that ''DIRS filings voluntarily report weaknesses in and damages to the national communications infrastructure.'' The public disclosure of such information, we then determined, could ''potentially facilitate terrorist targeting of critical infrastructure and key resources'' or ''competitively harm the filers by revealing information about the types and deployment of their equipment and the traffic.'' The network-level public disclosures of operational site percentages by county, however, would not require providers to reveal information about the status of any individual site that could render it more vulnerable to attack, and thus it does not appear that the proposed disclosure could be used to facilitate destructive acts against a provider's network. Similarly, the proposal does not require disclosure of potentially competitively sensitive information about specific deployment and operational practices, which have typically been accorded confidential treatment. Rather, the type of disclosures we propose—percentages of sites in operation by provider—is consistent with the public disclosures that competitors often make of the general performance of their products or services. We seek comment on these issues.

51. In addition, we seek comment on the extent to which the disclosures proposed in this *NPRM* or similar proposals could have any unintended impact on DIRS reporting. Could such disclosures impair the ability of the Commission to obtain detailed DIRS reports from mobile wireless service providers in the future, or otherwise detract from the effectiveness of the DIRS program? Are there steps the Commission could take to mitigate any such unintended impacts? Are there effective alternative reporting metrics that would not require disclosure of information that may be presumed confidential?

52. The competitive concerns that partially underlie the confidential treatment afforded to DIRS and NORS filings may be inapposite in this proceeding. In establishing confidentiality protections for NORS filings, the Commission acknowledged the concerns of some providers that publicly reported outage information ''[h]ad been used by competitors to wage marketing campaigns.'' The limited informational disclosures may apply competitive pressure to providers to bolster the resiliency of their mobile wireless network infrastructure. Accordingly, would the incorporation of such disclosed information into ''marketing campaigns'' improve public safety rather than detract from the effectiveness of these disclosures? Moreover, the proposal's disclosure would not likely contain trade secrets or other privileged information, such that its disclosure would compromise the operation of the mobile wireless marketplace. In reporting its percentages of sites in operation, a provider would not be required to reveal anything about its underlying practices or techniques for achieving network resiliency. The focus of the reporting is on outcomes—how well networks withstand disaster conditions—not on the business judgments or other factors that determine these outcomes. Would such disclosures discourage competition or innovation? Would such disclosures encourage more robust competition among providers to improve the resiliency of their networks? In short, would such disclosures improve consumer welfare? We seek comment on these questions.

53. *Manner of Disclosure and Associated Recordkeeping.* The proposal would require that mobile wireless service providers report their operational site percentages to the Commission in a machine-readable format. The Public Safety and Homeland Security Bureau, with any necessary support from other bureaus and offices, would compile the reported information and to post it on the Commission Web site in an easily accessed location, in a format that enables comparisons to be made among providers. We seek comment on ensuring that reported information is effectively disclosed and made available to consumers. Could the Commission undertake additional efforts to make the information more accessible to consumers or to third parties that may seek to incorporate the information into ''apps'' or other tools for consumers? How likely is it that mobile wireless service providers would also provide additional information and analyses by other means, including by posting it on their Web sites or citing it in press releases or advertisements.

54. We seek comment on whether we should establish rules requiring providers to maintain adequate records for some limited period of time of the internal processes and deliberations that support the operational site percentages or any other information they are required to report. If so, what sorts of records should we require providers to keep, and in what form? What time period for retention might be sufficient and why? Do providers already keep records of information that supports their reporting in DIRS? If so, what sorts of records and for how long? Are there incentives for providers to voluntarily keep records, for instance, to provide evidentiary support for their reported percentages in the event of a dispute or enforcement action? What costs and benefits would be associated with the adoption of any recordkeeping requirements the Commission might adopt? Are there ways of minimizing such costs while ensuring that adequate records are kept?

55. *Applicability to Smaller Mobile Wireless Service Providers.* Finally, we seek comment on the applicability of the proposed reporting obligations and associated disclosures to smaller mobile wireless service providers. We observe that many small mobile wireless service providers routinely file daily reports in DIRS as do larger providers. We seek comment on whether it would be particularly costly or difficult for smaller mobile wireless service providers to comply with these proposed obligations or similar ones. Should our requirements make special provisions for these mobile wireless service providers? Do they need extended periods of time in which to report the information and, if so, why? Would relaxed treatment for smaller providers unfairly limit their customers' ability to compare their providers' performance with that of their competitors? If we decide that smaller mobile wireless service providers merit special treatment under our rules, how should we delineate this class of mobile

wireless service providers? In seeking comment on these matters, we observe that the Regulatory Flexibility Act of 1980, as amended, (RFA) specifically directs us to consider the effects of proposed rules on small entities. Our Initial Regulatory Flexibility Analysis is set forth as Appendix B.

56. *Further Study.* Alternatively, should the Commission refer the question of providing greater transparency into network recovery efforts of CMRS providers to CSRIC or TAC before adopting any reporting or disclosure requirements? Are there some issues that should be carved off for further study while the Commission proceeds with others? Why? We ask that commenters define with specificity any issue on which either advisory body should be charged with developing recommendations, the timing anticipated for such work, and the value that such recommendations would be expected to provide. Could the efforts of CSRIC and TAC effectively lead to similar benefits for consumers and improvements to network resiliency that the proposed reporting in this NPRM is aimed at providing?

2. Other Measures

57. We also seek comment on whether there are alternative or complementary measures for improving wireless network reliability that the Commission should consider in this proceeding or subsequently. Commenters identifying such measures should address their associated costs and benefits, and whether such measures should be considered as alternatives to or as complements of the reporting and disclosures we propose in this *NPRM.*

58. *Alternative Informational Disclosures.* We first seek comment on whether the Commission should consider informational disclosures that differ in kind from the sorts of disclosures we have proposed. One possibility is to require mobile wireless providers to make available, as many electrical utilities already do, outage maps that document the availability of coverage within their service territories on an ongoing basis. We seek comment on adopting a requirement that mobile wireless providers make such maps available, during disasters and perhaps during normal periods of operation as well. How burdensome would it be to provide such maps, and how useful would they be to consumers?

59. Another possibility is that the Commission require mobile wireless service providers to report or disclose information about the practices they have implemented to promote the reliability of their networks. Under this option, the Commission might require mobile wireless service providers to report detailed information about their provisioning of back-up power (*e.g.,* percentages of sites equipped, duration of supply, technologies used) as well as available supplementary deployments (*e.g.,* quantities of COWs and COLTs, portable generators) they undertake to improve the resiliency of their networks. Were we to require disclosures along these lines, would consumers be able to understand and use the information to draw reasonable inferences about the comparative resiliency of wireless networks, or would such disclosures inundate consumers with more information than they could reasonably be expected to process? Would consumers understand which of these practices lead to different results, or is it preferable to focus on public reporting of a simple measure of comparative results among providers rather than on a number of dimensions of preparation? Would public disclosure of certain details of a provider's plans and resources for handling emergency situations pose a security risk? Are there other types of informational disclosures we have not identified, consistent with sound security policies, that would be useful to consumers or would otherwise advance network reliability? Are there less costly or less burdensome alternative measures that would accomplish the same intended objectives as the proposal?

60. *Relationship with Mobile MBA Program.* Next, we seek comment on the interplay between the reporting and disclosures proposed herein and the Commission's Mobile Measuring Broadband America (Mobile MBA) program. Under the Mobile MBA program, mobile wireless customers will voluntarily install an ''app'' that enables their devices to take direct measurements of network performance (*e.g.,* throughput, latency, cell site availability) at specified intervals and upload the data to a central server. Such a program could complement or replace the proposed disclosures by providing information on day-to-day network performance. We seek comment on the relationship between the two initiatives. Could the robust implementation of the Mobile MBA program eventually generate sufficient participation and information that would obviate the need for mobile wireless service provider reporting and associated disclosures of the sort we envision in this *NPRM*? Are there additional ways in which the two programs can serve complementary purposes? If so, how?

61. *Performance Standards.* In its May 13 letter, Consumers Union recommends that the Commission use reporting metrics such as those considered herein ''to set a schedule for phasing in improved performance standards as rapidly as possible.'' As an initial matter, we seek comment on whether successful implementation of the proposed reporting and disclosure rule could obviate the need for adoption of such standards. Would reporting and disclosure alone be sufficient to facilitate wireless network resiliency while enabling wireless providers to maintain the operational flexibility they claim is necessary to effectively implement back-up power solutions? Alternatively, should we consider performance standards of the sort Consumers Union proposes? Would the burden and cost of adopting performance standards exceed the benefits, particularly given the frequency or infrequency, or duration, of commercial power outages? Could the Commission take other complementary steps, short of adopting specific requirements, to encourage mobile wireless service providers to provide more robust back-up power for their cell sites or other critical communications facilities?

62. If we should consider performance standards as a possible alternative, we seek comment on what form such standards should take. For example, should we consider emergency back-up power requirements similar to the requirements the Commission previously adopted for mobile wireless networks but never made effective? Could we grant mobile wireless service providers greater flexibility than the previous rule, for example, by applying global back-up power standards to networks as a whole rather than to each individual site? If we were to specify a minimum duration for provision of back-up power, what would be a reasonable threshold, taking into consideration the capability of currently available back-up power technologies, including batteries? Since loss of backhaul service (*i.e.,* the connectivity between a site and the rest of the network) is also a major cause of cell site unavailability during emergencies, should the Commission consider adoption of performance standards to promote more redundant backhaul provisioning and what should those standards include? What are the incremental benefits of such standards and do they exceed the costs and burdens? Finally, if performance standards are appropriate, should we

consider phasing in such standards over time?

63. *Voluntary Industry Measures.* We also seek comment on whether heightened transparency and resiliency of mobile wireless networks could be achieved adequately through voluntary measures. We note one recent example of voluntary measures undertaken by industry to address consumer issues by empowering consumers through greater transparency. In light of concerns that substantial numbers of wireless consumers had experienced ''Bill Shock''—a sudden, unexpected increase in their wireless bills—the Commission in October 2010 proposed rules requiring carriers to alert consumers as they approach, and again as they reach limits of plan minutes, texts, data, and international roaming. In October 2011, the Commission announced an agreement between it, Consumers Union, CTIA, and certain wireless carriers that these carriers would provide free, automatic Bill Shock alerts on a voluntary basis, pursuant to CTIA's Code of Conduct. The alert requirements were phased in, culminating in the April 2013 announcement that all participating carriers now provide the alerts as promised. As a result, CTIA states that approximately 97 percent of consumers are protected against Bill Shock for voice, text, data, and international roaming services. The Commission established a Web site to enable consumers to easily identify participating carriers' specific Bill Shock alert policies and thresholds.

64. We seek comment on whether a similar voluntary initiative might feasibly achieve the improvements to consumer choice and network resiliency that are the objectives of this proceeding. If so, how might such an initiative work in practice? Could a voluntary initiative involving wireless industry and consumer advocacy groups timely develop additional or improved metrics about service availability and network performance during natural disasters that result in extensive service outages that would meet the objectives of providing consumers with information that they may find useful, and spurring comparisons and competition that result in greater reliability? Would such an initiative be likely to produce candid and transparent reporting of information to consumers, even from providers that must report poor performance? Additionally, are there opportunities for public-private initiatives that could help achieve the objectives? Could a real-time crowdsourcing approach work?

E. Legal Authority

1. Statutory Considerations

65. We seek comment on whether reporting requirements of the sort proposed in this *NPRM* would be within the Commission's authority under the Communications Act of 1934, as amended. In particular, we note that section 201(b) the Act authorizes the Commission to ''prescribe rules and regulations as may be necessary in the public interest to carry out the provisions'' of the Act. These provisions include the requirement that the practices of common carriers, including CMRS providers, are ''just and reasonable'' and not ''unjust or unreasonable.'' The Commission has asserted this authority in other contexts as a basis for requiring carriers to make available to the public information that enables consumers to make informed decisions about whether to purchase or retain a service. To the extent they promote ''just and reasonable'' practices relating to the resiliency of mobile wireless networks during emergencies, would the reporting and disclosures proposed in this *NPRM,* or similar proposals, advance the foundational purpose of the Commission articulated in section 1 of the Communications Act, namely that of ''promoting the safety of life and property through the use of wire and radio communications''?

66. Are there other Title II or Title III provisions that would provide a legal basis for the adoption of requirements of the sort we propose insofar as they extend to the provision of CMRS services? Could such mandatory reporting of network reliability data for public disclosure be grounded in section 214(d)'s requirement that a common carrier ''provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier'' and to ''undertake improvements in facilities'' to meet public demand? Would the proposed requirements also fall within the Commission's authority under section 218 to obtain from common carriers ''full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created?'' With respect to CMRS service, would such proposals be within the scope of our ''broad authority'' under Title III? We seek comment in particular on the applicability of sections 301 and 316, and our authority under section 303(b) to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.'' Section 301 provides for licensing of CMRS providers, and section 316 authorizes the Commission to modify such licenses ''if in the judgment of the Commission such action will promote the public interest, convenience, and necessity.'' Would the foregoing sources of authority, when coupled with our authority to ''generally encourage the larger and more effective use of radio in the public interest,'' and to adopt rules ''as may be necessary to carry out the provisions of th[e] Act,'' extend to the proposed disclosure requirements, as less restrictive ways of promoting more reliable service by wireless providers?

67. Also, we seek comment on the applicability of the Commission's authority over 911 service. The Nation's 911 system is part of its critical communications infrastructure, and the Commission plays a key role ensuring that the communications networks, including those of mobile wireless service providers, promote public safety, especially on matters involving national security and emergency preparedness of the United States. Indeed, Congress established the Commission in part to promote the ''safety of life and property.'' Consequently, the Commission also enjoys ''broad public safety and 9–1–1 authority.'' With mobile wireless service subscribers originating an increasing share of the nation's 911 calls—already the great majority and measured at as high as 75 percent in some areas—the resiliency of mobile wireless networks is becoming ever more critical to the reliable provision of 911 service. Accordingly, we seek comment on the extent to which the Commission's authority over 911 service could provide additional support for the adoption of requirements proposed in this *NPRM* or similar requirements.

2. First Amendment

68. We seek comment on whether the reporting requirements proposed in this *NPRM,* like the ''anti-cramming'' rules the Commission adopted in 2012, could withstand scrutiny under the First Amendment to the U.S. Constitution. In general, government regulation of commercial speech will be found compatible with the First Amendment if it meets the criteria laid out in *Central Hudson:* (1) There is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest. Under the standard set forth in *Zauderer,* compelled disclosure of ''purely factual and uncontroversial'' information is permissible if ''reasonably related to the State's

interest in preventing deception of consumers.'' We seek comment on which of these two standards, or any other standard, would apply to the proposals set forth in this *NPRM,* and whether the proposals would satisfy that standard.

69. In particular, we seek comment on whether reporting obligations of the sort we propose in this *NPRM* would meet the *Central Hudson* criteria. The Commission has previously observed that ''the government has a substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions in an increasingly competitive marketplace.'' The government also has a substantial interest, enshrined in section 1 of the Communications Act, in protecting the safety of the public through the use of radio communications. We seek comment on whether the reporting requirement proposed in this *NPRM* would directly advance these interests by making available for public disclosure information about the operational status of mobile wireless networks during emergencies, where designed to create incentives for mobile wireless service providers to improve the resiliency of these networks. What sort of additional factual record, if any, would the Commission need to develop to establish that the proposed reporting ''directly advances'' these substantial government interests?

70. We note that the proposed requirements would require reporting only of a single, fact-based metric, one that can be calculated from information that providers already tabulate and routinely report in DIRS filings. Such regulation is different in kind from minimum back-up power requirements previously adopted by the Commission, or other forms of direct regulation of wireless network facilities or practices. Moreover, in other contexts the proposed reporting of information to the government for purposes of compilation and disclosure that has been deemed less restrictive than requiring ''companies themselves to publicly post detailed information in a particular format.'' In addition, we observe that the proposed reporting would in no way restrict providers from disclosing information of their own choosing directly to the public, as many already do, to provide a fuller context for assessing the performance of their networks during an emergency. We seek comment on the relevance of these considerations.

71. Finally, we seek comment on the applicability of the *Zauderer* standard to reporting obligations of the sort proposed in this *NPRM.* Would the reported information qualify as ''purely factual and uncontroversial,'' provided that the reporting metric is defined with sufficient clarity and precision? Would the prevailing usage of operational site percentages among providers as a means of reporting progress in disaster recovery undermine any claim that such information is non-factual or controversial? Could the proposed reporting be construed as being ''reasonably related to the State's interest in preventing deception of customers?'' What sort of additional factual record, if any, would the Commission need to develop to establish such a relationship? Could such a relationship be established even in the absence of evidence of any intent to deceive? For instance, would the proposed reporting ''reasonably relate[]'' to preventing deception of customers insofar as disclosure of the reported information alerts customers to deficiencies in network resiliency of which they were previously unaware and which may have affected their prior purchasing decisions had the information been made available to them? Are there are other ways of establishing a reasonable relationship between reporting of the sort we propose and the prevention of consumer deception?

Procedural Matters

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the recommendations in this *Notice of Proposed Rule Making* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in ''Comment Period and Procedures'' of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

72. The American public relies increasingly on mobile wireless networks to communicate, with the great majority of calls to 911 already originating on wireless networks and a large and growing number of households having only wireless phones. Notwithstanding these trends, during Superstorm Sandy and other recent storms, mobile wireless networks suffered extensive site outages, seriously impairing the ability of millions of customers to summon emergency assistance, receive emergency information, and reach their loved ones. Although some service disruptions may be unavoidable during a major emergency, and surges in demand for wireless service at those times present added challenges, the current state of affairs is not acceptable and requires action. We believe that better service and hardening of mobile wireless networks is feasible and could dramatically reduce the severity of these problems, which are not incurred in equal measure by all mobile wireless providers.

73. Accordingly, our central proposal in this *NPRM* is to require facilities-based commercial mobile radio service (CMRS) providers to report to the Commission for public disclosure, on a daily basis during and following major emergencies, the percentage of cell sites within their networks that are providing CMRS. These disclosures would be made for each county in the designated disaster area. This information is currently included in voluntary reports provided electronically to the Commission by mobile wireless service providers in disasters, but on a presumptively confidential basis. For the reasons discussed below, we believe that requiring reporting and public disclosure of the information proposed could benefit consumers while also advancing public safety. First, public disclosure could enable consumers to reasonably compare the performance of mobile wireless service providers on a sufficiently similar basis during major emergencies to help consumers to make more informed decisions when selecting mobile wireless products and services. Second, empowering consumers with this information on an ongoing basis could in turn apply competitive pressure on mobile wireless service providers to invest in material improvements to their respective network infrastructures or take other actions to improve the reliability and resiliency of their networks. Third, the standardized disclosure of such information could provide policymakers with useful information and potentially spark an honest and more informed public safety and communications dialogue, perhaps including consideration of possible barriers to greater reliability of mobile wireless networks.

74. In addition to seeking comments below on specific transparency

proposals, we also explore alternative or complementary approaches and seek more general comment on other steps the Commission could take if necessary to achieve the goals of greater mobile wireless network transparency and reliability.

B. Legal Basis

75. The legal basis for the rules and rule changes proposed in this *NPRM* are contained in sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c.

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

76. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules adopted herein. 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).

77. Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

78. The disclosure obligations proposed in the *NPRM* would apply exclusively to facilities-based CMRS providers, *i.e.,* providers of CMRS that own or operate at least part of the network infrastructure that provides the service. The SBA size standard that most clearly applies to this class of providers is that established for Wireless Telecommunications Carriers. Under that standard, a business with 1,500 of fewer employees is considered small. Census Bureau data for 2007 show that there were 1,383 firms in this category that operated for the entire year. Of this total, 1,368 had employment of 999 or fewer, and 15 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Wireless Telecommunications Carriers can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

79. The *NPRM* proposes requiring mobile wireless providers to submit to the Commission for purposes of public disclosure, on a daily basis during designated emergencies, the percentage of their cell sites in each affected county that are operational. Providers would need to make ''reasonable efforts'' to ensure that such disclosures are accurate and up-to-date as of the time they are made. A large number of CMRS providers, including many smaller providers, already report such information on cell site outages in DIRS. In the *NPRM,* however, we have estimated the costs the proposed requirements would impose on providers that do not currently provide such information in DIRS. We have estimated that a $78,000 total nationwide annual expense would be imposed on an assumed fifty additional providers that currently are not reporting DIRS data, many of whom would likely qualify as small. Under this estimate, an average of only $1,560 in annual costs would be imposed on each provider, of which there would be only fifty—out of an estimated 1,368 small providers—and not all of whom would necessarily qualify as small. We therefore do not believe that the proposal would have a significant economic impact on a substantial number of small entities. We seek comment on this analysis.

80. In addition, the *NPRM* seeks comment on whether there is a need to impose requirements on providers to keep adequate records of the internal processes and deliberations that support their required disclosures. The *NPRM* seeks comment on ways of minimizing the costs of any such recordkeeping, and on whether providers have adequate incentives to keep such records voluntarily (*i.e.,* to ensure there is adequate evidentiary support for their disclosures in the context of an enforcement proceeding).

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

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

82. The disclosure obligations we do propose are minimally extensive, and for several reasons we do not believe that their implementation would have a significant economic impact on any mobile wireless providers, including those that qualify as small. First, the disclosures would be required only during serious emergencies, and even then only once a day. The content of the disclosure, a single percentage figure for each affected county, is minimal both in terms of size and complexity. Also, the information subject to disclosure is already routinely reported on a voluntary basis by mobile wireless providers, including many small providers, in the Commission's Disaster Information Reporting System (DIRS). For such providers, compliance with the reporting obligation would require no additional effort. We further observe that the disclosure requirement would not prescribe a design standard, as providers would be required to report statistics on the resiliency of their networks but retain wide flexibility to implement the strategies they deem most effective in achieving sufficient resiliency.

83. The disclosure requirements proposed in the *NPRM* are among the least burdensome of available options for promoting mobile wireless network resiliency. One alternative option we might have proposed is to require

providers to supply cell sites or other critical facilities with minimum supplies of back-up power to be used in the event of commercial power loss. The Commission previously adopted requirements along these lines, although they were ultimately vacated at the Commission's request in the face of legal challenge from the mobile wireless industry. Although we seek general comment in the *NPRM* on back-up power requirements as an alternative to, or possible complement of, the proposed disclosure obligations, we do not propose moving forward with adoption of such requirements at this time. Another alternative we consider in the *NPRM* is to require reporting of information other than operational site percentages, such as information about the efforts a provider has undertaken to harden its network and prepare for disasters. The relative economic impact of such reporting on small providers in comparison to the proposal is difficult to gauge in the absence of specific details, but we do not have reason to believe it would be significantly less burdensome than the minimal reporting discussed.

84. Finally, notwithstanding these observations, we seek comment in the *NPRM* specifically on the potential impact of the proposed obligations on small mobile wireless providers and on steps that could be taken to minimize the burden on such entities. We renew our request for comment on these matters in this IRFA. In doing so, we observe that many small mobile wireless service providers routinely file daily reports in DIRS as do larger providers, which suggests that such mobile wireless service providers would not find it particularly burdensome to comply with the sorts of reporting obligations discussed. Nevertheless, we seek comment on whether it would be particularly costly or difficult for smaller mobile wireless service providers to comply with these proposed obligations or similar ones. Should our requirements make special provisions for these mobile wireless service providers? Do they need extended periods of time in which to report the information and, if so, why? Would relaxed treatment for smaller providers unfairly limit their customers' ability to compare their providers' performance with that of their competitors? If we decide that smaller mobile wireless service providers merit special treatment under our rules, how should we delineate this class of mobile wireless service providers?

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

85. None.

Comment Filing Procedures: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments should be filed in PS Docket No. 13–239. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

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

Confidential Materials: Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in section 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR section 0.459. Redacted versions of confidential submissions may be filed via ECFS.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: Sec. 5, 48 Stat.1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b).

■ 2. Add § 4.15 is added to read as follows:

§ 4.15 Disaster reporting requirements for commercial mobile radio services providers.

(a) *Definitions.* For purposes of § 4.15 only, the following definitions apply:

(1) *Network site.* Any land station controlled or operated by a Commercial Mobile Radio Service (CMRS) provider and used by it during periods of normal operation to provide CMRS; any land station deployed by such provider on a temporary basis during a period of activation of the Disaster Information Reporting System (DIRS) for the purpose of providing CMRS; or any land station not under the operation or control of such provider but actually used by it to provide CMRS during a period of DIRS activation, under a roaming agreement or other arrangement. Co-located transmitters or antennas used by the same provider to provide CMRS using different technologies shall be treated as a single network site.

(2) *Operational site.* A network site that is providing CMRS, notwithstanding commercial power loss, physical damage, backhaul or transport service disruption, or any other factor.

(b) Facilities-based CMRS providers are required to report the information specified in paragraph (c) of this section during periods of activation of the DIRS system, but only when such activation is announced by means of a public notice.

(1) In carrying out the reporting specified in paragraph (c) of this section, providers shall report only with respect to counties subject to the DIRS activation.

(2) The reporting specified in paragraph (c) of this section shall be made at the time specified in the public notice announcing the DIRS activation,

or as soon as possible thereafter, each day the DIRS system remains activated unless otherwise specified by the Commission.

(c) Under the circumstances specified in paragraph (b) of this section, CMRS providers shall report to the Commission the percentage of their network sites in each county that are operational sites at the time the percentage is reported. Providers shall make reasonable efforts to ensure that all reported information is accurate and current as of the time it is reported.

(d) Providers shall carry out the reporting required under paragraph (c) of this section by submitting the required information to the Federal Communications Commission in a machine-readable format, and in accordance with any guidance the Public Safety and Homeland Security Bureau (Bureau) may issue with respect to such submissions.

(e) The Bureau shall compile the information reported under paragraph (c) of this section and publicly disclose the information on the Federal Communications Commission Web site, *http://www.fcc.gov,* in a prominent and easily accessed location and in a manner that enables comparisons to be made among providers. The Bureau may also take additional measures as appropriate to make this information more accessible and useful to consumers.

[FR Doc. 2013–27453 Filed 11–15–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Ocean and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130808698–3698–01]

RIN 0648–XC809

Endangered and Threatened Wildlife; 90-Day Finding on Petitions To List the Pinto Abalone as Threatened or Endangered Under the Endangered Species Act

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

ACTION: 90-day petition findings, request for information, and initiation of status review.

SUMMARY: We, NMFS, announce 90-day findings on two petitions received to list the pinto abalone (*Haliotis kamtschatkana*) as a threatened or endangered species under the Endangered Species Act (ESA) and to designate critical habitat concurrently with the listing. We find that the petitions and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted. We will conduct a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species from any interested party.

DATES: Information and comments on the subject action must be received by January 17, 2014.

ADDRESSES: You may submit comments, information, or data, identified by ''NOAA–NMFS–2013–0158'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2013–0158'' 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 or hand-delivery:* Protected Resources Division, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or other information you wish to protect from public disclosure. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, West Coast Region, (562) 980–4115; or Lisa Manning, NMFS, Office of Protected Resources, (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2013, we received a petition from the Natural Resources Defense Council (NRDC) to list the pinto abalone (*Haliotis kamtschatkana*) as threatened or endangered under the ESA. The petitioners also requested that critical habitat be designated for the species under the ESA. On August 5, 2013, we received a second petition, filed by the Center for Biological Diversity (CBD) to list the pinto abalone under the ESA and designate critical habitat. Both petitions bring forth much of the same or related factual information on the biology and ecology of pinto abalone, and raise several similar issues regarding potential factors affecting this species. As a result, we are considering both petitions simultaneously in this 90-day finding. Copies of the petitions are available upon request (see **ADDRESSES,** above).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the status review with a finding published in the **Federal Register** as to whether or not the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a thorough review of the available information, as compared to the more limited scope of review at the 90-day stage, a ''may be warranted'' finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include any subspecies and, for vertebrate species, any distinct population segment (DPS) which interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, ''the Services'') policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is

''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' continued existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA implementing regulations define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)). In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day stage, we evaluate the petitioners' request based upon the information in the petition, including its references and the information readily available in our files. We do not conduct additional research and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files indicating the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. Conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information negates a positive 90-day finding if a reasonable person would conclude that the uncertainty from the lack of information suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by non-governmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but the classification alone does not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Distribution and Life History of the Pinto Abalone

The pinto abalone is a marine gastropod mollusc and a member of the family Haliotidae and the genus *Haliotis.* Of the seven species of abalone found along the west coast of North America (Geiger, 1999), pinto abalone have the broadest latitudinal range extending from Sitka Island, Alaska to Baja California, Mexico (Campbell, 2000), and it is the predominant abalone found in Washington and Alaska, and in British Columbia, Canada. Two subspecies of pinto abalone have been recognized by taxonomists: the northern form (*Haliotis kamtschatkana kamtschatkana*) is distributed from Alaska south to Point Conception, California; and the southern form, or ''threaded abalone'' (*Haliotis kamtschatkana assimilis*) is distributed from central California to Turtle Bay in Baja California, Mexico (Geiger, 1999).

The pinto abalone's muscular foot is tan and is used to adhere to hard substrate and for locomotion. The epipodium (the circular fringe of skin around the foot) and tentacles are mottled yellow to dark tan with vertical banding patterns. The underside of the foot is pearly white. The outer surface of the shell is characterized by irregular

lumps, mottled red and/or green coloration, and 3–6 raised, open respiratory pores. Paralleling the respiratory pores is a deep groove (Stevick, 2010).

Pinto abalone occur in intertidal and subtidal habitats (0–20m depth, most commonly 0–10m depth; Rothaus *et al.,* 2008) that vary with respect to exposure and contain hard substrate (bedrock and boulders/cobble) with ample quantities of benthic diatoms, and micro- and macro-algae. Pinto abalone are found in areas with little freshwater influence (salinity ≥ 30 parts per thousand), and can tolerate wide ranges in temperature, from 2 to 24 degrees Celsius, based on laboratory experiments (COSEWIC, 2009).

Pinto abalone exhibit separate sexes and are thought to reach sexual maturity at sizes ranging between 50–70 mm shell length, which correspond to ages ranging between 2 to 5 years (Rothaus *et al.,* 2008; COSEWIC, 2009). Adults cluster in spawning aggregations and broadcast sperm or eggs into the water sometime between spring and late summer (Campbell *et al.,* 1992; Stevick, 2010). This type of spawning strategy depends on densely aggregated adults (e.g., within 1–2 meters of conspecifics) to achieve the high gamete densities needed for successful fertilization (Davis, 1996; Babcock and Keesing, 1999). Larvae continue to develop in the water column over a 5- to 10-day period (perhaps up to 13 days at cooler temperatures) before settling on to hard substrate in water that is slightly deeper than where spawning adults aggregate (Rothaus *et al.,* 2008; COSEWIC, 2009). This relatively short dispersive phase combined with hydrodynamic conditions during the time of spawning may limit dispersal distances (Bouma, 2007). Once settled onto rocky substrata, typically encrusted with coralline algae, pinto abalone juveniles consume benthic diatoms, bacterial films, and microalgae (COSEWIC, 2009). Adults feed on benthic macroalgae, including drift kelp (COSEWIC, 2009). Growth rates can vary depending on food availability, water temperature, and other environmental factors (COSEWIC, 2009). Pinto abalone are long-lived (approximately 20–50 years) and reach a maximum shell length of 14 to 16.5 cm (Shepherd *et al.,* 2000; Rothaus *et al.,* 2008). Pinto abalone are preyed upon by a wide variety of marine predators including sea stars, fishes, octopus, the southern sea otter, river otters and *Cancer* crabs.

Status and Abundance Trends of the Pinto Abalone

The pinto abalone has been a target species for recreational and/or commercial fisheries in Alaska, British Columbia, Washington, and California. A full discussion of the impacts of fisheries on pinto abalone populations is discussed in the *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* listing factor section below. In summary, fisheries-dependent information suggests declines ranging between 80–99 percent throughout portions of the species' range (Woodby *et al.,* 2000; Jamieson, 1999; Rogers-Bennett, 2007).

Fishery-independent information from Alaska, British Columbia, Washington, and California corroborate the declining trends suggested by landings data. Qualitative observations during dive surveys conducted in Southeastern Alaska from 1988–1999, suggest a continued, steady decline in pinto abalone densities (Woodby *et al.,* 2000). In British Columbia, fishery-independent surveys confirmed that natural stock rebuilding did not occur after fishery closure in 1990 and some populations further declined (Campbell, 2000; COSEWIC, 2009). Densities of mature pinto abalone on the central coast of British Columbia and in the Queen Charlotte Islands have declined by approximately 80–90 percent since 1978 (COSEWIC 2009). In Washington, fishery-independent surveys at index stations in the San Juan Archipelago indicate that pinto abalone abundance has declined by 83 percent, density has declined from 0.18 to 0.05 abalone per meter squared overall, and mean shell length has increased, suggesting recruitment failure (Rothaus *et al.,* 2008; Essington *et al.,* 2011). There is very little information on population status of pinto abalone in Oregon (Rogers-Bennett 2007), and the petitioners suspect that they have never occurred in abundances large enough to support fishing activity there. In California, comparison of pinto abalone numbers in the early 1970s to the 1999–2003 period at three index sites in northern California showed a decline of 99 percent, (Rogers-Bennett, 2007) and the species is currently rare throughout California (Rogers-Bennett *et al.,* 2002). In Mexico, current-day abalone landings range between 350–400 metric tons per year, an order of magnitude lower than catches recorded in the mid-1900s. The incidental collection of the southern subspecies of pinto abalone in the Mexican fishery is unknown as is the species' status and abundance trends.

Analysis of the Petitions

The two petitions request the same action, to list the pinto abalone as endangered or threatened under the ESA and to designate critical habitat for the species. In addition, NRDC requested the following alternative to listing the species throughout its range:

''In the alternative, NMFS should list the southern subspecies of pinto abalone as endangered, and identify distinct population segments (DPSs) of the northern subspecies of pinto abalone and list such DPSs as endangered or threatened.''

The ESA allows for the listing of species and subspecies of invertebrates, but does not allow for listing of invertebrate DPSs. Thus, NMFS does not have the authority to list DPSs of pinto abalone or to list DPSs of either of its two recognized subspecies, as requested by the NRDC.

The petitions contain similar information on the species, including the taxonomy, species description, geographic distribution, habitat, population status and trends, and factors contributing to the species' decline. Both petitioners identified historical overfishing, current low densities resulting in low recruitment rates, and poaching as the primary factors contributing to the decline of pinto abalone. The petitioners state that predation, inadequate state fishing regulations, climate change, and ocean acidification also pose serious threats to the species' persistence.

In the following sections, we analyze the information presented by the petitions and readily available in our files regarding the specific ESA section 4(a)(1) factors (hereafter, ''listing factors'') affecting the population's risk of extinction.

The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Both petitions suggest that increases in atmospheric CO_2 and other greenhouse gases that have occurred since the industrial era began in the 1700s pose a serious emerging threat to pinto abalone. Specifically, the petitioners highlight impacts of the following stressors that are linked to greenhouse gas emissions: increasing sea surface temperatures, increased incursions of low salinity water into coastal areas (Essington *et al.,* 2011), sea level rise, and ocean acidification. The petitioners include greenhouse gas emissions and its associated impacts under different listing factors. The NRDC discusses greenhouse gas emissions and associated impacts in the

Other Natural or Manmade Factors listing factor section, while CBD includes discussions of this threat under this listing factor, and the *Disease and Predation* and *Inadequate Regulatory Mechanisms* listing factor sections. We will summarize the information presented by the petitioners and in our files only here, but recognize that climate change and its associated impacts could also be included in the *Other Natural or Manmade Factors* section.

Direct impacts of water quality parameters associated with climate change on pinto abalone were evident in a study conducted by Bouma (2007), whereby larvae experienced higher mortality rates at decreased salinities (<26 practical salinity units) and elevated water temperatures (>21° Celsius). Recent studies by Crim *et al.* (2011) and Friedman *et al.* (2012) suggest that elevated levels of dissolved CO_2 in seawater result in negative impacts to shell development and survival of pinto abalone larvae. In addition, elevated levels of dissolved CO_2 and low pH have been observed in coastal areas along the coasts of British Columbia and Washington (Feely *et al.,* 2012; Freidman *et al.,* 2012), suggesting that pinto abalone populations could be currently experiencing the effects of ocean acidification. The petitioners are also concerned about the simultaneous effects of multiple stressors that are associated with climate change. For example, reddish-rayed abalone (*H. coccoradiata*) experienced lower than expected shell calcification rates when exposed to elevated temperatures and low pH than those observed when larvae were exposed to each stressor in isolation (Byrne *et al.,* 2011). Indirect impacts from climate-mediated habitat changes may reduce the availability of food sources and habitats for pinto abalone, especially in the form of kelp beds and coralline algae (Tomascik and Holmes, 2003; Rogers-Bennett, 2007; COSEWIC, 2009; Rogers-Bennett *et al.,* 2011).

We conclude that the information in the petitions and in our files suggests that climate change and its associated impacts, especially low salinity, elevated water temperatures, and ocean acidification may already be impacting pinto abalone populations in some areas and may impede the continued existence of the species in to the future. However, additional information regarding predicted rates of change in these parameters by area, including error terms, are necessary to evaluate future impacts to pinto abalone survival. The information provided on the indirect effects of climate change on the availability of food sources and suitable settlement habitat is insufficient to evaluate whether these factors may be reducing the quality or quantity of pinto abalone habitat enough such that listing may be warranted.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information from both petitions suggests that fisheries have contributed historically to population declines of pinto abalone throughout their range. Pinto abalone were harvested in commercial fisheries in Alaska, British Columbia, and California, until their closures in 1995, 1990 and 1996, respectively. In Alaska, the fishery began in the mid-1960s and operated initially with very few restrictions (Woodby *et al.,* 2000). As landings fell dramatically in the early 1980s, a subsequent rise in the ex-vessel value ensued, possibly leading to increased fishing pressure that was not offset by increasingly stringent catch guidelines and minimum size limits (Woodby *et al.,* 2000; Herbert, 2011). As a result, catch-per-unit-effort fell by 90 percent between the peak of the fishery in 1979 (172 metric tons) and 1995, the last year of the fishery (Woodby *et al.,* 2000). The commercial fishery in British Columbia began in the early 1900s with little or no regulation. The fishery was small and sporadic until the 1950s, when effort increased due to the introduction of SCUBA gear and other improved fishing technologies (e.g. freezing) (Muse 1998). Landings peaked in the 1970's at over 400 metric tons per year (Sloan and Breen, 1988; Campbell, 2000) and by the mid-1980s, landings declined by roughly 88 percent (Jamieson, 1999). Despite regulations such as limited entry, quotas, size limits, and total allowable catch, abalone depletion continued and the fishery was closed in 1990 (Muse 1998) due to stock declines and conservation concerns (Jamieson, 2001). Commercial abalone fishing in California dates back to the 1950s, when Chinese-Americans began an intensive fishery in rocky intertidal areas. The fishery extended in to subtidal areas with the advent of SCUBA in the 1900s. Landings ranged between about 1,800–2,200 metric tons annually from 1952–1968, declined rapidly through the early 1980s by an order of magnitude, and gradually and steadily declined another order of magnitude until the fishery closed in 1996 (CDFW 2005). Pinto abalone were not targeted by the California fishery; however, approximately 21,000 animals belonging to the southern subspecies were removed between 1969–1995 (Rogers-Bennett *et al.,* 2002). Pinto abalone declines of approximately 90 percent were estimated using historical data (both fishery-dependent and -independent data) to back-calculate historical baseline abundances (Rogers-Bennett *et al.,* 2002). In Mexico, abalone fishing began at the end of the 19th century, peaked in the mid-20th century at 6,000 metric tons of meat per year, and currently ranges between 350 to 400 metric tons per year (OECD, 2012). The current-day, small-scale fishery is located on the western coast of the Baja California Peninsula and includes green (*H. fulgens*), pink (*H. corrugata*), black (*H. cracherodii*), white (*H. sorenseni*), and red (*H. rufescens*) abalone (OECD, 2012). This fishery is primarily based upon two species, the green and pink abalone, which together represent over 95 percent of the total catch. The Mexican government classified this fishery as deteriorated in 1996 largely because of declines in green abalone populations. Although the southern subspecies of pinto abalone is not mentioned as being a part of this fishery, it is likely that the species has been incidentally captured in Mexico.

Recreational and/or subsistence fisheries were conducted in British Columbia, Washington and California until their closures in 1990, 1994 and 1997, respectively. Unfortunately, annual harvest information for these recreational fisheries was either not recorded or is unavailable (Rothaus *et al.,* 2008). Currently, Alaska permits subsistence and personal use fishing with a catch limit of up to five pinto abalone per day and a minimum shell length of 3.5 inches. In Oregon, a recreational fishery remains with limits of one abalone per day, per person, and five per year (ODFW UD).

The petitioners assert that pinto abalone populations in many areas throughout their range have not recovered despite commercial and recreational fishery closures and more restrictive regulations for remaining subsistence, personal use and recreational fisheries. The petitioners argue that historical fishing reduced pinto abalone densities to levels that were below those necessary for successful fertilization in many areas.

We conclude that the petitions and information in our files present substantial evidence that fisheries throughout a large portion of the species' range had an impact on the viability of pinto abalone populations through density reduction and possibly subsequent reproductive failure that may continue today in some areas. This information suggests that the impacts of historical fishing may continue to affect

the continued existence of pinto abalone populations, despite the fact that the threat itself has been removed. To better evaluate these continued impacts, more fishery-independent information on abalone density, size distributions, and nearest neighbor distances is necessary. To further evaluate the potential impact of the current subsistence, personal use, recreational, and commercial fisheries in Alaska, Oregon, and Mexico, more information regarding the density, size distributions, and nearest neighbor distances of pinto abalone populations in areas that overlap with fishing effort is necessary.

Disease or Predation

The CBD petition briefly mentions that pinto abalone are susceptible to a protist parasite in aquaculture environments and asserts that diseases and parasites do pose risks to abalone in general, especially as ocean temperatures rise due to climate change impacts. The petition does not provide any additional information to support that disease is a factor affecting the species' continued existence such that listing may be warranted. Thus, the available information is insufficient to evaluate if disease may be affecting the continued existence of pinto abalone.

The petitioners list crabs, octopus, and sea stars as major predators of pinto abalone (Griffiths and Gosselin 2008). The NRDC believes that pinto abalone face a high level of predation by sea otters in Alaska based on information contained within Alaska Department of Fish and Game (ADFG, 2013). The NRDC does not believe that sea otters represent the main cause of pinto abalone declines in other locations because: (1) Pinto abalone populations are still declining in areas, especially in British Columbia, where sea otters are not present; and (2) the persistence of large animals in Washington (most animals are > 100 mm shell length) suggests that predation by sea otters (which selectively prey on large abalone) is not having a large impact on populations there.

We conclude that the NRDC petition and information in our files present substantial evidence that predation may be having an impact on the continued existence of pinto abalone in some areas of the range (i.e. by sea otters in Alaska), but not others. Additional information regarding sea otter abundance (historical, present, and predicted future), predation rates, and prey composition from subtidal areas (25 meters depth) up into the intertidal zone in Southeastern Alaska and Washington is necessary to determine whether sea otter predation is contributing to the decline of pinto abalone populations.

Inadequacy of Existing Regulatory Mechanisms

The petitions assert that the inadequacy of existing Federal, state, or international regulatory mechanisms has contributed to the continued decline of pinto abalone populations throughout a large portion of their range. The petitioners contend that despite Federal, state, and international fisheries' closures approximately two decades ago, a Federal threatened listing in Canada under the Species at Risk Act in 1999 (and upgrading to endangered status in 2009; COESWIC, 2009), addition to the NOAA Species of Concern List in 2004, the development of recovery plans in Canada and California (NRAP, 2003; CDFW 2005), an abalone rebuilding strategy implemented in Mexico in 2000 (OECD, 2012), and stricter measures regulating subsistence, personal use, recreational and commercial fisheries where they remain, pinto abalone populations continue to decline. The petitioners assert that this continued decline is likely the result of multiple stressors (i.e. historical overharvest, current harvest, discard mortality, poaching, and predation by sea otters) that have occurred or are occurring in different combinations, and acting in synergistic ways depending on location, to further reduce densities and the reproductive potential of remaining pinto abalone populations. The petitioners provide evidence to indicate that four of these stressors, historical overharvest, current harvest, discard mortality, and poaching, may be occurring because of inadequate past and present regulations and lack of enforcement of those regulations by state, Federal, and international governing bodies.

The states invoked increasingly protective measures during their commercial fisheries (e.g, bag limits, size limits, quotas, limited entry) to safeguard pinto abalone populations, but according to the petitioners these measures were either not restrictive enough, were not followed or enforced, and/or came too late to prevent the species' continued decline even after the fisheries were closed. In early 2012, Alaska closed its sport fishery and limited the subsistence and personal use fisheries to five abalone per day with a minimum shell length of 3.5 inches. Pinto abalone may only be collected by hand, using snorkel gear, and using abalone irons; the use of compressed air has been prohibited since 1997 (Herbert, pers. comm.). The 3.5-inch size limit failed to prevent stock collapse in the Alaska commercial fishery before its closure (Woodby *et al.,* 2000). The NRDC petition suggests that this size limit may be too low to sustain current-day subsistence and personal use fishing pressure in addition to other stressors such as predation by sea otters and discard mortality. The NRDC believes that discard mortality of smaller pinto abalone (many abalone are damaged during harvesting) by abalone fishers is a problem in areas where abalone harvest is legal.

Both petitions state that poaching has threatened and continues to plague pinto abalone populations throughout their range. In the Pacific Northwest, pinto abalone are particularly susceptible to poaching because they aggregate in relatively shallow waters, they occur in remote and largely unpatrolled coastlines and their market value remains high. Authorities in British Columbia have reported 30 abalone poaching convictions between 1997 and 2006, and they estimate that this only reflects a small percentage (10–20 percent) of the actual poaching activity (COSEWIC, 2009). The Organisation for Economic Co-Operation and Development (OECD, 2012) reports that even though the abalone rebuilding plan in Mexico is entirely focused on controlling fishing effort to address fishery decline, disease, climate change, predation, poaching, and a lack of fishery surveillance by the Mexican government also threaten the recovery of the fishery. A number of cases involving the illegal trade of federally protected abalone from Mexico into the United States and Canada (white and black in the United States and pinto abalone in Canada) have occurred over the last decade (Zetwo, pers. communication), indicating that existing regulatory mechanisms in Mexico have not eliminated risks to pinto abalone posed by poaching.

The CBD petition asserts that existing regulatory mechanisms are inadequate to address the threats to pinto abalone posed by greenhouse gas emissions. CBD argues that in the United States, domestic laws that protect the environment are only partially being implemented and therefore are not sufficient to reverse predicted increases in greenhouse gases in our atmosphere, and will merely slow the rate at which predicted increases will occur. On the international stage, emission reduction targets have been set and pledges have been made at a number of world conferences, but many countries, including the United States, have not met their reduction goals. The petition does not discuss any specifics regarding what levels of greenhouse gas emissions

would adequately protect pinto abalone populations from the impacts of climate change, or the timeframe over which reductions would need to occur in order to safeguard pinto abalone populations. Thus, it is unclear the level and extent to which existing regulatory mechanisms are inadequate to protect pinto abalone from this specific threat.

The CBD petition contends that inadequate regulation of commercial abalone farms and captive propagation and enhancement programs for restoring pinto abalone populations pose risks to wild pinto abalone populations including: disease-spread, loss of genetic diversity, and reduced fitness. However the petition does not provide any specific information that validates their concerns, such as examples of how diseases spread by land-based facilities, or that the outplanting of captive-raised animals that may be genetically or behaviorally unfit has led to the decline of pinto abalone populations. The petition also does not explain how inadequate Federal and state regulation of these programs has led to the species' decline.

Based on the information in the petitions and in our files as discussed above, we conclude that existing regulatory mechanisms may be inadequate to ensure sustainable fishing, minimize incidental collection, and sufficiently reduce or eliminate poaching of pinto abalone populations. To further evaluate the adequacy of existing regulatory mechanisms, more information is needed regarding the effectiveness of recent fishing restrictions and the level of poaching occurring in the United States, Canada, and Mexico. We conclude that while the information presented in the CBD petition suggests that regulations regarding greenhouse gas emissions may not be adequate to reverse the predicted rising trend in greenhouse gas emissions, there is great uncertainty regarding the population-level impacts of climate change to pinto abalone and the adaptability of pinto abalone to climate change effects occurring over long time scales. Therefore, the available information is not sufficient to determine if inadequate regulation of greenhouse gas emissions may be threatening pinto abalone populations such that listing may be warranted. We conclude that the CBD petition does not present sufficient information to determine whether inadequate regulation of abalone farms or captive propagation and enhancement programs are impacting the continued existence of pinto abalone populations.

Other Natural or Manmade Factors

The NRDC petition discusses the direct and indirect impacts of climate change under this listing factor in their petition. We have reviewed the information in the petition and in our files under the listing factor entitled *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range* (see above).

The CBD petition discusses the threat imposed by low pinto abalone densities and resulting reproductive failure on pinto abalone populations under this listing factor. We have reviewed the information in the petition and in our files under the listing factor entitled *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* (see above).

Petition Finding

After reviewing the information contained in both petitions, as well as information readily available in our files, we conclude the petitions present substantial scientific information indicating the petitioned action of listing the pinto abalone as a threatened or endangered may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(3)), we will commence a status review of the species. Following completion of the status review, we will determine whether the species is in danger of extinction (endangered) or likely to become so within the foreseeable future (threatened) throughout all or a significant portion of its range. We now initiate this review, and thus, the pinto abalone is considered to be a candidate species (50 CFR 424.15(b)). Within 12 months of the receipt of the NRDC petition (July 1, 2013), we will make a finding as to whether listing the species as endangered or threatened is warranted as required by section 4(b)(3)(B) of the ESA. If listing the species is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information relevant to whether pinto abalone is threatened or endangered. Specifically, we are soliciting published and unpublished information in the following areas: (1) Long-term trends in abundance, distribution, size ranges, and nearest neighbor distances, especially in areas where fishing pressure, sea otter predation, and poaching occurs; (2) potential factors for decline now and in the future, especially overharvesting, poaching, natural predation (especially by southern sea otters), disease, climate change, and ocean acidification; (3) southern sea otter population status, predation rates, and prey composition in Alaska and Washington from coastal intertidal areas to 25 meters depth; (4) population status in Mexico; (5) factors important for management of ongoing subsistence, personal use, and recreational fisheries; (6) current estimates of population size and available habitat; (7) data on various life history parameters including, but not limited: to size/age at maturity, fecundity, length of larval stage, and larval dispersal dynamics; (8) enforcement information from Alaska, Washington, Oregon, California, and Mexico regarding the frequency, severity, and location of poaching incidents; (9) projections on population growth or decline and risk of extinction considering the impacts of stressors; and (10) ongoing or planned efforts to protect and restore the species and its habitat.

We also request information on critical habitat for pinto abalone. Specifically, we request information on the physical and biological habitat features that are essential to the conservation of the species and identification of habitat areas that include these essential physical and biological features. Essential features include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12). For habitat areas potentially qualifying as critical habitat, we request information describing: (1) The activities that affect the habitat areas or could be affected by the designation; and (2) the economic impacts, impacts to national security, or other relevant impacts of additional requirements of management measures likely to result from the designation.

We request that all information be accompanied by: (1) Supporting documentation such as maps, raw data with associated documentation, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, mailing address, email address, and any association,

institution, or business that the person represents.

References Cited

A complete list of references is available upon request from the NMFS West Coast Regional Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 12, 2013.

Samuel D. Rauch, III.,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–27553 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 78, No. 222

Monday, November 18, 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

Submission for OMB Review; Comment Request

November 12, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Agricultural Research Service

Title: Food Safety Education and Training Materials Sharing Form.

OMB Control Number: 0518–0046.

Summary of Collection: The USDA National Agricultural Library (NAL) has a Food Safety Education and Training Materials Database. The Database is a centralized gateway to access consumer-centric materials for educators and others interested in food safety education. The collection of information is necessary to (1) Ensure resources are not duplicated (i.e., extension agents creating previously available education materials), (2) provide a central gateway to access the education materials, (3) create a systematic and efficient method of collecting data from USDA grantees, and (4) promote awareness of food safety education materials available for a variety of audiences. Materials that will be collected using the ''Food Safety Education and Training Materials Sharing Form'' will help the Food Safety Information Center (FSIC) staff identify food safety education and training resources for review and inclusion into the Education and Training Materials Database much faster and more efficiently. The authority for NAL to collect this information is contained in CFR, Title 7, Volume 1, Part 2, Subpart K, Sec. 2.65(92).

Need and Use of the Information: FSIS staff members will use information collected by the Sharing Form to build and constantly enhance the Food Safety Education and Training Materials Database. Food safety educators access and use this database to identify and obtain curricula, lesson plans, training tools and participant materials. Vital information about these resources, such as a description of the resources, its creator, publishing and ordering information can be collected in a more standardized and efficient manner using the Sharing Form. Failure to collect this information would significantly inhibit the ability to provide up-to-date information on existing food safety education and training materials that are appropriate for food safety educators, consumers and other interested in food safety education.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 35.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 11.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–27523 Filed 11–15–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 4284, subpart J, Value-Added Producer Grant Program.

DATES: Comments on this notice must be received by January 17, 2014 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Chad Parker, Deputy Administrator, Rural Business-Cooperative Service, USDA, Room 4016-South, MS 3252, 1400 Independence Ave. SW., Washington, DC 20250. Telephone: (202) 720–7558, Email *chad.parker@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Value-Added Producer Grants.

OMB Number: 0570–0064.

Expiration Date of Approval: March 31, 2014.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 79 hours per grant application.

Respondents: Independent producers, agriculture producer groups, farmer- or rancher-cooperatives, and majority-controlled producer-based business ventures.

Estimated Number of Respondents: 468.

Estimated Number of Responses per Respondent: 3.

Estimated Number of Responses: 1294.

Estimated Total Annual Burden on Respondents: 37,065 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information including 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 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.

Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 26, 2013.

Lillian Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2013–27530 Filed 11–15–13; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–996, A–428–843, A–588–872, A–580–872, A–401–809, A–583–851]

Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations

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

DATES: *Effective Date:* November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun at (202) 482–5760 (the People's Republic of China (PRC)); Patrick O'Connor at (202) 482–0989 (Germany); Thomas Martin at (202) 482–3936 (Japan); Dmitry Vladimirov at (202) 482–0665 (the Republic of Korea (Korea)); Drew Jackson at (202) 482–4406 (Sweden); or Krisha Hill at (202) 482–4037 (Taiwan), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On September 30, 2013, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of non-oriented electrical steel (NOES) from the PRC, Germany, Japan, Korea, Sweden, and Taiwan filed in proper form on behalf of AK Steel Corporation (Petitioner). The AD petitions were accompanied by three countervailing duty (CVD) petitions.[1] Petitioner is the sole domestic producer of NOES.

On October 22, 2013, and October 29, 2013, the Department requested additional information and clarification of certain areas of the Petitions.[2] Petitioner filed responses to these requests on October 25, 2013, October 28, 2013 and October 30, 2013.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed these Petitions on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner has demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioner is requesting. *See* the ''Determination of Industry Support for the Petitions'' section below.

Periods of Investigations

Pursuant to 19 CFR 351.204(b)(1), because the Petitions were filed on September 30, 2013, the period of investigation (POI) for the PRC investigation is January 1, 2013, through June 30, 2013. The POI for the Germany, Japan, Korea, Sweden, and Taiwan investigations is July 1, 2012, through June 30, 2013.

Scope of the Investigations

The product covered by these investigations is NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan. For a full description of the scope of the investigations, *see* the ''Scope of the Investigations,'' in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief. As discussed in the preamble to the

[1] *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan, dated September 30, 2013 (Petitions).

[2] *See* letter from the Department to Petitioner entitled ''Re: Petitions for the Imposition of Antidumping Duties on Imports of Non-Oriented Electrical Steel from the People's Republic of China, the Federal Republic of Germany, Japan, the Republic of Korea, Sweden, and Taiwan and Countervailing Duties on Imports of Non-Oriented Electrical Steel from the People's Republic of China, the Republic of Korea, and Taiwan: Supplemental Questions'' dated October 22, 2013, and letters from the Department to Petitioner entitled ''Petition for the Imposition of Antidumping Duties on Imports of Non-Oriented Electrical Steel from {country}: Supplemental Questions'' on each of the country-specific records dated October 22, 2013; *see also* Memorandum to the File entitled, Antidumping Duty Investigations of Non-Oriented Electrical Steel from the Federal Republic of Germany and from the State of Japan,'' dated October 29, 2013.

regulations,[3] we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by 5:00 p.m. Eastern Time on November 26, 2013. All comments must be filed on the records of the PRC, Germany, Japan, Korea, Sweden, and Taiwan AD investigations as well as the concurrent PRC, Korea, and Taiwan CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using IA ACCESS.[4] An electronically filed document must be received successfully in its entirety by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Duty Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of NOES to be reported in response to the Department's antidumping duty questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe NOES, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments on product characteristics by November 20, 2013. Rebuttal comments must be received by November 27, 2013. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Tolling of Deadlines

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[5] Therefore, all deadlines in these investigations have been tolled by 16 days. The revised deadline for the initiation of these investigations is November 6, 2013.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[6] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[7]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that NOES constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[8]

[3] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[5] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' dated October 18, 2013.

[6] *See* section 771(10) of the Act.

[7] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[8] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from the People's Republic of China (the PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Petitions Covering Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan (Attachment II); Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Germany (Germany Initiation Checklist), at

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in 2012.[9] Petitioner states that it is the only producer of NOES in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.[10]

On October 28, 2013, we received a submission on behalf of JFE Steel Corporation and Nippon Steel & Sumitomo Metal Corporation, Japanese producers of NOES, questioning Petitioner's industry support calculation. On October 30, 2013, Petitioner responded to the Japanese producers' challenge.[11]

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support.[12] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[13] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[14] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[15] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department initiate.[16]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[17]

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; and adversely impacted production, capacity utilization, and financial performance.[18] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[19]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate AD investigations of imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For the PRC, Japan and Korea, Petitioner based U.S. price on price quotes obtained by an independent researcher for subject merchandise produced in the subject country by producer(s) of NOES in that country and sold or offered for export sale to the United States by producer(s) and/or traders of NOES.[20]

For Germany, Taiwan, and Sweden, and as additional indicators of export prices for Japan, Petitioner based U.S. prices on the free-on-board (FOB) foreign port prices of entries of merchandise under consideration obtained from U.S. Customs and Border Protection's (CBP) Automated Manifest System, which Petitioner then linked to publicly available data maintained by the U.S. Census Bureau *via* the ITC's Dataweb.[21]

In addition, for Japan, Korea, Germany, Taiwan, and Sweden, Petitioner also based U.S. prices on FOB foreign port average unit value data for products classified under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers for the merchandise under consideration imported from these respective countries into the United States during the POI, derived from official U.S. import statistics, also obtained *via* Dataweb.[22]

For the PRC, Germany, Japan, Korea, Sweden, and Taiwan, Petitioner made deductions for movement and other expenses consistent with the sales and delivery terms.[23] For the PRC, Petitioner additionally adjusted the quoted U.S. prices for a portion of value-added tax

Attachment II; Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Japan (Japan Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Sweden (Sweden Initiation Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Non-Oriented Electrical Steel from Taiwan (Taiwan AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

[9] *See* Volume I of the Petitions, at 2.

[10] *Id.,* at 2 and Exhibit I–1.

[11] For further discussion of these submissions, *see* the PRC AD Initiation Checklist, Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist, at Attachment II.

[12] *Id.*

[13] *Id.; see also* section 732(c)(4)(D) of the Act.

[14] *See* the PRC AD Initiation Checklist, Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist, at Attachment II.

[15] *Id.*

[16] *Id.*

[17] *See* Volume I of the Petitions, at 11 and Exhibit I–8.

[18] *Id.,* at 9–28 and Exhibits I–6 through I–25.

[19] *See* the PRC AD Initiation Checklist, Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.

[20] *See* the PRC AD Initiation Checklist, Japan Initiation Checklist, and Korea AD Initiation Checklist.

[21] *See* Germany Initiation Checklist, Japan Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist.

[22] *See* Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist.

[23] *See* the PRC AD Initiation Checklist, Germany Initiation Checklist, Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist.

that was not refunded/rebated.[24] For Japan, Petitioner additionally adjusted the quoted U.S. prices for mark-ups from trading companies.[25] Petitioner made no other adjustments to U.S. price.

Normal Value

For Japan, Korea, Taiwan, and Sweden, Petitioner based NV on price quotes provided by an independent researcher for the foreign like product produced in the subject country by producer(s) of NOES in that country and sold or offered for sale in the subject country by producer(s) and/or traders of NOES.[26]

For Germany, Petitioner was unable to obtain home-market or third-country prices; accordingly, Petitioner based NV on constructed value (CV).[27]

For Sweden, Petitioner made deductions for movement expenses consistent with the terms of delivery.[28] For Japan, Petitioner adjusted the quoted prices for taxes and mark-ups from trading companies.[29] For Korea and Taiwan, Petitioner treated quoted prices as the ex-factory prices.[30]

With respect to the PRC, Petitioner states that the Department has long treated the PRC as a non-market economy (NME) country.[31] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner claims that Thailand is an appropriate surrogate country because it is a market economy country that is at a level of economic development comparable to that of the PRC, it is a significant producer of the merchandise under consideration, and the data for valuing FOPs are both available and reliable.[32] Petitioner used the 2012–2013 financial statements of an Indian vertically integrated steel producer Tata Steel Limited (Tata) to calculate surrogate financial ratios. Petitioner justified its selection of the Tata financial statements as follows:[33] (1) Petitioner has been unable to locate any publicly available financial statements for a vertically integrated steel producer in Thailand with operations comparable to the PRC producer. Like the PRC producer, Tata is a vertically integrated steel producer and, thus, its operations and experiences are an appropriate surrogate; (2) Tata's operations earned a profit in 2012–2013. The Thai steel companies that Petitioner identified were not profitable; (3) Petitioner has been unable to locate publicly available, contemporaneous financial statements for any company in other potential surrogate countries that is a vertically-integrated producer of comparable merchandise and that shows a profit;[34] (4) Tata has issued unconsolidated financial statements that reflect almost exclusively its returns on steel manufacturing operations; and (5) Tata's unconsolidated financial statements are prepared at a level of detail that permit recognition of energy costs to prevent double counting with other factors.

Petitioner also explained that, in *Grain-Oriented Electrical Steel from the People's Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations* 78 FR 65283 (October 31, 2013), the Department initiated a less-than-fair-value investigation of grain-oriented electrical steel from the PRC based on the use of Indian financial statements. Based on information provided by Petitioner, we believe it is appropriate to use Thailand as a surrogate country for initiation purposes. We also believe that, for initiation purposes, it is appropriate to use the Indian financial statements as the surrogate source for financial ratios. Interested parties will have the opportunity to submit comments regarding surrogate country selection and will be provided an opportunity to submit publicly available information to value FOPs within 40 days before the scheduled date of the preliminary determination.[35]

Factors of Production

Petitioner based the FOPs usage for materials, labor and energy on the consumption rates of its own production of NOES in the United States.

Valuation of Raw Materials

Petitioner valued the FOPs for various raw material inputs used to produce subject merchandise based on Thai data from the Global Trade Atlas (GTA) statistics for the POI for the PRC under applicable HTSUS codes.[36] Petitioner added to this value the average Thai brokerage and inland freight charges reported for importing goods into Thailand, as published by the World Bank in *Doing Business 2013: Thailand*.[37]

Petitioner made a deduction for the value of scrap recovered during the production process based on the average import value of other ferrous waste and scrap using HTSUS subheading 7204.49 as published by GTA for the period from January 2013 through June 2013.[38]

Petitioner excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country.

Valuation of Labor

Petitioner calculated labor using a 2006 industry-specific wage rate for Thailand, which was published in 2007 by the Thailand National Statistics Office. Petitioner adjusted this wage rate for inflation using the Thai Consumer Price Index as published by the International Monetary Fund.[39]

Valuation of Energy

Petitioner valued electricity based on the data from the Metropolitan Electricity Authority.[40] Petitioner used the GTA statistics for Thai imports of natural gas and universal conversion factors to calculate the volume-based surrogate value for natural gas.[41]

[24] *See* the PRC AD Initiation Checklist.

[25] *See* Japan Initiation Checklist.

[26] *See* Japan Initiation Checklist, Korea AD Initiation Checklist, Sweden Initiation Checklist, and Taiwan AD Initiation Checklist.

[27] *See* Germany Initiation Checklist.

[28] *See* Japan Initiation Checklist and Sweden Initiation Checklist.

[29] *See* Japan Initiation Checklist.

[30] *See* Korea AD Initiation Checklist and Taiwan AD Initiation Checklist.

[31] *See* Volume II of the Petition at 1.

[32] *Id.,* at 2.

[33] *Id.,* at 6.

[34] *See* Supplement to the China Petition, dated October 28, 2013 (China Supplement), at 3.

[35] *See* 19 CFR 351.301(c)(3)(i) (2013).

[36] *See* Volume II of the Petition, at 4 and Exhibits II–8, II–9, and II–13.

[37] *Id.,* at 5 and Exhibits II–7 and II–9.

[38] *Id.,* at 4–5 and Exhibit II–9.

[39] *Id.* at 5 and Exhibit II–10.

[40] *See* ''Non-Oriented Electrical Steel From The People's Republic of China: Petitioner's Response To The Department's Questions Regarding The Petition,'' dated October 28, 2013, at 4 and Exhibits S–2 and S–5.

[41] *Id.*

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner calculated surrogate financial ratios (*i.e.,* factory overhead, selling, general and administrative (SG&A) expenses, and profit) using the audited financial statements of Tata Steel Limited, an Indian producer of comparable merchandise, for the fiscal year ending March 31, 2013.[42] According to Petitioner, Tata Steel Limited is a vertically-integrated Indian producer of a wide variety of steel products. Petitioner asserts that the use of these financial statements is appropriate because there was limited access to other publicly-available financial statements of a vertically-integrated steel company which manufactured comparable merchandise and which was also profitable.[43]

Sales Below Cost Allegations

For Japan, Korea, Sweden, and Taiwan, Petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of NOES in the respective home markets were made at prices below the fully-absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct country-wide sales-below-cost investigations. The Statement of Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act, states that an allegation of sales below COP need not be specific to individual exporters or producers.[44] The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' [45]

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.[46]

Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); SG&A expenses; financial expenses; and packing expenses. Petitioner calculated COM (except for depreciation) based on Petitioner's experience adjusted for known differences between the industry in the United States and the industries of the respective country (*i.e.,* Japan, Korea, Sweden, and Taiwan), during the proposed POI.[47] Using publicly-available data to account for price differences, Petitioner multiplied their usage quantities by the submitted value of the inputs used to manufacture NOES in each country.

To determine depreciation, SG&A, and financial expense rates, Petitioner relied on financial statements of producers of comparable merchandise operating in the respective foreign country.[48]

Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the most comparable product, we find reasonable grounds to believe or suspect that sales of the foreign like products were made at prices that are below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating country-wide cost investigations on sales of NOES from Japan, Korea, Sweden, and Taiwan.

Normal Value Based on Constructed Value

For Japan, Korea, Sweden, and Taiwan, because they alleged sales below cost, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, Petitioner additionally calculated NV based on constructed value (CV). Petitioner calculated CV using the same average COM, SG&A, financial expense, and packing figures used to compute the COPs. Petitioner relied on the same financial statements used as the basis for the depreciation and SG&A expense rates to calculate the profit rates.[49]

For Germany, Petitioner based NV on CV, as neither a home market nor a third country price was reasonably available. Pursuant to section 773(e) of the Act, CV consists of the COM; SG&A expenses; financial expenses; packing expenses; and profit. Petitioner calculated COM (except for depreciation) based on Petitioner's experience adjusted for known differences between the German and U.S. industries during the proposed POI, multiplied by the value of the inputs used to manufacture NOES in Germany using publicly available data.[50]

To determine depreciation, SG&A, and financial expense rates, Petitioner relied on the financial statements of a German producer of comparable merchandise.[51] Petitioner relied on the same financial statements used as the basis for the depreciation and SG&A expense rates to calculate the profit rate.[52]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price (EP) to NV in accordance with section 773(a) of the Act, the estimated dumping margins for NOES from: (1) Germany range from 73.74 percent to 98.84 percent; [53] (2) Japan range from 88.63 percent to 204.79 percent; [54] (3) Korea range from 16.00 percent to 68.82 percent; [55] (4) Sweden range from 62.17 percent to 126.72 percent; [56] and (5) Taiwan range from 52.23 percent to 101.51 percent.[57] Based on comparisons of EP to NV in accordance with section 773(c) of the Act, the estimated dumping margins for NOES from the PRC range from 244.54 percent to 407.52 percent.[58]

Initiation of Antidumping Duty Investigations

Based upon the examination of the AD Petitions on NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no

[42] *See* Volume II of the Petition, at 6 and Exhibit II–12.

[43] *Id.*

[44] *See* SAA, H.R. Doc. No. 103–316, Vol. 1 (1994), at 833, *reprinted in* 1994 U.S.C.C.A.N. 3773.

[45] *Id.*

[46] *Id.*

[47] *See* Japan Initiation Checklist; Korea AD Initiation Checklist; Sweden Initiation Checklist; and Taiwan AD Initiation Checklist.

[48] *Id.*

[49] *Id.*

[50] *See* Germany Initiation Checklist.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *See* Japan Initiation Checklist.

[55] *See* Korea AD Initiation Checklist.

[56] *See* Sweden Initiation Checklist.

[57] *See* Taiwan AD Initiation Checklist.

[58] *See* the PRC AD Initiation Checklist.

later than 140 days after the date of this initiation.

Respondent Selection

Petitioner named three companies as producers/exporters of NOES from Germany, five from Japan, three from Korea, one from Sweden, and two from Taiwan.[59] Following standard practice in AD investigations involving market-economy countries, the Department will, where appropriate, select respondents based on CBP data for U.S. imports of NOES. For Germany, Korea and Japan, we intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five-business days of publication of this **Federal Register**. For Sweden and Taiwan, the Department intends to examine all known producers/exporters identified in the Petitions in these investigations.[60] The Department invites comments regarding respondent selection within seven days of publication of this **Federal Register** notice.

With respect to the PRC, Petitioner has identified 25 potential respondents. In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity and value questionnaires to each potential respondent and base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.* Exporters and producers of NOES from the PRC that do not receive quantity and value questionnaires *via* mail may still submit a quantity and value response and can obtain a copy from the Enforcement and Compliance Web site. The quantity and value questionnaire must be submitted by all PRC exporters/producers no later than November 26, 2013. All quantity and value questionnaires must be filed electronically using IA ACCESS.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application.[61] The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://www.trade.gov/enforcement/news.asp* on the date of publication of this initiation notice in the **Federal Register**. The separate rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate rate application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. The Department requires that the PRC respondents submit a response to both the quantity and value questionnaire and the separate rate application by their respective deadlines in order to receive consideration for separate rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[62]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the PRC, Germany, Japan, Korea, Sweden, and Taiwan *via* IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

Meeting With the Government of Korea

Pursuant to a request by the Government of Korea, on November 5, 2013, Department officials met with Korean Government officials to discuss that government's inquiry regarding the status of the Department's consideration of the Petition and industry support, as provided under section 732(b)(3)(B) of the Act.

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than December 2, 2013, whether there is a reasonable indication that imports of NOES from the PRC, Germany, Japan, Korea, Sweden, and Taiwan are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on

[59] *See* the Petitions at Volume I, Exhibit I–4.

[60] The Petitions name Surahammars Bruks AB as a producer/exporter of NOES in Sweden, and China Steel Corporation and Leicong Industrial Company, Ltd., as producers/exporters of NOES in Taiwan. *See id.*

[61] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[62] *See* Policy Bulletin 05.1 at 6 (emphasis added).

the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to these investigations. Review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt* prior to submitting factual information in these investigations.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.[63] The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Review *Extension of Time Limits; Final Rule,* available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[64] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[65] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 6, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The merchandise subject to these investigations consists of non-oriented electrical steel (NOES), which includes cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ''substantially equal'' in the prior sentence means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oesteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight at least 1.25 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum.

NOES is subject to these investigations whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.,* with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). Fully processed NOES is typically made to the requirements of ASTM specification A 677, Japanese Industrial Standards (JIS) specification C 2552, and/or International Electrotechnical Commission (IEC) specification 60404–8–4. Semi-processed NOES is typically made to the requirements of ASTM specification A 683. However, the scope of these investigations is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also be entered under subheadings 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0180 of the HTSUS. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2013–27304 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–DS–P

[63] *See Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013).

[64] *See* section 782(b) of the Act.

[65] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

Travel and Tourism Trade Mission to Taiwan, Japan and Korea

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is amending notice

for the Travel and Tourism Trade Mission to Taiwan, Japan and Korea scheduled for March 10–14, 2014, published at 78 FR 34344, June 7, 2013, to notify applicants that the fee for each additional participant (SME or larger) is $700 per participant.

FOR FURTHER INFORMATION CONTACT: Frank Spector, Office of Industry and Analysis, Trade Promotion Programs, Phone: 202–482–2054; Fax: 202–482–9000, Email: *Frank.Spector@trade.gov.*

SUPPLEMENTARY INFORMATION: The International Trade Administration will have a senior executive lead the Travel and Tourism Trade Mission to Taiwan, Japan and Korea, March 10–14, 2014, published at 78 FR 34344, June 7, 2013. As previously published, the notice did not specify that there would be a fee charged for each additional participant.

Amendments

For these reasons, the Mission Description of the Notice of the Travel and Tourism Trade Mission to Taiwan, Japan and Korea is amended to read as follows:

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required.

This Trade Mission is organized as three separate segments (Taiwan, Korea and Japan). Companies may choose to participate in one, two or all three segments. The fee for participating in more than one segment is the sum of the individual segments.

For business-to-business meetings in Taiwan only (not traveling to an additional trade mission country), the participation fee will be $1,400 for a small or medium-sized enterprise (SME) and $1,625 for large firms.

For business-to-business meetings in Japan only (not traveling to an additional trade mission country), the participation fee will be $1,725 for a small or medium-sized enterprise (SME) and $1,925 for large firms.

For business-to-business meetings in Korea only (not traveling to an additional trade mission country), the participation fee will be $1,275 for a small or medium-sized enterprise (SME) and $1,475 for large firms.

The fee for each additional firm representative (SME or large) is $700. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant.

Frank Spector,

Senior International Trade Specialist.

[FR Doc. 2013–27458 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC980

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on December 11–12, 2013. The Council will convene on Wednesday, December 11, 2013, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. The Council will reconvene on Thursday, December 12, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Wyndham Sugar Bay Resort and Spa, 6500 Estate Smith Bay, St. Thomas, USVI 00802.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 148th regular Council Meeting to discuss the items contained in the following agenda:

December 11, 2013, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 147th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- ''EFH of the Deep'' Book Update Presentation—Dr. Máximo Cerame Vivas and Dr. Graciela García-Moliner
- Scientific and Statistic Committee (SSC) Report
  —Analysis of Landings Relative to Annual Catch Limits
  —Identification of Species for which ACL Overruns Results from Improved Data Collection
- Advisory Panel/Ad Hoc Committee Report on Timing Model—Dr. Kate Quigley
- Comprehensive Island Based FMP Update
  —Discussion of Option Paper Comprehensive Amendment U.S. Caribbean FMPs: ACL Control Rule
  —List of Actions and Alternatives to be considered by the CFMC
  —Preparation: SSC/AP/Ad Hoc
- Recreational Fishing Regulations Review
- SEDAR Update: Compatible Regulations with PR DRNA
  —Bajo de Sico, Abril La Sierra, Tourmaline and Others

PUBLIC COMMENT PERIOD (5-minutes presentations)

December 11, 2013, 5:15 p.m.–6 p.m.

- Council Administrative Matters
  —Budget Update Fiscal Year 2013/14
  —Closed Session to Discuss SSC/AP/OEAP Memberships
  —Other Business

December 12, 2013, 9 a.m.–5 p.m.

- Overview of the Caribbean Large Marine Ecosystem Program
- Fish Spawning Aggregations—Dr. William Heyman/Dr. Michelle Schärer
- Trap Reduction and Lobster Project—Mr. Anthony Iarocci
- BVI Fishery Violation Incidents—Mr. Roy Pemberton
- Outreach and Education Meeting Report—Dr. Alida Ortíz
- Listing and Litigation Updates:
  —Corals
  —Nassau
  —Queen Conch
- Enforcement Issues:
  —Puerto Rico—DNER
  —U.S. Virgin Islands—DPNR
  —NOAA/NMFS
  —U.S. Coast Guard
- Meetings Attended by Council Members and Staff

PUBLIC COMMENT PERIOD (5-minute presentations)

- Other Business
- Next Council Meeting

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 13, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–27489 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC862

Marine Mammals; File No. 18171

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Wessley Merten, Marine Sciences Department, University of Puerto Rico, Mayagüez Campus, PO Box 9000, Mayagüez, PR 00682, to conduct commercial or educational photography of bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), striped dolphins (*Stenella coeruleoalba*), false killer whales (*Pseudorca crassidens*), and killer whales (*Orcinus orca*) in waters off Puerto Rico.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 12, 2013, notice was published in the **Federal Register** (78 FR 56218) that a request for a permit to conduct commercial or educational photography had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 18171 authorizes commercial/educational underwater and vessel-based filming and photography of marine mammals in waters off Puerto Rico. Footage will be used in two documentaries, one focused on offshore sport fishing in Puerto Rico and another one focused on Puerto Rico's marine mammal and marine mammal program (i.e., Department of Natural and Environmental Resources Marine Mammal Rescue Program). The first documentary will be presented at a film festival in Puerto Rico and distributed to schools and the public throughout Puerto Rico. A maximum of 210 bottlenose, 210 spinner, and 210 striped dolphins, 60 false killer and 60 killer whales, could be approached and filmed annually. Filming may occur year-round. The permit is valid through November 7, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 13, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–27516 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC228

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation, Maintenance, and Repair of the Northeast Gateway Liquefied Natural Gas Port and the Algonquin Pipeline Lateral Facilities in Massachusetts Bay

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Tetra Tech EC, Inc. (Tetra Tech), on behalf of the Northeast Gateway® Energy Bridge™, L.P. (Northeast Gateway or NEG) and Algonquin Gas Transmission, L.L.C. (Algonquin), for authorization to take marine mammals, by harassment, incidental to operating, maintaining, and repairing a liquefied natural gas (LNG) port and the Algonquin Pipeline Lateral (Pipeline Lateral) facilities by NEG and Algonquin, in Massachusetts Bay. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Northeast Gateway to incidentally take, by harassment, small numbers of marine mammals for a period of 1 year.

DATES: Comments and information must be received no later than December 18, 2013.

ADDRESSES: Comments should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments on this action is *ITP.Guan@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of the application and a list of references used in this document may be obtained by writing to this address, and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying

Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On January 18, 2013, NMFS received an application from Excelerate Energy, L.P. (Excelerate) and Tetra Tech EC, Inc., on behalf of Northeast Gateway and Algonquin, for an authorization to take 14 species of marine mammals by Level B harassment incidental to operations, maintenance, and repair of an LNG port and the Pipeline Lateral facilities in Massachusetts Bay. They are: North Atlantic right whale, humpback whale, fin whale, sei whale, minke whale, long-finned pilot whale, Atlantic white-sided dolphin, bottlenose dolphin, short-beaked common dolphin, killer whale, Risso's dolphin, harbor porpoise, harbor seal, and gray seal. Since LNG Port and Pipeline Lateral operation, maintenance, and repair activities have the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted. NMFS previously issued an IHA to Northeast Gateway and Algonquin to allow for the incidental harassment of small numbers of marine mammals resulting from the construction and operation of the NEG Port and the Algonquin Pipeline Lateral (72 FR 27077; May 14, 2007). Subsequently, NMFS issued four one-year IHAs for the take of marine mammals incidental to the operation of the NEG Port activity pursuant to section 101(a)(5)(D) of the MMPA (73 FR 29485, May 21, 2008; 74 FR 45613, September 3, 2009; 75 FR 53672, September 1, 2010; and 76 FR 62778, October 11, 2011). The most recent IHA expired on October 6, 2012. Unlike the previous IHAs, which only covered incidental harassment during standard operations of the deepwater port, the new IHA application from Excelerate requests take coverage during standard operations, as well as during planned and unplanned maintenance and repair. Marine mammals could be affected by noise generated by operating the dynamic positioning system during the docking of LNG vessels at the NEG Port, and noises generated from maintenance and repair of the LNG Port and Pipeline Lateral facilities.

Description of the Activity

The Northeast Gateway Port is located in Massachusetts Bay and consists of a submerged buoy system to dock specially designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in federal waters approximately 270 to 290 ft (82 to 88 m) in depth. This facility delivers regasified LNG to onshore markets via the Algonquin Pipeline Lateral (Pipeline Lateral). The Pipeline Lateral consists of a 16.1-mile (25.8-kilometer) long, 24-inch (61-centimeter) outside diameter natural gas pipeline which interconnects the Port to an offshore natural gas pipeline known as the HubLine.

The Northeast Gateway Port consists of two subsea Submerged Turret Loading™ (STL) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel Flowline, to the subsea Pipeline Lateral. Northeast Gateway utilizes vessels from its current fleet of specially designed Energy Bridge™ Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft^3 (82 million m^3) of natural gas condensed to 4.9 million ft^3 (138,000 m^3) of LNG. Northeast Gateway has recently added two vessels to its fleet that have a cargo capacity of approximately 151,000 m^3 (5.3 million ft^3). The mooring system installed at the Northeast Gateway Port is designed to handle each class of vessel. The EBRVs would dock to the STL buoys, which would serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the STL buoys is secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

NEG Port Operations

During NEG Port operations, EBRVs servicing the NEG Port would utilize the International Maritime Organization (IMO)-approved Boston Traffic Separation Scheme (TSS) to delivery LNG to the NEG Port facility. When an EBRV arrives at the NEG Port, it would retrieve one of the two permanently anchored submerged STL buoys. It would make final connection to the buoy through a series of engine and bow thruster actions. The EBRV would require the use of thrusters for dynamic positioning (DP) during docking procedure. Typically, the docking procedure is completed over a 10- to 30-minute period, with the thrusters activated as necessary for short periods (bursts in seconds). During this time period thrusters would be engaged in use for docking at the NEG Port approximately 10 to 30 minutes for each vessel arrival and departure. Once connected to the buoy, the EBRV would make ready to begin vaporizing the LNG into its natural gas state using the onboard regasification system. As the LNG is regasified, natural gas would be transferred at pipeline pressures off the EBRV through the STL buoy and flexible riser via a steel flowline leading to the connecting Algonquin Pipeline Lateral. When the LNG vessel is on the buoy, wind and current effects on the

vessel would be allowed to ''weathervane'' on the single-point mooring system; therefore, thrusters would not be used to maintain a stationary position.

According to NEG, it is estimated that the NEG Port could receive approximately 65 cargo deliveries a year, although none have been received since February 2010.

Detailed information on the operation activities can be found in the MARAD/USCG Final EIS on the Northeast Gateway Project (see **ADDRESSES** for availability). Detailed information on the LNG facility's operation and noise generated from operations was also published in the **Federal Register** for the proposed IHA for Northeast Gateway's LNG Port construction and operations on March 13, 2007 (72 FR 11328).

NEG Port Maintenance and Repair

The specified design life of the NEG Port is about 40 years, with the exception of the anchors, mooring chain/rope, and riser/umbilical assemblies, which are based on a maintenance-free design life of 20 years. The buoy pick-up system components are considered consumable and are inspected following each buoy connection, and replaced (from inside the STL compartment during the normal cargo discharge period) as deemed necessary. The underwater components of the NEG Port are inspected once yearly in accordance with Classification Society Rules (American Bureau of Shipping) using either divers or remotely operated vehicles (ROV) to inspect and record the condition of the various STL system components. These activities are conducted using the NEG Port's normal support vessel (125-foot [38 meter], 99 gross ton, 2,700 horsepower, aluminum mono-hull vessel), and to the extent possible coincide with planned weekly visits to the NEG Port.

In addition to these routine activities, there may be instances whereby unanticipated events at the NEG Port necessitate emergency maintenance and/or repair activities. While the extent and number of such maintenance and repair activities at the NEG Port over its expected 25 year life cannot be accurately estimated, it is reasonable to assume that a worst-case maintenance and/or repair scenario would result in similar types of activities and require the use of similar support vessels and equipment as used for construction. There may also be certain unanticipated circumstances that require the presence of an EBRV at the NEG Port to support these maintenance and repair activities (e.g., maintenance and repair on the STL Buoy, vessel commissioning, and any onboard equipment malfunction or failure occurring while a vessel is present for cargo delivery). To assess the impact to marine mammals from the NEG port maintenance and repair, a 14-day maintenance period during one calendar is selected. This is based on evaluation of the potential marine mammal takes associated with similar maintenance and repair at the Neptune Port Facility in Massachusetts Bay, due to the fact that both the NEG and Neptune Ports are very similar in their potential need and type of maintenance and repair of port facilities.

Algonquin Pipeline Lateral Routine Operations and Maintenance Activities

The planned activities required for the operations and maintenance (O&M) of the Algonquin Pipeline Lateral and Flowlines over a 1-year period are limited. Similar to the inspection of the NEG Port underwater components, the only planned O&M activity is the annual inspection of the cathodic protection monitors by a ROV. The monitors are located at the ends of the Algonquin Pipeline Lateral and the adjacent Flowlines. Each inspection activity would take approximately 3 days and would utilize a ROV launched from a vessel of opportunity. The most likely vessel would be similar to the NEG Port's normal support vessel referenced earlier in the document. This vessel is self-positioning and requires no anchors or use of thrusters. The vessel would mobilize from Salem, Massachusetts, and would inspect the monitors in the vicinity of the NEG Port and at the point where the Algonquin Pipeline Lateral interconnects with Algonquin's HubLine. These activities would be performed during daylight hours and during periods of good weather.

Unplanned Pipeline Repair Activities

Unplanned O&M activities may be required from time to time at a location along the Algonquin Pipeline Lateral or along one of the Flowlines should the line become damaged or malfunction. Repair activities requiring limited excavation to access the pipeline or cathodic protection maintenance are authorized by the FERC certificate.

Should repair work be required, it is likely a dive vessel would be the main vessel used to support the repair work. The type of diving spread and the corresponding vessel needed to support the spread would be dictated by the type of repair work required and the water depth at the work location. In addition, the type of vessel used may vary depending upon availability. The duration of an unplanned activity would also vary depending upon the repair work involved (e.g., repairing or replacing a section of the pipeline, connection, or valve) but can generally be assumed to take less than 40 work days to complete based on industry experience with underwater pipeline repairs.

A diving spread required to execute an unplanned activity might necessitate several vessels. Most likely the dive vessel would support a saturation diving spread and be moored at the work location using four anchors. Once secured at the work location, the dive vessel would remain on site through the completion of the work, weather permitting. A crew/supply boat would be utilized to intermittently provide labor and supply transfers. Once or twice during the work, a tug may be required to bring a material barge to and from the location. While unlikely, there is a small possibility that a second dive vessel would be required to support the main dive vessel, depending upon the work activity. The second dive vessel would be on-site for a shorter work duration. These vessels would be supported from an onshore base located between Quincy and Gloucester, Massachusetts.

The selection of a dive vessel would be driven by the technical requirements of the work. In addition, the degree of urgency required to address the work and the availability of vessels will also enter into the decision process for securing a dive vessel. It may be that a four-point moored dive vessel is either not available or doesn't meet the technical capabilities required by the work. It then becomes possible that a DP dive vessel may have to be utilized. The use of a DP dive vessel removes the need for an attendant tug to support the vessel since no anchors will be deployed. However, potential impacts related to noise are increased when a DP dive vessel is used. The noise generated by a DP dive vessel varies, and results from the use of the thrusters which run at various levels to maintain the vessel's position during the work depending upon currents, winds, waves and other forces acting on the vessel at the time of the work.

Description of Marine Mammals in the Area of the Specified Activities

Marine mammal species that potentially occur in the vicinity of the Northeast Gateway facility include several species of cetaceans and pinnipeds:

North Atlantic right whale (*Eubalaena glacialis*),

humpback whale (*Megaptera novaeangliae*),
fin whale (*Balaenoptera physalus*),
minke whale (*B. acutorostrata*),
long-finned pilot whale (*Globicephala melas*),
Atlantic white-sided dolphin (*Lagenorhynchus acutus*),
bottlenose dolphin (*Tursiops truncatus*),
coPSOn dolphin (*Delphinus delphis*),
killer whale (*Orcinus orca*),
Risso's dolphin (*Grampus griseus*),
harbor porpoise (*Phocoena phocoena*),
harbor seal (*Phoca vitulina*), and
gray seal (*Halichoerus grypus*).

Information on those species that may be affected by this activity is discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Würsig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring *et al.,* 2013). This latter document is available at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ao2012.pdf.* An updated summary on several PSO-sighted marine mammal species distribution and abundance in the vicinity of the proposed action area is provided below.

Humpback Whale

The highest abundance for humpback whales is distributed primarily along a relatively narrow corridor following the 100-m (328 ft) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the Great South Channel, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increases in the spring with the highest occurrence along the slope waters (between the 40- and 140-m, or 131- and 459-ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and Tillies Basin and between the 50- and 200-m (164- and 656-ft) isobaths along the inner slope of Georges Bank. High abundance is also estimated for the waters around Platts Bank. In the summer months, abundance increases markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100–200 m, or 328–656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160-m isobaths) of Phelps and Davis Bank north of the Great South Channel towards Cape Cod, and between the 50- and 100-m (164- and 328-ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persists in all seasons except winter, when humpbacks remain at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the Great South Channel. The best estimate of abundance for Gulf of Maine, formerly western North Atlantic, humpback whales is 847 animals (Waring *et al.,* 2009). Current data suggest that the Gulf of Maine humpback whale stock is steadily increasing in size, which is consistent with an estimated average trend of 3.1 percent in the North Atlantic population overall for the period 1979–1993 (Stevick *et al.,* 2003, cited in Waring *et al.,* 2009).

Fin Whale

Spatial patterns of habitat utilization by fin whales are very similar to those of humpback whales. Spring and summer high-use areas follow the 100-m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200-m (164- and 656-ft) isobaths), and northward from the Great South Channel (between the 50- and 160-m, or 164- and 525-ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank is a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of the Stellwagen Bank National Marine Sanctuary (SBNMS) is used more frequently than the northern portion in all months except winter, when high abundance is recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter is estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to 160-m, 328- to 656-ft, isobaths), as well as Georges Basin and northern Georges Bank. The best estimate of abundance for the western North Atlantic stock of fin whales is 2,269 (Waring *et al.,* 2009). Currently, there are insufficient data to determine population trends for this species.

Minke Whale

Like other piscivorous baleen whales, highest abundance for minke whale is strongly associated with regions between the 50- and 100-m (164- and 328-ft) isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, Great South Channel and Georges Shoals on Georges Bank. Minke whales are sighted in the SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, or 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise and Scantium) also support high relative abundance. Very low densities of minke whales remain throughout most of the southern Gulf of Maine in winter. The best estimate of abundance for the Canadian East Coast stock, which occurs from the western half of the Davis Strait to the Gulf of Mexico, of minke whales is 3,312 animals (Waring *et al.,* 2009). Currently, there are insufficient data to determine population trends for this species.

North Atlantic Right Whale

North Atlantic right whales are generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160-m, or 328- to 525-ft, isobaths) on the northern edge of the Great South Channel and deep waters (100–300 m, 328–984 ft) parallel to the 100-m (328-ft) isobath of northern Georges Bank and Georges Basin. High abundance is also found in the shallowest waters (<30 m, or <98 ft) of Cape Cod Bay, over Platts Bank and around Cashes Ledge. Lower relative abundance is estimated over deep-water basins including Wilkinson Basin, Rodgers Basin and Franklin Basin. In the summer months, right whales move almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200-m, or 525- and 656-ft, isobaths) and north of Georges Bank (Rogers, Crowell and Georges Basins). Highest abundance is found north of the 100-m (328-ft) isobath at the Great South Channel and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge are also estimated as high-use areas. In the fall months, right whales are sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, Cape Cod Bay, Scantum Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occurred along the southern edge of the Bank.

The western North Atlantic population size was estimated to be at

least 345 individuals in 2005 based on a census of individual whales identified using photo-identification techniques (Waring *et al.,* 2009). This value is a minimum and does not include animals that were alive prior to 2003 but not recorded in the individual sightings database as seen from December 1, 2003, to October 10, 2008. It also does not include calves known to be born during 2005 or any other individual whale seen during 2005 but not yet entered into the catalog (Waring *et al.,* 2009). Examination of the minimum alive population index calculated from the individual sightings database, as it existed on October 10, 2008, for the years 1990–2005 suggests a positive trend in numbers. These data reveal a significant increase in the number of catalogued whales alive during this period but with significant variation due to apparent losses exceeding gains during 1998–1999. Mean growth rate for the period 1990–2005 was 1.8 percent (Waring *et al.,* 2009).

Long-Finned Pilot Whale

The long-finned pilot whale is more generally found along the edge of the continental shelf (a depth of 330 to 3,300 ft, or 100 to 1,000 m), choosing areas of high relief or submerged banks in cold or temperate shoreline waters. This species is split between two subspecies: The Northern and Southern subspecies. The Southern subspecies is circumpolar with northern limits of Brazil and South Africa. The Northern subspecies, which could be encountered during operation of the NEG Port, ranges from North Carolina to Greenland (Reeves *et al.,* 2002; Wilson and Ruff, 1999). In the western North Atlantic, long-finned pilot whales are pelagic, occurring in especially high densities in winter and spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.,* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and Gulf of Maine areas during the summer and early fall (May and October) (NOAA, 1993). According to the species stock report, the population estimate for the Western North Atlantic long-finned pilot whale is 26,535 individuals (Waring *et al.,* 2010). Currently, there are insufficient data to determine population trends for the long-finned pilot whale.

Atlantic White-Sided Dolphin

In spring, summer and fall, Atlantic white-sided dolphins are widespread throughout the southern Gulf of Maine, with the high-use areas widely located either side of the 100-m (328-ft) isobath along the northern edge of Georges Bank, and north from the Great South Channel to Stellwagen Bank, Jeffreys Ledge, Platts Bank and Cashes Ledge. In spring, high-use areas exist in the Great South Channel, northern Georges Bank, the steeply sloping edge of Davis Bank and Cape Cod, southern Stellwagen Bank and the waters between Jeffreys Ledge and Platts Bank. In summer, there is a shift and expansion of habitat toward the east and northeast. High-use areas are identified along most of the northern edge of Georges Bank between the 50- and 200-m (164- and 656-ft) isobaths and northward from the Great South Channel along the slopes of Davis Bank and Cape Cod. High numbers of sightings are also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High numbers of sightings of white-sided dolphin are recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high numbers of sightings are recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined show that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorous or planktivorous, are more concentrated than the dolphins and porpoises. They utilize a corridor that extended broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100 m (328 ft) isobath. Stellwagen Bank and Jeffreys Ledge support a high abundance of baleen whales throughout the year. Species richness maps indicate that high-use areas for individual whales and dolphin species co-occur, resulting in similar patterns of species richness primarily along the southern portion of the 100-m (328-ft) isobath extending northeast and northwest from the Great South Channel. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod are also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge and Cashes Ledge. The best estimate of abundance for the western North Atlantic stock of white-sided dolphins is 63,368 (Waring *et al.,* 2009). A trend analysis has not been conducted for this species.

Killer Whale, CoPSOn Dolphin, Bottlenose Dolphin, Risso's Dolphin, and Harbor Porpoise

Although these five species are some of the most widely distributed small cetacean species in the world (Jefferson *et al.,* 1993), they are not coPSOnly seen in the vicinity of the proposed project area in Massachusetts Bay (Wiley *et al.,* 1994; NCCOS, 2006; Northeast Gateway Marine Mammal Monitoring Weekly Reports, 2007). The total number of killer whales off the eastern U.S. coast is unknown, and present data are insufficient to calculate a minimum population estimate or to determine the population trends for this stock (Blaylock *et al.,* 1995). The best estimate of abundance for the western North Atlantic stock of coPSOn dolphins is 120,743 animals, and a trend analysis has not been conducted for this species (Waring *et al.,* 2007). There are several stocks of bottlenose dolphins found along the eastern U.S. from Maine to Florida. The stock that may occur in the area of the Neptune Port is the western North Atlantic coastal northern migratory stock of bottlenose dolphins. The best estimate of abundance for this stock is 7,489 animals (Waring *et al.,* 2009). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the western North Atlantic stock of Risso's dolphins is 20,479 animals (Waring *et al.,* 2009). There are insufficient data to determine the population trend for this stock. The best estimate of abundance for the Gulf of Maine/Bay of Fundy stock of harbor porpoise is 89,054 animals (Waring *et al.,* 2009). A trend analysis has not been conducted for this species.

Harbor Seal and Gray Seal

In the U.S. waters of the western North Atlantic, both harbor and gray seals are usually found from the coast of Maine south to southern New England and New York (Waring *et al.,* 2010).

Along the southern New England and New York coasts, harbor seals occur seasonally from September through late May (Schneider and Payne, 1983). In recent years, their seasonal interval along the southern New England to New Jersey coasts has increased (deHart, 2002). In U.S. waters, harbor seal breeding and pupping normally occur in waters north of the New Hampshire/Maine border, although breeding has occurred as far south as Cape Cod in the early part of the 20th century (Temte *et al.,* 1991; Katona *et al.,* 1993). The best estimate of abundance for the western

North Atlantic stock of harbor seals is 99,340 animals (Waring *et al.,* 2009). Between 1981 and 2001, the uncorrected counts of seals increased from 10,543 to 38,014, an annual rate of 6.6 percent (Gilbert *et al.,* 2005, cited in Waring *et al.,* 2009).

Although gray seals are often seen off the coast from New England to Labrador, within the U.S. waters, only small numbers of gray seals have been observed pupping on several isolated islands along the Maine coast and in Nantucket-Vineyard Sound, Massachusetts (Katona *et al.,* 1993; Rough, 1995). In the late 1990s, a year-round breeding population of approximately 400 gray seals was documented on outer Cape Cod and Muskeget Island (Warring *et al.,* 2007). Depending on the model used, the minimum estimate for the Canadian gray seal population was estimated to range between 125,541 and 169,064 animals (Trzcinski *et al.,* 2005, cited in Waring *et al.,* 2009); however, present data are insufficient to calculate the minimum population estimate for U.S. waters. Waring *et al.* (2009) note that gray seal abundance in the U.S. Atlantic is likely increasing, but the rate of increase is unknown.

Potential Effects of the Specified Activity on Marine Mammals

The proposed NEG LNG port operations and maintenance and repair activities could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS. Currently, NMFS considers that repeated exposure to received noise levels at 180 dB and 190 dB re 1 μPa (rms) could lead to TTS in cetaceans and pinnipeds, respectively.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.* 2009). Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water vibratory pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, vessel docking and stationing while operating dynamic positioning (DP) thrusters, dredging and pipe laying associated with LNG Port and Pipeline Lateral maintenance and repair, and LNG regasification activities, contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification are expected to be biologically significant if the change affects growth, survival, and/or reproduction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007). Currently NMFS uses 160 dB re 1 μPa (rms) at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa (rms) for non-impulse noises (such as operating DP thrusters, dredging, pipe laying, and LNG regasification). For the NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities, only the 120 dB re 1 μPa (rms) threshold is considered because only non-impulse noise sources would be generated.

Northeast Gateway contracted with Tetra Tech EC, Inc. (Tetra Tech) to perform field investigations to document various underwater noise levels emitted during the construction of the NEG Port and Algonquin Pipeline Lateral and during the operation of NEG Port facilities (namely the operation of EBRVs). Tetra Tech conducted five offshore hydroacoustic field programs: One in 2005 and one in 2006 at the Gulf Gateway Deepwater Port located approximately 116 miles off the coast of Louisiana in the Gulf of Mexico; and three in 2007 at the NEG Port and Algonquin Pipeline Lateral Project area. The 2005 measurements were completed to determine underwater noise levels during EBRV onboard regasification and vessel movements. The data from the 2005 field program was used to support the modeling and analysis of potential acoustic effects of EBRV operations in Massachusetts Bay during the NEG Port permitting and licensing process. The data collected in 2006 was also associated with EBRV operation activities and were collected for the purpose of verifying the measurement completed in 2005 as well as to further document sound levels

during additional operational and EBRV activities such as EBRV coupling and decoupling from the buoy system, transit and the use of stern and bow thrusters required for dynamic positioning. The 2007 measurements were collected during NEG Port and Algonquin Pipeline Lateral construction to obtain site-specific underwater sound-level data associated with various construction activities that were previously modeled in support of permitting and licensing. These data are used here to analyze potential noise impacts to marine mammals and to provide the basis for take calculation before new measurements are made on-site (see Proposed Monitoring Measures section below).

A detailed report describing both the 2006 and 2007 operation and construction noise measurement events and associated results have been included as Appendix B of the IHA application. The following sections describe those activities that could result in Level B harassment as they relate to NEG Port and Algonquin O&M activities.

NEG Port Operations

For the purposes of understanding the noise footprint of operations at the NEG Port, measurements taken to capture operational noise (docking, undocking, regasification, and EBRV thruster use) during the 2006 Gulf of Mexico field event were taken at the source. Measurements taken during EBRV transit were normalized to a distance of 328 feet (100 meters) to serve as a basis for modeling sound propagation at the NEG Port site in Massachusetts Bay.

Sound propagation calculations for operational activities were then completed at two positions in Massachusetts Bay to determine site-specific distances to the 120/160/180 dB re 1 μPa isopleths: At LNG Port (EBRV Operations) and at Boston TSS (EBRV Transit).

At each of these locations sound propagation calculations were performed to determine the noise footprint of the operation activity at each of the specified locations. Calculations were performed in accordance with Marsh and Schulkin (1985) and Richardson et al (1995) and took into consideration aspects of water depth, sea state, bathymetry, and seabed composition. In addition, the acoustic modeling performed specifically evaluated sound energy in 1/3-octave spectral bands covering frequencies from 12.5 hertz (Hz) to 20 kilohertz (kHz). This range encompasses the auditory frequency range of marine mammals and the range at which sound propagates beyond the immediate vicinity of the source (i.e., high frequency sounds have a much higher attenuation rate than frequencies in the low to middle range due to a higher absorption rate by seawater and boundary effects). These results were then summed across frequencies to provide the broadband received levels at receptor locations. A literature review of relevant underwater noise measurement data of offshore construction activities in similar shallow water environments were referred to for estimating typical propagation rates. Relevant here, the resulting distances to the 120 dB isopleth (180 dB re 1 μPa does not exist) was estimated to determine the maximum distance at which Level B harassment may occur.

To further understand how NEG Port activities may result in underwater noise that could harass marine mammals, Northeast Gateway has engaged scientists from Cornell University's Bioacoustics Research Program (BRP) and the Woods Hole Oceanographic Institution (WHOI) as the consultants for collecting and analyzing the acoustic data throughout the project area (see sections 13.0 and 14.0 of the IHA application). Elevated underwater sound levels within Massachusetts Bay due to this existing vessel traffic and other Bay activities may effectively mask sound generated during Port activities. Sound levels recorded by marine autonomous recording units (MARUs) within frequency bands for marine mammals have been reported to include whales, other biotic and abiotic sound sources and ambient noise that could be occurring at the time (BRP 2011).

NEG Port Maintenance and Repair

As stated in earlier in the document, routine inspections of NEG Port mooring components occur after each buoy connection from the Port's normal support vessel. Inspections of other Port facility components such as the STL Buoy, flexible riser, mooring system, pipeline end manifold (PLEM) are conducted annually by a ROV and/or diver launched from a vessel of opportunity.

In addition to these routine activities, there may be instances whereby unanticipated events at the NEG Port necessitate emergency maintenance and/or repair activities. While the extent and number of such maintenance and repair activities at the NEG Port over its expected 25 year life cannot be accurately estimated, it is reasonable to assume that a worst-case maintenance and/or repair scenario would result in similar types of activities and require the use of similar support vessels and equipment as used for construction.

Modeling analysis conducted by TetraTech concluded that the only underwater noise of critical concern during NEG Port construction would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. To confirm these modeled results and better understand the noise footprint associated with construction activities at the NEG Port, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral Construction period. Measurements were taken to establish the ''loudest'' potential construction measurement event. The location at the LNG Port was used to determine site-specific distances to the 120/180 dB re 1 μPa isopleths for NEG Port maintenance and repair activities.

As described for NEG Port operations, sound propagation calculations were performed to determine the noise footprint of the construction activity. The calculations took into consideration aspects of water depth, sea state, bathymetry, and seabed composition, and specifically evaluated sound energy in the range that encompasses the auditory frequencies of marine mammals and at which sound propagates beyond the immediate vicinity of the source. These results were then summed across frequencies to provide the broadband received levels at receptor locations. The resulting distances to the 120 dB isopleth (180 dB re 1 μPa does not exist) was estimated to determine the maximum distance at which Level B harassment may occur (Table 1).

Algonquin Pipeline Lateral Operations and Maintenance and Unplanned Repair

As discussed earlier in the document, routine inspections of the Algonquin Pipeline Lateral are conducted annually by a ROV launched from a vessel of opportunity. Planned O&M activity is the annual inspection of the cathodic protection monitors by a ROV. The monitors are located at the ends of the Algonquin Pipeline Lateral and the adjacent Flowlines. Each inspection activity will take approximately 3 days and will utilize a ROV launched from a vessel of opportunity. The most likely vessel will be similar to the NEG Port's normal support vessel.

In addition to these routine activities, there may be instances whereby unanticipated events at the NEG Port and Algonquin Pipeline Lateral necessitate emergency maintenance and/or repair activities. While the extent

and number of such maintenance and repair activities at the Port over its expected 25 year life cannot be accurately estimated, it is reasonable to assume that a worst-case maintenance and/or repair scenario would result in similar types of activities and require the use of similar support vessels and equipment as used for construction.

Modeling analysis conducted in support of the final EIS/EIR concluded that the only underwater noise of critical concern during NEG Port and Algonquin Pipeline Lateral construction would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. As with construction noise at the NEG Port, to confirm modeled results and better understand the noise footprint associated with construction activities along the Algonquin Pipeline Lateral, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral Construction period. Again, measurements were taken to establish the ''loudest'' potential construction measurement event. Two positions within Massachusetts Bay were then used to determine site-specific distances to the 120/180 dB re 1 μPa isopleths: at PLEM and at Mid-Pipeline.

As described for NEG Port operations and maintenance and repair, at each location sound propagation calculations were performed to determine the noise footprint of the construction activity at each of the specified locations. The resulting distances to the 120 dB isopleth (180 dB re 1 μPa does not exist) was estimated to determine the maximum distance at which Level B harassment may occur (Table 1).

TABLE 1—MODELED UNDERWATER RECEIVED SOUND PRESSURE LEVELS AND DISTANCES TO THRESHOLD LEVELS FOR NEG PORT AND ALGONQUIN PIPELINE LATERAL OPERATIONS AND MAINTENANCE AND REPAIR ACTIVITIES

Activities	Estimated distance (m) from source where received SPL falls below 120 dB re 1 μPa
NEG Port Operations:	
EBRV docking with support vessel at Port	4,250
EBRV docking with support vessels on station	5,500
EBRV regasification	< 300
EBRV transiting TSS	1,750
NEG Port Maintenance and Repair:	
Barge/tug (with load)/construction vessel	2,560
Algonquin Pipeline Lateral O&M and Unplanned Repair:	
Barge/tug (with load)/construction vessel at PLEM	3,500
Barge/tug (with load)/construction vessel at Mid-pipeline	2,831

Potential Effects on Marine Mammal Habitat

NEG Port Operations

Operation of the NEG Port will not result in short-term effects; however, long-term effects on the marine environment, including alteration of the seafloor conditions, continued disturbance of the seafloor, regular withdrawal of sea water, and regular generation of underwater noise, will result from Port operations. Specifically, a small area (0.14 acre) along the Pipeline Lateral has been permanently altered (armored) at two cable crossings. In addition, the structures associated with the NEG Port (flowlines, mooring wire rope and chain, suction anchors, and pipeline end manifolds) occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 43 acres (worst case scenario based on severe 100-year storm with EBRVs occupying both STL buoys) will be subject to disturbance due to chain sweep while the buoys are occupied. Given the relatively small size of the NEG Port area that will be directly affected by Port operations, NMFS does not anticipate that habitat loss will be significant.

EBRVs are currently authorized to withdraw an average of 4.97 million gallons per day (mgd) and 2.6 billion gallons per year of sea water for general ship operations during it cargo delivery activities at the NEG Port. However, during the operations of the NEG Port facility, it was revealed that significantly more water usage is needed from what was originally evaluated in the final USCG Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The updates for the needed water intake and discharge temperature are:

- 11 billion gallons of total annual water use at the Port;
- Maximum daily intake volume of up to 56 mgd at a rate of 0.45 feet per second when an EBRV is not able to achieve the heat recovery system (HRS: It is the capability of reducing water use during the regasification process) mode of operation; and,
- Maximum daily change in discharge temperature of 12 °C (21.6 °F) from ambient from the vessel's main condenser cooling system.

Under the requested water-use scenario, Tech Tech (2011) conducted an environmental analysis on the potential impacts to marine mammals and their prey. To evaluate impacts to phytoplankton under the increased water usage, the biomass of phytoplankton lost from the Massachusetts Bay ecosystem was estimated based on the method presented in the final EIS/EIR. Phytoplankton densities of 65,000 to 390,000 cells/gallon were multiplied by the annual planned activities of withdrawal rate of 11 billion gallons to estimate a loss of 7.15×10^{14} to 4.29×10^{15} cells per year. Assuming a dry-weight biomass of 10^{-10} to 10^{-11} gram per cell (g/cell), an estimated 7.2 kg to 429 kg of biomass would be lost from Massachusetts Bay under the proposed activity, up to approximately 4.2 times that estimated in the final EIS/EIR for the permitted operational scenario. An order of magnitude estimate of the effect of this annual biomass loss on the regional food web can be calculated assuming a 10 percent transfer of biomass from one trophic level to the next (Sumich 1988) following the method used in the final EIS/EIR. This suggests that the loss of 7.2 kg to 429 kg of phytoplankton will result in the loss of about 0.7 kg to 42.9 kg of zooplankton, less than 0.1 kg to 4.3 kg of small planktivorous fish, and up to

0.4 kg of large piscivorous fish (approximately equivalent to a single 1-pound striped bass). Relative to the biomass of these trophic levels in the project area, this biomass loss is minor and consistent with the findings in the final EIS/EIR.

In addition, zooplankton losses will also increase proportionally to the increase in water withdrawn. The final EIS/EIR used densities of zooplankton determined by the sampling conducted by the Massachusetts Water Resource Authority (MWRA) to characterize the area around its offshore outfall and assumed a mean zooplankton density of 34.9×10^3 organisms per m^3. Applying this density, the water withdrawal volume under the proposed activity would result in the entrainment of 2.2×10^{10} zooplankton individuals per trip or 1.5×10^{12} individuals per year. Assuming an average biomass of 0.63×10^{-6} g per individual, this would result in the loss of 14.1 kg of zooplankton per shipment or 916.5 kg of zooplankton per year. As discussed for phytoplankton, biomass transfers from one trophic level to the next at a rate of about 10 percent. Therefore, this entrainment of zooplankton would result in loss of about 91.6 kg of planktivorous fish and 9.2 kg of large piscivorous fish (approximately equivalent to two 9-pound striped bass). These losses are minor relative to the total biomass of these trophic levels in Massachusetts Bay.

Finally, ichthyoplankton (fish eggs and larvae) losses and equivalent age one juvenile fish estimates under the proposed activity were made based on actual monthly ichthyoplankton data collected in the port area from October 2005 through December 2009 and the proposed activity withdrawal volume of 11 billion gallons per year evenly distributed among months (0.92 billion gallons per month) as a worst-case scenario, representing the maximum number of Port deliveries during any given month. Similarly, the lower, upper, and mean annual entrainment estimates are based on the lower and upper 95 percent confidence limits, of the monthly mean ichthyoplankton densities, and the monthly mean estimates multiplied by the monthly withdrawal rate of 0.92 billion gallons per month. At this withdrawal rate approximately 106 million eggs and 67 million larvae are estimated to be lost (see Table 4.2–2 of the IHA application). The most abundant species and life stages estimated to be entrained under the proposed activity are cunner post yolk-sac larvae (33.3 million), yellowtail flounder/*Labridae* eggs (27.4 million) and hake species eggs (18.7 million). Together, these species and life stages accounted for approximately 46 percent of the total entrainment estimated. Entrainment was estimated to be highest in June through July when 97.4 million eggs and larvae (approximately 57 percent of the annual total) were estimated to be entrained. Nevertheless, since the demand for natural gas and corresponding Port activities will likely be greatest during the winter heating season (November through March) when impacts from entrainment will likely be lower.

These estimated losses are not significant given the very high natural mortality of ichthyoplankton. This comparison was done in the final EIS/EIR where ichthyoplankton losses based on historic regional ichthyoplankton densities and a withdrawal rate of approximately 2.6 billion gallons per year were represented by the equivalent number of age one fish. Under the final EIS/EIR withdrawal scenario, equivalent age one losses due to entrainment ranged from 1 haddock to 43,431 sand lance (Tetra Tech 2010). Equivalent age one losses under the conditions when no NEG Port operation occurrence were recalculated using Northeast Gateway monitoring data in order to facilitate comparisons between the permitted scenario. Using Northeast Gateway monitoring data, withdrawal of 2.6 billion gallons per year would result in equivalent age one losses ranging from less than 1 haddock to 5,602 American sand lance. By comparison, equivalent age one losses under the proposed activity withdrawal rate of 11 billion gallons per year ranged from less than 1 haddock to 23,701 sand lance and were generally similar to or less than those in the final EIS/EIR. Substantially more equivalent age one Atlantic herring, pollock, and butterfish were estimated to be lost under the final EIS/EIR at a withdrawal rate of 2.6 billion gallons per year, while substantially more equivalent age one Atlantic cod, silver hake and hake species, cunner, and Atlantic mackerel are estimated to be lost under the proposed activity.

Although no reliable annual food consumption rates of baleen whales are available for comparison, based on the calculated quantities of phytoplankton, zooplankton, and ichthyoplankton removal analyzed above, it is reasonable to conclude that baleen whale predation rates would dwarf any reasonable estimates of prey removals by NEG Port operations. Therefore, NMFS believes that the prey removals by NEG Port operations resulting from water usage will have negligible impacts on marine mammal habitat.

NEG Port Maintenance

As stated earlier, NEG LNG Port will require scheduled maintenance inspections using either divers or ROVs. The duration of these inspections are not anticipated to be more than two 8-hour working days. An EBRV will not be required to support these annual inspections. Water usage during the LNG Port maintenance would be limited to the standard requirements of NEG's normal support vessel. As with all vessels operating in Massachusetts Bay, sea water uptake and discharge is required to support engine cooling, typically using a once-through system. The rate of seawater uptake varies with the ship's horsepower and activity and therefore will differ between vessels and activity type. For example, the *Gateway Endeavor* is a 90-foot vessel powered with a 1,200 horsepower diesel engine with a four-pump seawater cooling system. This system requires seawater intake of about 68 gallons per minute (gpm) while idling and up to about 150 gpm at full power. Use of full power is required generally for transit. A conservatively high estimate of vessel activity for the Gateway Endeavor would be operation at idle for 75 percent of the time and full power for 25 percent of the time. During the routine activities this would equate to approximately 42,480 gallons of seawater per 8-hour work day. When compared to the engine cooling requirements of an EBRV over an 8-hour period (approximately 18 million gallons), the *Gateway Endeavour* uses about 0.2 percent of the EBRV requirement. To put this water use into context, potential effects from the waters-use scenario of 56 mgd have been concluded to be orders of magnitude less than the natural fluctuations of Massachusetts Bay and Cape Cod Bay and not detectable. Water use by support vessels during routine port activities would not materially add to the overall impacts.

Certain maintenance and repair activities may also require the presence of an EBRV at the Port. Such instances may include maintenance and repair on the STL Buoy, vessel commissioning, and any onboard equipment malfunction or failure occurring while a vessel is present for cargo delivery. Because the requested water-use scenario allows for daily water use of up to 56 mgd to support standard EBRV requirements when not operating in the HRS mode, vessels would be able to remain at the Port as necessary to support all such maintenance and repair scenarios. Therefore, NMFS considers that NEG Port maintenance and repair

would have negligible impacts to marine mammal habitat in the proposed activity area.

Unanticipated Algonquin Pipeline Lateral Maintenance and Repair

As stated earlier, proper care and maintenance of the Algonquin Pipeline Lateral should minimize the likelihood of an unanticipated maintenance and/or repair event; however, unanticipated activities may occur from time to time if facility components become damaged or malfunction. Unanticipated repairs may range from relatively minor activities requiring minimal equipment and one or two diver/ROV support vessels to major activities requiring larger construction-type vessels similar to those used to support the construction and installation of the facility.

Major repair activities, although unlikely, may include repairing or replacement of pipeline manifolds or a sections of the Pipeline Lateral. This type of work would likely require the use of large specialty construction vessels such as those used during the construction and installation of the NEG Port and Algonquin Pipeline Lateral. The duration of a major unplanned activity would depend upon the type of repair work involved and would require careful planning and coordination.

Turbidity would likely be a potential effect of Algonquin Pipeline Lateral maintenance and repair activities on listed species. In addition, the possible removal of benthic or planktonic species, resulting from relatively minor construction vessel water use requirements, as measured in comparison to EBRV water use, is unlikely to affect in a measurable way the food sources available to marine mammals. Therefore, NMFS considers that Algonquin Pipeline Lateral maintenance and repair would have negligible impacts to marine mammal habitat in the proposed activity area.

Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed NEG LNG Port operations and maintenance and repair activities, Excelerate and Tetra Tech worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the LNG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities. The primary purpose of these proposed mitigation measures is to ensure that no marine mammal would be injured or killed by vessels transiting the LNG Port facility, and to minimize the intensity of noise exposure of marine mammals in the activity area. For the proposed NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair, the following mitigation measures are proposed.

(a) General Marine Mammal Avoidance Measures

(i) All vessels shall utilize the International Maritime Organization (IMO)-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the NEG Port and/or the repair/maintenance area at the earliest practicable point of transit in order to avoid the risk of whale strikes.

(ii) Upon entering the TSS and areas where North Atlantic right whales are known to occur, including the Great South Channel Seasonal Management Area (GSC–SMA) and the SBNMS, the EBRV shall go into ''Heightened Awareness'' as described below.

(A) Prior to entering and navigating the modified TSS the Master of the vessel shall:

(I) Consult Navigational Telex (NAVTEX), NOAA Weather Radio, the NOAA Right Whale Sighting Advisory System (SAS) or other means to obtain current right whale sighting information as well as the most recent Cornell acoustic monitoring buoy data for the potential presence of marine mammals;

(II) Post a look-out to visually monitor for the presence of marine mammals;

(III) Provide the US Coast Guard (USCG) required 96-hour notification of an arriving EBRV to allow the NEG Port Manager to notify Cornell of vessel arrival.

(B) The look-out shall concentrate his/her observation efforts within the 2-mile radius zone of influence (ZOI) from the maneuvering EBRV.

(C) If marine mammal detection was reported by NAVTEX, NOAA Weather Radio, SAS and/or an acoustic monitoring buoy, the look-out shall concentrate visual monitoring efforts towards the areas of the most recent detection.

(D) If the look-out (or any other member of the crew) visually detects a marine mammal within the 2-mile radius ZOI of a maneuvering EBRV, he/she will take the following actions:

(I) The Officer-of-the-Watch shall be notified immediately; who shall then relay the sighting information to the Master of the vessel to ensure action(s) can be taken to avoid physical contact with marine mammals.

(II) The sighting shall be recorded in the sighting log by the designated look-out.

(iii) In accordance with 50 CFR 224.103(c), all vessels associated with NEG Port and Pipeline Lateral activities shall not approach closer than 500 yards (460 m) to a North Atlantic right whale and 100 yards (91 m) to other whales to the extent physically feasible given navigational constraints. In addition, when approaching and departing the project area, vessels shall be operated so as to remain at least 1 km away from any visually-detected North Atlantic right whales.

(iv) In response to active right whale sightings and active acoustic detections, and taking into account exceptional circumstances, EBRVs, repair and maintenance vessels shall take appropriate actions to minimize the risk of striking whales. Specifically vessels shall:

(A) Respond to active right whale sightings and/or DMAs reported on the Mandatory Ship Reporting (MSR) or SAS by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less if the vessel is within the boundaries of a DMA (50 CFR 224.105) or within the circular area centered on an area 8 nm in radius from a sighting location;

(B) Respond to active acoustic detections by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less within an area 5 nm in radius centered on the detecting AB; and

(C) Respond to additional sightings made by the designated look-outs within a 2-mile radius of the vessel by slowing the vessel to 10 knots or less and concentrating monitoring efforts towards the area of most recent sighting.

(v) All vessels operated under NEG and Algonquin must follow the established specific speed restrictions when calling at the NEG Port. The specific speed restrictions required for all vessels (i.e., EBRVs and vessels associated with maintenance and repair) consist of the following:

(A) Vessels shall reduce their maximum transit speed while in the TSS from 12 knots or less to 10 knots or less from March 1 to April 30 in all waters bounded by straight lines

connecting the following points in the order stated below unless an emergency situation dictates for an alternate speed. This area shall hereafter be referred to as the Off Race Point Seasonal Management Area (ORP–SMA) and tracks NMFS regulations at 50 CFR 224.105:

42°30′ N 70°30′ W 41°40′ N 69°57′ W
42°30′ N 69°45′ W 42°12′ N 70°15′ W
41°40' N 69°45′ W 42°12′ N 70°30′ W
42°04.8′ N 70°10′ W 42°30′ N 70°30′ W

(B) Vessels shall reduce their maximum transit speed while in the TSS to 10 knots or less unless an emergency situation dictates for an alternate speed from April 1 to July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area shall hereafter be referred to as the GSC–SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30′ N 69°45′ W 41°40′ N 69°45′ W
42°30′ N 67°27′ W 42°30′ N 69°45′ W
42°09′ N 67°08.4′ W 41°00′ N 69°05′ W

(C) Vessels are not expected to transit the Cape Cod Bay or the Cape Cod Canal; however, in the event that transit through the Cape Cod Bay or the Cape Cod Canal is required, vessels shall reduce maximum transit speed to 10 knots or less from January 1 to May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12′ N latitude and the Cape Cod Canal. This area shall hereafter be referred to as the Cape Cod Bay Seasonal Management Area (CCB–SMA).

(D) All Vessels transiting to and from the project area shall report their activities to the mandatory reporting Section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

(E) All Vessels greater than or equal to 300 gross tons (GT) shall maintain a speed of 10 knots or less, unless an emergency situation requires speeds greater than 10 knots.

(F) All Vessels less than 300 GT traveling between the shore and the project area that are not generally restricted to 10 knots will contact the Mandatory Ship Reporting (MSR) system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 kilometers) of any sighting location, when traveling in any of the seasonal management areas (SMAs) or when traveling in any active dynamic management area (DMA).

(b) NEG Port-Specific Operations

(i) In addition to the general marine mammal avoidance requirements identified in (5)(a) above, vessels calling on the NEG Port must comply with the following additional requirements:

(A) EBRVs shall travel at 10 knots maximum speed when transiting to/from the TSS or to/from the NEG Port/Pipeline Lateral area. For EBRVs, at 1.86 miles (3 km) from the NEG Port, speed will be reduced to 3 knots and to less than 1 knot at 1,640 ft (500 m) from the NEG buoys, unless an emergency situation dictates the need for an alternate speed.

(B) EBRVs that are approaching or departing from the NEG Port and are within the ATBA5 surrounding the NEG Port, shall remain at least 1 km away from any visually-detected North Atlantic right whale and at least 100 yards (91 m) away from all other visually-detected whales unless an emergency situation requires that the vessel stay its course. During EBRV maneuvering, the Vessel Master shall designate at least one look-out to be exclusively and continuously monitoring for the presence of marine mammals at all times while the EBRV is approaching or departing from the NEG Port.

(C) During NEG Port operations, in the event that a whale is visually observed within 1 km of the NEG Port or a confirmed acoustic detection is reported on either of the two ABs closest to the NEG Port (western-most in the TSS array), departing EBRVs shall delay their departure from the NEG Port, unless an emergency situation requires that departure is not delayed. This departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 1 km from the NEG Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the NEG Port, or visually within 1 km from the NEG Port.

(ii) Vessel captains shall focus on reducing dynamic positioning (DP) thruster power to the maximum extent practicable, taking into account vessel and Port safety, during the operation activities. Vessel captains will shut down thrusters whenever they are not needed.

(c) Planned and Unplanned Maintenance and Repair Activities

(i) NEG Port

(A) The Northeast Gateway shall conduct empirical source level measurements on all noise emitting construction equipment and all vessels that are involved in maintenance/repair work.

(B) If dynamic positioning (DP) systems are employed and/or activities will emit noise with a source level of 139 dB re 1 μPa at 1 m or greater, activities shall be conducted in accordance with the requirements for DP systems listed in (b)(ii) above.

(C) Northeast Gateway shall provide the NMFS Headquarters Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30 days notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Northeast Gateway shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(ii) Pipeline Lateral

(A) Pipeline maintenance/repair vessels less than 300 GT traveling between the shore and the maintenance/repair area that are not generally restricted to 10 knots shall contact the MSR system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 km) of any sighting location, when travelling in any of the seasonal management areas (SMAs) as defined above.

(B) Maintenance/repair vessels greater than 300 GT shall not exceed 10 knots, unless an emergency situation that requires speeds greater than 10 knots.

(C) Planned maintenance and repair activities shall be restricted to the period between May 1 and November 30.

(D) Unplanned/emergency maintenance and repair activities shall be conducted utilizing anchor-moored dive vessel whenever operationally possible.

(E) Algonquin shall also provide the NMFS Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and Stellwagen Bank National Marine Sanctuary (SBNMS) with a minimum of 30-day notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/

maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Algonquin shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(F) If dynamic positioning (DP) systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 μPa at 1 m or greater, activities shall be conducted in accordance with the requirements for DP systems listed in (b)(ii) above.

(G) In the event that a whale is visually observed within 0.5 mile (0.8 kilometers) of a repair or maintenance vessel, the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew shall be put on a heightened state of alert and the marine mammal shall be monitored constantly to determine if it is moving toward the repair or maintenance area.

(H) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μPa @ 1 m or higher when a right whale is sighted within or approaching at 500 yd (457 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (500 yd [457 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(I) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μPa @ 1 m or higher when a marine mammal other than a right whale is sighted within or approaching at 100 yd (91 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (100 yd [91 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(J) Algonquin and associated contractors shall also comply with the following:

(I) Operations involving equipment with sound source levels exceeding 139 dB re 1μPa @ 1 m shall ''ramp-up'' sound sources, allowing whales a chance to leave the area before sounds reach maximum levels. In addition, Northeast Gateway, Algonquin, and other associated contractors shall maintain equipment to manufacturers' specifications, including any sound-muffling devices or engine covers in order to minimize noise effects. Noisy construction equipment shall only be used as needed and equipment shall be turned off when not in operation.

(II) Any material that has the potential to entangle marine mammals (e.g., anchor lines, cables, rope or other construction debris) shall only be deployed as needed and measures shall be taken to minimize the chance of entanglement.

(III) For any material mentioned above that has the potential to entangle marine mammals, such material shall be removed from the water immediately unless such action jeopardizes the safety of the vessel and crew as determined by the Captain of the vessel.

(IV) In the event that a marine mammal becomes entangled, the marine mammal coordinator and/or PSO will notify NMFS (if outside the SBNMS), and SBNMS staff (if inside the SBNMS) immediately so that a rescue effort may be initiated.

(K) All maintenance/repair activities shall be scheduled to occur between May 1 and November 30; however, in the event of unplanned/emergency repair work that cannot be scheduled during the preferred May through November work window, the following additional measures shall be followed for Pipeline Lateral maintenance and repair related activities between December and April:

(I) Between December 1 and April 30, if on-board PSOs do not have at least 0.5-mile visibility, they shall call for a shutdown. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down.

(II) Prior to leaving the dock to begin transit, the barge shall contact one of the PSOs on watch to receive an update of sightings within the visual observation area. If the PSO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel shall hold for 30 minutes and again get a clearance to leave from the PSOs on board. PSOs shall assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

(III) Transit route, destination, sea conditions and any marine mammal sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 1,000 m of the vessel shall result in a high alert and slow speed of 4 knots or less and a sighting within 750 m shall result in idle speed and/or ceasing all movement.

(IV) The material barges and tugs used in repair and maintenance shall transit from the operations dock to the work sites during daylight hours when possible provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug shall be 5 knots.

(V) All repair vessels must maintain a speed of 10 knots or less during daylight hours. All vessels shall operate at 5 knots or less at all times within 5 km of the repair area.

(d) Acoustic Monitoring Related Activities

(i) Vessels associated with maintaining the acoustic seafloor array of Marine Autonomous Recording Units (MARUs) and the AB network operating as part of the mitigation/monitoring protocols shall adhere to the following speed restrictions and marine mammal monitoring requirements.

(A) Vessels maintaining the MARU array that are greater than 300 gross tons (GT) shall not exceed 10 knots.

(B) Vessels maintaining the MARU array that are less than 300 GT shall not exceed 15 knots at any time, but shall adhere to speeds of 10 knots or less in the following areas and seasons:

(I) In the ORP–SMA between March 1 and April 30; and

(II) In the CCB–SMA between January 1 and May 15.

(C) In accordance with 50 CFR 224.103 (c), all vessels associated with NEG Port activities shall not approach closer than 500 yards (460 meters) to a North Atlantic right whale.

(D) All vessels shall obtain the latest DMA or right whale sighting information via the NAVTEX, MSR, SAS, NOAA Weather Radio, or other available means prior to operations to determine if there are right whales present in the operational area.

Mitigation Conclusions

NMFS has carefully evaluated the proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

• The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Proposed Monitoring Measures

(a) Vessel-Based Visual Monitoring

(i) Vessel-Based monitoring for marine mammals shall be done by trained look-outs during NEG LNG Port and Pipeline Lateral operations and maintenance and repair activities. The observers shall monitor the occurrence of marine mammals near the vessels during LNG Port and Pipeline Lateral related activities. Lookout duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the activities; and documenting ''take by harassment''.

(ii) The vessel look-outs assigned to visually monitor for the presence of marine mammals and shall be provided with the following:

(A) Recent NAVTEX, NOAA Weather Radio, SAS and/or acoustic monitoring buoy detection data;

(B) Binoculars to support observations;

(C) Marine mammal detection guide sheets; and

(D) Sighting log.

(b) NEG LNG Port Operations

(i) All individuals onboard the EBRVs responsible for the navigation duties and any other personnel that could be assigned to monitor for marine mammals shall receive training on marine mammal sighting/reporting and vessel strike avoidance measures.

(ii) While an EBRV is navigating within the designated TSS, there shall be three people with look-out duties on or near the bridge of the ship including the Master, the Officer-of-the-Watch and the Helmsman-on-watch. In addition to the standard watch procedures, while the EBRV is transiting within the designated TSS, maneuvering within the Area to be Avoided (ATBA), and/or while actively engaging in the use of thrusters, an additional look-out shall be designated to exclusively and continuously monitor for marine mammals.

(iii) All sightings of marine mammals by the designated look-out, individuals posted to navigational look-out duties and/or any other crew member while the EBRV is transiting within the TSS, maneuvering within the ATBA and/or when actively engaging in the use of thrusters, shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master. The Master or Officer-of-the-Watch shall ensure the required reporting procedures are followed and the designated marine mammal look-out records all pertinent information relevant to the sighting.

(iv) Visual sightings made by look-outs from the EBRVs shall be recorded using a standard sighting log form. Estimated locations shall be reported for each individual and/or group of individuals categorized by species when known. This data shall be entered into a database and a summary of monthly sighting activity shall be provided to NMFS. Estimates of take and copies of these log sheets shall also be included in the reports to NMFS.

(c) Planned and Unplanned Maintenance and Repair

(i) Two (2) qualified and NMFS-approved protected species observers (PSOs) shall be assigned to each vessel that will use dynamic positioning (DP) systems during maintenance and repair related activities. PSOs shall operate individually in designated shifts to accommodate adequate rest schedules. Additional PSOs shall be assigned to additional vessels if auto-detection buoy (AB) data indicates that sound levels exceed 120 dB re 1 μPa, further then 100 meters (328 feet) from these vessels.

(ii) All PSOs shall receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after review of their resume. All PSOs shall have direct field experience on marine mammal vessels and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

(iii) PSOs (one primary and one secondary) shall be responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist and the secondary PSO will serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals and sea turtles. Specifically PSO's shall:

(A) Monitor at all hours of the day, scanning the ocean surface by eye for a minimum of 40 minutes every hour.

(B) Monitor the area where maintenance and repair work is conducted beginning at daybreak using 25x power binoculars and/or hand-held binoculars. Night vision devices must be provided as standard equipment for monitoring during low-light hours and at night.

(C) Conduct general 360° visual monitoring during any given watch period and target scanning by the observer shall occur when alerted of a whale presence.

(D) Alert the vessel superintendent or construction crew supervisor of visual detections within 2 miles (3.31 kilometers) immediately.

(E) Record all sightings on marine mammal field sighting logs. Specifically, all data shall be entered at the time of observation, notes of activities will be kept, and a daily report prepared and attached to the daily field sighting log form. The basic reporting requirements include the following:

• Beaufort sea state;
• Wind speed;
• Wind direction;
• Temperature;
• Precipitation;
• Glare;
• Percent cloud cover;
• Number of animals;
• Species;
• Position;
• Distance;
• Behavior;
• Direction of movement; and
• Apparent reaction to construction activity.

(iv) In the event that a whale is visually observed within the 2-mile (3.31-kilometers) zone of influence (ZOI) of a DP vessel or other construction vessel that has shown to emit noise with source level in excess of 139 dB re 1 μPa @ 1 m, the PSO will notify the repair/maintenance construction crew to minimize the use of thrusters until the animal has moved away, unless there are divers in the water or an ROV is deployed.

(d) Acoustic Monitoring

(i) Northeast Gateway shall monitor the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Pipeline Lateral using an array of 19 MARUs that were deployed initially in April 2007 to collect data during NEG LNG Port and Pipeline Lateral related activities.

(ii) The acoustic data collected by the MARUs shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback and right whales) within approximately 10 nm of the NEG Port and shall measure and document the noise ''budget'' of Massachusetts Bay so as to eventually assist in determining whether or not an overall increase in noise in the Bay associated with the Project might be having a potentially negative impact on marine mammals.

(iii) In addition to the 19 MARUs, Northeast Gateway shall deploy 10 ABs within the Separation Zone of the TSS for the operational life of the Project.

(iv) The ABs shall be used to detect a calling North Atlantic right whale an average of 5 nm from each AB. The AB system shall be the primary detection mechanism that alerts the EBRV Master to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described in section (5) above.

(e) Acoustic Whale Detection and Response Plan

(i) NEG Port Operations

(A) Ten (10) ABs that have been deployed since 2007 shall be used to continuously screen the low-frequency acoustic environment (less than 1,000 Hertz) for right whale contact calls occurring within an approximately 5-nm radius from each buoy (the AB's detection range).

(B) Once a confirmed detection is made, the Master of any EBRVs operating in the area will be alerted immediately.

(ii) NEG Port and Pipeline Lateral Planned and Unplanned/Emergency Repair and Maintenance Activities

(A) If the repair/maintenance work is located outside of the detectible range of the 10 project area ABs, Northeast Gateway and Algonquin shall consult with NOAA (NMFS and SBNMS) to determine if the work to be conducted warrants the temporary installation of an additional AB(s) to help detect and provide early warnings for potential occurrence of right whales in the vicinity of the repair area.

(B) The number of ABs installed around the activity site shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(C) Should acoustic monitoring be deemed necessary during a planned or unplanned/emergency repair and/or maintenance event, active monitoring for right whale calls shall begin 24 hours prior to the start of activities.

(D) Source level data from the acoustic recording units deployed in the NEG Port and/or Pipeline Lateral maintenance and repair area shall be provided to NMFS.

Proposed Reporting Measures

(a) Throughout NEG Port and Pipeline Lateral operations, Northeast Gateway and Algonquin shall provide a monthly Monitoring Report. The Monitoring Report shall include:

(i) Both copies of the raw visual EBRV lookout sighting information of marine mammals that occurred within 2 miles of the EBRV while the vessel transits within the TSS, maneuvers within the ATBA, and/or when actively engaging in the use of thrusters, and a summary of the data collected by the look-outs over each reporting period.

(ii) Copies of the raw PSO sightings information on marine mammals gathered during pipeline repair or maintenance activities. This visual sighting data shall then be correlated to periods of thruster activity to provide estimates of marine mammal takes (per species/species class) that took place during each reporting period.

(iii) Conclusion of any planned or unplanned/emergency repair and/or maintenance period, a report shall be submitted to NMFS summarizing the repair/maintenance activities, marine mammal sightings (both visual and acoustic), empirical source-level measurements taken during the repair work, and any mitigation measures taken.

(b) During the maintenance and repair of NEG Port components, weekly status reports shall be provided to NOAA (both NMFS and SBNMS) using standardized reporting forms. The weekly reports shall include data collected for each distinct marine mammal species observed in the repair/maintenance area during the period that maintenance and repair activities were taking place. The weekly reports shall include the following information:

(i) Location (in longitude and latitude coordinates), time, and the nature of the maintenance and repair activities;

(ii) Indication of whether a DP system was operated, and if so, the number of thrusters being used and the time and duration of DP operation;

(iii) Marine mammals observed in the area (number, species, age group, and initial behavior);

(iv) The distance of observed marine mammals from the maintenance and repair activities;

(v) Changes, if any, in marine mammal behaviors during the observation;

(vi) A description of any mitigation measures (power-down, shutdown, etc.) implemented;

(vii) Weather condition (Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover etc.);

(viii) Condition of the observation (visibility and glare); and

(ix) Details of passive acoustic detections and any action taken in response to those detections.

(d) Injured/Dead Protected Species Reporting

(i) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by the proposed IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NEG and/or Algonquin shall immediately cease activities and immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the Northeast Regional Stranding Coordinators (*Mendy.Garron@noaa.gov* or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300. The report must include the following information:

(A) time, date, and location (latitude/longitude) of the incident;

(B) the name and type of vessel involved;

(C) the vessel's speed during and leading up to the incident;

(D) description of the incident;

(E) status of all sound source use in the 24 hours preceding the incident;

(F) water depth;

(G) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) description of marine mammal observations in the 24 hours preceding the incident;

(I) species identification or description of the animal(s) involved;

(J) the fate of the animal(s); and

(K) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take.

NMFS shall work with NEG and/or Algonquin to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NEG and/or Algonquin may not resume their activities until notified by NMFS via letter, email, or telephone.

(ii) In the event that NEG and/or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), NEG and/or Algonquin will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Northeast Stranding Coordinators (*Mendy.Garron@noaa.gov* or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300, within 24 hours of the discovery. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NEG and/or Algonquin to determine whether modifications in the activities are appropriate.

(iii) In the event that NEG or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (if the IHA is issued) (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NEG and/or Algonquin shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Northeast Stranding Coordinators (*Mendy.Garron@noaa.gov* or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300, within 24 hours of the discovery. NEG and/or Algonquin shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. NEG and/or Algonquin can continue its operations under such a case.

Summary of Previous Monitoring Reports

Based on monthly activity reports submitted to NMFS for the period between August 2010 and October 2013, there were no activities at the NEG Port during the period. Therefore, no take of marine mammals occurred or were reported during this period.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B harassment is anticipated as a result of NEG's operation and maintenance and repair activities. Anticipated take of marine mammals is associated with operation of dynamic positioning during the docking of the LNG vessels and positioning of maintenance and dive vessels, and by operations of certain machinery during maintenance and repair activities. The regasification process itself is an activity that does not rise to the level of taking, as the modeled source level for this activity is 108 dB. Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that are proposed that were described earlier in this document.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed open water marine survey programs might include one or more of the following: masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) is highly unlikely to occur based on the proposed mitigation and monitoring measures that would preclude marine mammals from being exposed to noise levels high enough to cause hearing impairment.

For non-pulse sounds, such as those produced by operating dynamic positioning (DP) thruster during vessel docking and supporting underwater construction and repair activities and the operations of various machineries that produces non-pulse noises, NMFS uses the 120 dB (rms) re 1 μPa isopleth to indicate the onset of Level B harassment.

NEG Port and Algonquin Pipeline Lateral Activities Acoustic Footprints

I. NEG Port Operations

For the purposes of understanding the noise footprint of operations at the NEG Port, measurements taken to capture operational noise (docking, undocking, regasification, and EBRV thruster use) during the 2006 Gulf of Mexico field event were taken at the source. Measurements taken during EBRV transit were normalized to a distance of 328 feet (100 meters) to serve as a basis for modeling sound propagation at the NEG Port site in Massachusetts Bay.

Sound propagation calculations for operational activities were then completed at two positions in Massachusetts Bay to determine site-specific distances to the 120/160/180 dB isopleths:

- Operations Position 1—Port (EBRV Operations): 70°36.261′ W and 42°23.790′ N
- Operations Position 2—Boston TSS (EBRV Transit): 70°17.621′ W and 42°17.539′ N

At each of these locations sound propagation calculations were performed to determine the noise footprint of the operation activity at each of the specified locations. Calculations were performed in accordance with Marsh and Schulkin (1985) and Richardson *et al.* (1995) and took into consideration aspects of water depth, sea state, bathymetry, and seabed composition. In addition, the acoustic modeling performed specifically evaluated sound energy in 1/3-octave spectral bands covering frequencies from 12.5 Hz to 20 kHz. The resultant underwater sound pressure levels to the 120 dB isopleth is presented in Table 2.

TABLE 2—RADII OF 120-dB SPL ISOPLETHS FROM NEG LNG OPERATIONS

	Radius to 120-dB zone (m)
One EBRV docking procedure with support vessel	4,250
Two EBRV docking procedure with support vessel	5,500
EBRV regasification	<300
EBRV transiting the TSS (10 knot)	1,750

II. NEG Port Maintenance and Repair

Modeling analysis conducted for the construction of the NEG Port concluded that the only underwater noise of critical concern during NEG Port construction would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. To confirm these modeled results and better understand the noise footprint associated with construction activities at the NEG Port, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral Construction period. Measurements were taken and normalized as described to establish the ''loudest'' potential construction measurement event. One position within Massachusetts Bay was then used to determine site-specific distances to the 120/180 dB isopleths for NEG Port maintenance and repair activities:

- Construction Position 1. Port: 70°36.261′ W and 42°23.790′ N

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The calculations took into consideration aspects of water depth, sea state, bathymetry, and seabed composition, and specifically evaluated sound energy in the range that encompasses the auditory frequencies of marine mammals and at which sound propagates beyond the immediate vicinity of the source. These results were then summed across frequencies to provide the broadband received levels at receptor locations. The results showed that the estimated distance from the loudest source involved in construction activities fell to 120 dB re 1 μPa at a distance of 3,600 m.

III. Algonquin Pipeline Lateral Operation and Maintenance Activities

Modeling analysis conducted during the NEG Port and Pipeline Lateral construction concluded that the only underwater noise of critical concern during such activities would be from vessel noises such as turning screws, engine noise, noise of operating machinery, and thruster use. As with construction noise at the NEG Port, to confirm modeled results and better understand the noise footprint associated with construction activities along the Algonquin Pipeline Lateral, field measurements were taken of various construction activities during the 2007 NEG Port and Algonquin Pipeline Lateral construction period. Measurements were taken and normalized to establish the ''loudest'' potential construction measurement event. Two positions within Massachusetts Bay were then used to determine site-specific distances to the 120/160/180 dB isopleths:

- Construction Position 2. PLEM: 70°46.755′ W and 42°28.764′ N.
- Construction Position 3. Mid-Pipeline: 70°40.842′ W and 42°31.328′ N.

Sound propagation calculations were performed to determine the noise footprint of the construction activity. The calculations took into consideration aspects of water depth, sea state, bathymetry, and seabed composition, and specifically evaluated sound energy in the range that encompasses the auditory frequencies of marine mammals and at which sound propagates beyond the immediate vicinity of the source. These results were then summed across frequencies to provide the broadband received levels at receptor locations. The results of the distances to the 120-dB are shown in Table 3.

TABLE 3—RADII OF 120-dB SPL ISOPLETHS FROM ALGONQUIN PIPELINE LATERAL OPERATION AND MAINTENANCE

	Radius to 120-dB zone (m)
Barge/tug (pulling & pushing)/ construction vessel/barge @ PLEM	3,600
Barge/tug (pulling & pushing)/ construction vessel/barge @ mid-pipeline	2,831

The basis for Northeast Gateway and Algonquin's ''take'' estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB, which is the threshold used by NMFS for non-pulse sounds. For the NEG LNG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities, the take estimates are determined by multiplying the 120-dB esonified area by local marine mammal density estimates, and then multiplying by the estimated dates such activities would occur during a year-long period. For the NEG Port operations, the 120-dB esonfied area is 56.8 km² for a single visit during docking when running DP system. For NEG Port and Algonquin Pipeline Lateral maintenance and repair activities, modeling based on the empirical measurements showed that the distance of the 120-dB radius is expected to be 3.6 km, making a maximum 120-dB ZOI of approximately 40.7 km².

Although there have been no LNG deliveries since February 2010 at the NEG LNG Port, NEG expected when the Port is under full operation, NEW expects it will receive up to 65 LNG shipments per year, and would require 14 days for NEG Port maintenance and up to 40 days for planned and unplanned Algonquin Pipeline Lateral maintenance and repair.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin, humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS uses the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS 2006), to estimate potential takes of marine mammals species in the vicinity of project area.

The NCCOS study used cetacean sightings from two sources: (1) The North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA's NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of

Maine study area, which also includes the project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 5,210 km (8,383 mi) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Owing to the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on the most recent NCCOS report published in December 2006. A summary of seasonal cetacean distribution and abundance in the project area is provided above, in the ''Description of Marine Mammals in the Area of the Specified Activities'' section. For a detailed description and calculation of the cetacean abundance data and SPUE, please refer to the NCCOS study (NCCOS, 2006). These data show that the relative abundance of North Atlantic right, fin, humpback, minke, sei, and pilot whales, and Atlantic white-sided dolphins for all seasons, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0118, 0.0059, 0.0084, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 0.5 mi (0.825 km) as the hypothetical strip width (W). This strip width is based on the distance of visibility used in the NARWC data that was part of the NCCOS (2006) study. However, those surveys used a strip transect instead of a line transect methodology. Therefore, in order to obtain a strip width, one must divide the visibility or transect value in half. Since the visibility value used in the NARWC data was 2.3 mi (3.7 km), it thus gives a strip width of 1.15 mi (1.85 km). The hypothetical strip width used in the analysis is less than half of that derived from the NARWC data, therefore, the analysis provided here is more protective in calculating marine mammal densities in the area. Based on this information, the area density (D) of these species in the project area can be obtained by the following formula:

$$D = SPUE/2W$$

where D is marine mammal density in the area, and W is the strip width. Based on this calculation method, the estimated take numbers per year for North Atlantic right, fin, humpback, minke, sei, and pilot whales, and Atlantic white-sided dolphins by the NEG Port facility operations (maximum 65 visits per year), NEG Port maintenance and repair (up to 14 days per year), and Algonquin Pipeline Lateral operation and maintenance (up to 40 days per year), are 29, 35, 42, 21, 30, 145, and 469, respectively (Table 4). These numbers represent approximately 6.59%, 1%, 5.12%, 0.1%, 8.4%, 1.2%, and 1% of the populations for these species based on the latest NMFS Atlantic marine mammal stock assessment reports (Waring *et al.* 2013), respectively. Since it is very likely that individual animals could be ''taken'' by harassment multiple times, these percentages are the upper boundary of the animal population that could be affected. The actual number of individual animals being exposed or taken would likely be far less. There is no danger of injury, death, or hearing impairment from the exposure to these noise levels.

TABLE 4—ESTIMATED ANNUAL TAKES OF MARINE MAMMALS FROM THE NEG PORT AND ALGONQUIN PIPELINE LATERAL OPERATIONS AND MAINTENANCE AND REPAIR ACTIVITIES IN MASSACHUSETTS BAY

Species	Population/stock	Number of takes
Right whale	Western Atlantic	29
Humpback whale	Gulf of Maine	42
Fin whale	Western North Atlantic	35
Sei whale	Nova Scotia	30
Minke whale	Canadian East Coast	21
Long-finned pilot whale	Western North Atlantic	145
Atlantic white-sided dolphin	Western North Atlantic	469
Bottlenose dolphin	Western North Atlantic Southern Migratory	20
Short-beaked common dolphin	Western North Atlantic	40
Risso's dolphin	Western North Atlantic	40
Killer whale	Western North Atlantic	10
Harbor porpoise	Gulf of Maine/Bay of Fundy	20
Harbor seal	Western North Atlantic	60
Gray seal	Western North Atlantic	30

In addition, bottlenose dolphins, common dolphins, killer whales, Risso's dolphins, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of deepwater NEG Port and Algonquin Pipeline Lateral operations and maintenance and repair. Since these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based the take estimates on typical group size. Therefore, NMFS estimates that up to approximately 20 bottlenose dolphins, 40 short-beaked common dolphins, 40 Risso's dolphins, 10 killer whales, 20 harbor porpoises, 60 harbor seals, and 30 gray seals could be exposed to continuous noise at or above 120 dB re 1 μPa rms incidental to operations during the one year period of the IHA, respectively. These numbers represent 0.16%, 0.06%, 0.26%, and 0.03% of the bottlenose dolphin, short-

beaked common dolphin, Risso's dolphin, and harbor porpoise populations/stocks. Since no population/stock estimates for killer whale, and harbor and gray seals is available, the percentage of estimated takes for these species is unknown. Nevertheless, since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur NMFS has preliminarily determined that the takes of 10 killer whales, 60 harbor seals, and 30 gray seals represent a small fraction of the population and stocks of these species (Table 3). The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures that are proposed for inclusion in the IHA.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of proposed Northeast Gateway LNG Port Algonquin Pipeline Lateral operations and maintenance and repair activities, and none are proposed to be authorized by NMFS. Additionally, animals in the area are not anticipated to incur any hearing impairment (i.e., TTS or PTS), as the modeling of source levels indicates that none of the source received levels exceed 180 dB (rms).

While some of the species occur in the proposed project area year-round, some species only occur in the area during certain seasons. Humpback and minke whales are not expected in the project area in the winter. During the winter, a large portion of the North Atlantic right whale population occurs in the southeastern U.S. calving grounds (i.e., South Carolina, Georgia, and northern Florida). The fact that certain activities will occur during times when certain species are not commonly found in the area will help reduce the amount of Level B harassment for these species.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). Operational activities are not anticipated to occur at the Port on consecutive days. In addition, Northeast Gateway EBRVs are expected to make 65 port calls throughout the year, with thruster use needed for a couple of hours. Therefore, Northeast Gateway will not be creating increased sound levels in the marine environment for prolonged periods of time.

Of the 14 marine mammal species likely to occur in the area, four are listed as endangered under the ESA: North Atlantic right, humpback, and fin whales. All of these species are also considered depleted under the MMPA. There is currently no designated critical habitat or known reproductive areas for any of these species in or near the proposed project area. However, there are several well known North Atlantic right whale feeding grounds in the Cape Cod Bay and Great South Channel. No mortality or injury is expected to occur, and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival. There is no critical habitat or biologically important areas for marine mammals within the proposed project area.

The population estimates for the species that may be taken by Level B behavioral harassment contained in the most recent U.S. Atlantic Stock Assessment Reports were provided earlier in this document. From the most protective estimates of both marine mammal densities in the project area and the size of the 120-dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the proposed Northeast Gateway LNG Port and Algonquin Pipeline Lateral operations and maintenance and repair activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from Northeast Gateway and Algonquin's proposed activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Proposed Incidental Harassment Authorization

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from January 6, 2014, through January 5, 2015.

(2) This Authorization is valid only for activities associated with Northeast Gateway's LNG Port and Algonquin's Pipeline Lateral operations and maintenance and repair activities in the Massachusetts Bay. The specific area of the activities is shown in Figure 2–1 of the Excelerate Energy, L.P. and Tetra Tech EC., Inc.'s IHA application.

(3)(a) The species authorized for incidental harassment takings, Level B harassment only, are: Right whales (*Eubalaena glacialis*); fin whales (*Balaenoptera physalus*); humpback whales (*Megaptera novaeangliae*); minke whales (*B. acutorostrata*); sei whales (*B. borealis*); long-finned pilot whales (*Globicephala melas*); Atlantic white-sided dolphins (*Lagenorhynchus acutus*); bottlenose dolphins (*Tursiops truncatus*); short-beaked common dolphins (*Delphinus delphis*); Risso's dolphin (*Grampus griseus*); killer whales (*Orcinus orca*); harbor porpoises (*Phocoena phocoena*); harbor seals (*Phoca vitulina*); and gray seals (*Halichoerus grypus*).

(3)(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

(i) NEG Port operations;

(ii) NEG Port maintenance and repair; and

(iii) Algonquin Pipeline Lateral operations and maintenance.

(3)(c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the National Marine Fisheries Service (NMFS) Northeast Regional Administrator (978–281–9300) or his designee (978–282–8468), NMFS Headquarter Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301–427–8401), or his designee (301–427–8418).

(4) Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 3. The taking by Level A harassment, injury or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required mitigation measures under (5) of this authorization are not implemented.

(5) Mitigation

(a) General Marine Mammal Avoidance Measures

(i) All vessels shall utilize the International Maritime Organization (IMO)-approved Boston Traffic Separation Scheme (TSS) on their approach to and departure from the NEG Port and/or the repair/maintenance area at the earliest practicable point of transit in order to avoid the risk of whale strikes.

(ii) Upon entering the TSS and areas where North Atlantic right whales are known to occur, including the Great South Channel Seasonal Management Area (GSC–SMA) and the SBNMS, the EBRV shall go into ''Heightened Awareness'' as described below.

(A) Prior to entering and navigating the modified TSS the Master of the vessel shall:

(I) Consult Navigational Telex (NAVTEX), NOAA Weather Radio, the NOAA Right Whale Sighting Advisory System (SAS) or other means to obtain current right whale sighting information as well as the most recent Cornell acoustic monitoring buoy data for the potential presence of marine mammals;

(II) Post a look-out to visually monitor for the presence of marine mammals;

(III) Provide the US Coast Guard (USCG) required 96-hour notification of an arriving EBRV to allow the NEG Port Manager to notify Cornell of vessel arrival.

(B) The look-out shall concentrate his/her observation efforts within the 2-mile radius zone of influence (ZOI) from the maneuvering EBRV.

(C) If marine mammal detection was reported by NAVTEX, NOAA Weather Radio, SAS and/or an acoustic monitoring buoy, the look-out shall concentrate visual monitoring efforts towards the areas of the most recent detection.

(D) If the look-out (or any other member of the crew) visually detects a marine mammal within the 2-mile radius ZOI of a maneuvering EBRV, he/she will take the following actions:

(I) The Officer-of-the-Watch shall be notified immediately; who shall then relay the sighting information to the Master of the vessel to ensure action(s) can be taken to avoid physical contact with marine mammals.

(II) The sighting shall be recorded in the sighting log by the designated look-out.

(iii) In accordance with 50 CFR 224.103(c), all vessels associated with NEG Port and Pipeline Lateral activities shall not approach closer than 500 yards (460 m) to a North Atlantic right whale and 100 yards (91 m) to other whales to the extent physically feasible given navigational constraints. In addition, when approaching and departing the project area, vessels shall be operated so as to remain at least 1 km away from any visually-detected North Atlantic right whales.

(iv) In response to active right whale sightings and active acoustic detections, and taking into account exceptional circumstances, EBRVs, repair and maintenance vessels shall take appropriate actions to minimize the risk of striking whales. Specifically vessels shall:

(A) Respond to active right whale sightings and/or DMAs reported on the Mandatory Ship Reporting (MSR) or SAS by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less if the vessel is within the boundaries of a DMA (50 CFR 224.105) or within the circular area centered on an area 8 nm in radius from a sighting location;

(B) Respond to active acoustic detections by concentrating monitoring efforts towards the area of most recent detection and reducing speed to 10 knots or less within an area 5 nm in radius centered on the detecting AB; and

(C) Respond to additional sightings made by the designated look-outs within a 2-mile radius of the vessel by slowing the vessel to 10 knots or less and concentrating monitoring efforts towards the area of most recent sighting.

(v) All vessels operated under NEG and Algonquin must follow the established specific speed restrictions when calling at the NEG Port. The specific speed restrictions required for all vessels (i.e., EBRVs and vessels associated with maintenance and repair) consist of the following:

(A) Vessels shall reduce their maximum transit speed while in the TSS from 12 knots or less to 10 knots or less from March 1 to April 30 in all waters bounded by straight lines connecting the following points in the order stated below unless an emergency situation dictates for an alternate speed. This area shall hereafter be referred to as the Off Race Point Seasonal Management Area (ORP–SMA) and tracks NMFS regulations at 50 CFR 224.105:

42°30′ N 70°30′ W
42°30′ N 69°45′ W
41°40′ N 69°45′ W
42°04.8′ N 70°10′ W
41°40′ N 69°57′ W
42°12′ N 70°15′ W
42°12′ N 70°30′ W
W 42°30′ N 70°30′ W

(B) Vessels shall reduce their maximum transit speed while in the TSS to 10 knots or less unless an emergency situation dictates for an alternate speed from April 1 to July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area shall hereafter be referred to as the GSC–SMA and tracks NMFS regulations at 50 CFR 224.105:

42°30′ N 69°45′ W
42°30′ N 67°27′ W
42°09′ N 67°08.4′ W
41°40′ N 69°45′ W
42°30′ N 69°45′ W
41°00′ N 69°05′ W

(C) Vessels are not expected to transit the Cape Cod Bay or the Cape Cod Canal; however, in the event that transit through the Cape Cod Bay or the Cape Cod Canal is required, vessels shall reduce maximum transit speed to 10 knots or less from January 1 to May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12' N latitude and the Cape Cod Canal. This area shall hereafter be referred to as the Cape Cod Bay Seasonal Management Area (CCB–SMA).

(D) All Vessels transiting to and from the project area shall report their activities to the mandatory reporting Section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels

entering and exiting the MSRA shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

(E) All Vessels greater than or equal to 300 gross tons (GT) shall maintain a speed of 10 knots or less, unless an emergency situation requires speeds greater than 10 knots.

(F) All Vessels less than 300 GT traveling between the shore and the project area that are not generally restricted to 10 knots will contact the Mandatory Ship Reporting (MSR) system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 kilometers) of any sighting location, when traveling in any of the seasonal management areas (SMAs) or when traveling in any active dynamic management area (DMA).

(b) NEG Port-Specific Operations

(i) In addition to the general marine mammal avoidance requirements identified in (5)(a) above, vessels calling on the NEG Port must comply with the following additional requirements:

(A) EBRVs shall travel at 10 knots maximum speed when transiting to/from the TSS or to/from the NEG Port/Pipeline Lateral area. For EBRVs, at 1.86 miles (3 km) from the NEG Port, speed will be reduced to 3 knots and to less than 1 knot at 1,640 ft (500 m) from the NEG buoys, unless an emergency situation dictates the need for an alternate speed.

(B) EBRVs that are approaching or departing from the NEG Port and are within the ATBA5 surrounding the NEG Port, shall remain at least 1 km away from any visually-detected North Atlantic right whale and at least 100 yards (91 m) away from all other visually-detected whales unless an emergency situation requires that the vessel stay its course. During EBRV maneuvering, the Vessel Master shall designate at least one look-out to be exclusively and continuously monitoring for the presence of marine mammals at all times while the EBRV is approaching or departing from the NEG Port.

(C) During NEG Port operations, in the event that a whale is visually observed within 1 km of the NEG Port or a confirmed acoustic detection is reported on either of the two ABs closest to the NEG Port (western-most in the TSS array), departing EBRVs shall delay their departure from the NEG Port, unless an emergency situation requires that departure is not delayed. This departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 1 km from the NEG Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the NEG Port, or visually within 1 km from the NEG Port.

(ii) Vessel captains shall focus on reducing dynamic positioning (DP) thruster power to the maximum extent practicable, taking into account vessel and Port safety, during the operation activities. Vessel captains will shut down thrusters whenever they are not needed.

(c) Planned and Unplanned Maintenance and Repair Activities

(i) NEG Port

(A) The Northeast Gateway shall conduct empirical source level measurements on all noise emitting construction equipment and all vessels that are involved in maintenance/repair work.

(B) If dynamic positioning (DP) systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 μPa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(C) Northeast Gateway shall provide the NMFS Headquarters Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and SBNMS with a minimum of 30 days notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Northeast Gateway shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(ii) Pipeline Lateral

(A) Pipeline maintenance/repair vessels less than 300 GT traveling between the shore and the maintenance/repair area that are not generally restricted to 10 knots shall contact the MSR system, the USCG, or the project site before leaving shore for reports of active DMAs and/or recent right whale sightings and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 miles (8 km) of any sighting location, when travelling in any of the seasonal management areas (SMAs) as defined above.

(B) Maintenance/repair vessels greater than 300 GT shall not exceed 10 knots, unless an emergency situation that requires speeds greater than 10 knots.

(C) Planned maintenance and repair activities shall be restricted to the period between May 1 and November 30.

(D) Unplanned/emergency maintenance and repair activities shall be conducted utilizing anchor-moored dive vessel whenever operationally possible.

(E) Algonquin shall also provide the NMFS Office of the Protected Resources, NMFS Northeast Region Ship Strike Coordinator, and Stellwagen Bank National Marine Sanctuary (SBNMS) with a minimum of 30-day notice prior to any planned repair and/or maintenance activity. For any unplanned/emergency repair/maintenance activity, Northeast Gateway shall notify the agencies as soon as it determines that repair work must be conducted. Algonquin shall continue to keep the agencies apprised of repair work plans as further details (e.g., the time, location, and nature of the repair) become available. A final notification shall be provided to agencies 72 hours prior to crews being deployed into the field.

(F) If dynamic positioning (DP) systems are to be employed and/or activities will emit noise with a source level of 139 dB re 1 μPa at 1 m, activities shall be conducted in accordance with the requirements for DP systems listed in (5)(b)(ii).

(G) In the event that a whale is visually observed within 0.5 mile (0.8 kilometers) of a repair or maintenance vessel, the vessel superintendent or on-deck supervisor shall be notified immediately. The vessel's crew shall be put on a heightened state of alert and the marine mammal shall be monitored constantly to determine if it is moving toward the repair or maintenance area.

(H) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μPa @1 1 m or higher when a right whale is sighted within or approaching at 500 yd (457 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (500 yd [457 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(I) Repair/maintenance vessel(s) must cease any movement and/or cease all activities that emit noises with source level of 139 dB re 1 μPa @1 1 m or higher when a marine mammal other than a right whale is sighted within or approaching at 100 yd (91 m) from the vessel. Repair and maintenance work may resume after the marine mammal is positively reconfirmed outside the established zones (100 yd [91 m]) or 30 minutes have passed without a redetection. Any vessels transiting the maintenance area, such as barges or tugs, must also maintain these separation distances.

(J) Algonquin and associated contractors shall also comply with the following:

(I) Operations involving excessively noisy equipment (source level exceeding 139 dB re 1μPa @ 1 m) shall ''ramp-up'' sound sources, allowing whales a chance to leave the area before sounds reach maximum levels. In addition, Northeast Gateway, Algonquin, and other associated contractors shall maintain equipment to manufacturers' specifications, including any sound-muffling devices or engine covers in order to minimize noise effects. Noisy construction equipment shall only be used as needed and equipment shall be turned off when not in operation.

(II) Any material that has the potential to entangle marine mammals (e.g., anchor lines, cables, rope or other construction debris) shall only be deployed as needed and measures shall be taken to minimize the chance of entanglement.

(III) For any material that has the potential to entangle marine mammals, such material shall be removed from the water immediately unless such action jeopardizes the safety of the vessel and crew as determined by the Captain of the vessel.

(IV) In the event that a marine mammal becomes entangled, the marine mammal coordinator and/or PSO will notify NMFS (if outside the SBNMS), and SBNMS staff (if inside the SBNMS) immediately so that a rescue effort may be initiated.

(K) All maintenance/repair activities shall be scheduled to occur between May 1 and November 30; however, in the event of unplanned/emergency repair work that cannot be scheduled during the preferred May through November work window, the following additional measures shall be followed for Pipeline Lateral maintenance and repair related activities between December and April:

(I) Between December 1 and April 30, if on-board PSOs do not have at least 0.5-mile visibility, they shall call for a shutdown. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down.

(II) Prior to leaving the dock to begin transit, the barge shall contact one of the PSOs on watch to receive an update of sightings within the visual observation area. If the PSO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel shall hold for 30 minutes and again get a clearance to leave from the PSOs on board. PSOs shall assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

(III) Transit route, destination, sea conditions and any marine mammal sightings/mitigation actions during watch shall be recorded in the log book. Any whale sightings within 1,000 m of the vessel shall result in a high alert and slow speed of 4 knots or less and a sighting within 750 m shall result in idle speed and/or ceasing all movement.

(IV) The material barges and tugs used in repair and maintenance shall transit from the operations dock to the work sites during daylight hours when possible provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug shall be 5 knots.

(V) All repair vessels must maintain a speed of 10 knots or less during daylight hours. All vessels shall operate at 5 knots or less at all times within 5 km of the repair area.

(d) Acoustic Monitoring Related Activities

(i) Vessels associated with maintaining the acoustic seafloor array of Marine Autonomous Recording Units (MARUs) and the AB network operating as part of the mitigation/monitoring protocols shall adhere to the following speed restrictions and marine mammal monitoring requirements.

(A) Vessels maintaining the MARU array that are greater than 300 gross tons (GT) shall not exceed 10 knots.

(B) Vessels maintaining the MARU array that are less than 300 GT shall not exceed 15 knots at any time, but shall adhere to speeds of 10 knots or less in the following areas and seasons:

(I) In the ORP–SMA between March 1 and April 30; and

(II) In the CCB–SMA between January 1 and May 15.

(C) In accordance with NOAA Regulation 50 CFR 224.103 (c), all vessels associated with NEG Port activities shall not approach closer than 500 yards (460 meters) to a North Atlantic right whale.

(D) All vessels shall obtain the latest DMA or right whale sighting information via the NAVTEX, MSR, SAS, NOAA Weather Radio, or other available means prior to operations to determine if there are right whales present in the operational area.

(6) Monitoring

(a) Vessel-Based Visual Monitoring

(i) Vessel-based monitoring for marine mammals shall be done by trained look-outs during NEG LNG Port and Pipeline Lateral operations and maintenance and repair activities. The observers shall monitor the occurrence of marine mammals near the vessels during LNG Port and Pipeline Lateral related activities. Lookout duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the activities; and documenting ''take by harassment''.

(ii) The vessel look-outs assigned to visually monitor for the presence of marine mammals and shall be provided with the following:

(A) Recent NAVTEX, NOAA Weather Radio, SAS and/or acoustic monitoring buoy detection data;

(B) Binoculars to support observations;

(C) Marine mammal detection guide sheets; and

(D) Sighting log.

(b) NEG LNG Port Operations

(i) All individuals onboard the EBRVs responsible for the navigation duties and any other personnel that could be assigned to monitor for marine mammals shall receive training on marine mammal sighting/reporting and vessel strike avoidance measures.

(ii) While an EBRV is navigating within the designated TSS, there shall be three people with look-out duties on or near the bridge of the ship including the Master, the Officer-of-the-Watch and the Helmsman-on-watch. In addition to the standard watch procedures, while the EBRV is transiting within the designated TSS, maneuvering within the Area to be Avoided (ATBA), and/or while actively engaging in the use of thrusters, an additional look-out shall be designated to exclusively and continuously monitor for marine mammals.

(iii) All sightings of marine mammals by the designated look-out, individuals posted to navigational look-out duties and/or any other crew member while the EBRV is transiting within the TSS, maneuvering within the ATBA and/or

when actively engaging in the use of thrusters, shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master. The Master or Officer-of-the-Watch shall ensure the required reporting procedures are followed and the designated marine mammal look-out records all pertinent information relevant to the sighting.

(iv) Visual sightings made by look-outs from the EBRVs shall be recorded using a standard sighting log form. Estimated locations shall be reported for each individual and/or group of individuals categorized by species when known. This data shall be entered into a database and a summary of monthly sighting activity shall be provided to NMFS. Estimates of take and copies of these log sheets shall also be included in the reports to NMFS.

(c) Planned and Unplanned Maintenance and Repair

(i) Two (2) qualified and NMFS-approved protected species observers (PSOs) shall be assigned to each vessel that will use dynamic positioning (DP) systems during maintenance and repair related activities. PSOs shall operate individually in designated shifts to accommodate adequate rest schedules. Additional PSOs shall be assigned to additional vessels if auto-detection buoy (AB) data indicates that sound levels exceed 120 dB re 1 μPa, farther than 100 meters (328 feet) from these vessels.

(ii) All PSOs shall receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after review of their resume. All PSOs shall have direct field experience on marine mammal vessels and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico.

(iii) PSOs (one primary and one secondary) shall be responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary PSO shall act as the identification specialist and the secondary PSO will serve as data recorder and also assist with identification. Both PSOs shall have responsibility for monitoring for the presence of marine mammals and sea turtles. Specifically PSO's shall:

(A) Monitor at all hours of the day, scanning the ocean surface by eye for a minimum of 40 minutes every hour.

(B) Monitor the area where maintenance and repair work is conducted beginning at daybreak using 25x power binoculars and/or hand-held binoculars. Night vision devices must be provided as standard equipment for monitoring during low-light hours and at night.

(C) Conduct general 360° visual monitoring during any given watch period and target scanning by the observer shall occur when alerted of a whale presence.

(D) Alert the vessel superintendent or construction crew supervisor of visual detections within 2 miles (3.31 kilometers) immediately.

(E) Record all sightings on marine mammal field sighting logs. Specifically, all data shall be entered at the time of observation, notes of activities will be kept, and a daily report prepared and attached to the daily field sighting log form. The basic reporting requirements include the following:

- Beaufort sea state;
- Wind speed;
- Wind direction;
- Temperature;
- Precipitation;
- Glare;
- Percent cloud cover;
- Number of animals;
- Species;
- Position;
- Distance;
- Behavior;
- Direction of movement; and
- Apparent reaction to construction activity.

(iv) In the event that a whale is visually observed within the 2-mile (3.31-kilometers) zone of influence (ZOI) of a DP vessel or other construction vessel that has shown to emit noise with source level in excess of 139 dB re 1 μPa @1 1 m, the PSO will notify the repair/maintenance construction crew to minimize the use of thrusters until the animal has moved away, unless there are divers in the water or an ROV is deployed.

(d) Acoustic Monitoring

(i) Northeast Gateway shall monitor the noise environment in Massachusetts Bay in the vicinity of the NEG Port and Pipeline Lateral using an array of 19 MARUs that were deployed initially in April 2007 to collect data during NEG LNG Port and Pipeline Lateral related activities.

(ii) The acoustic data collected by the MARUs shall be analyzed to document the seasonal occurrences and overall distributions of whales (primarily fin, humpback and right whales) within approximately 10 nm of the NEG Port and shall measure and document the noise ''budget'' of Massachusetts Bay so as to eventually assist in determining whether or not an overall increase in noise in the Bay associated with the Project might be having a potentially negative impact on marine mammals.

(iii) In addition to the 19 MARUs, Northeast Gateway shall deploy 10 ABs within the Separation Zone of the TSS for the operational life of the Project.

(iv) The ABs shall be used to detect a calling North Atlantic right whale an average of 5 nm from each AB. The AB system shall be the primary detection mechanism that alerts the EBRV Master to the occurrence of right whales, heightens EBRV awareness, and triggers necessary mitigation actions as described in section (5) above.

(e) Acoustic Whale Detection and Response Plan

(i) NEG Port Operations

(A) Ten (10) ABs that have been deployed since 2007 shall be used to continuously screen the low-frequency acoustic environment (less than 1,000 Hertz) for right whale contact calls occurring within an approximately 5-nm radius from each buoy (the AB's detection range).

(B) Once a confirmed detection is made, the Master of any EBRVs operating in the area will be alerted immediately.

(ii) NEG Port and Pipeline Lateral Planned and Unplanned/Emergency Repair and Maintenance Activities

(A) If the repair/maintenance work is located outside of the detectible range of the 10 project area ABs, Northeast Gateway and Algonquin shall consult with NOAA (NMFS and SBNMS) to determine if the work to be conducted warrants the temporary installation of an additional AB(s) to help detect and provide early warnings for potential occurrence of right whales in the vicinity of the repair area.

(B) The number of ABs installed around the activity site shall be commensurate with the type and spatial extent of maintenance/repair work required, but must be sufficient to detect vocalizing right whales within the 120-dB impact zone.

(C) Should acoustic monitoring be deemed necessary during a planned or unplanned/emergency repair and/or maintenance event, active monitoring for right whale calls shall begin 24 hours prior to the start of activities.

(D) Source level data from the acoustic recording units deployed in the NEG Port and/or Pipeline Lateral maintenance and repair area shall be provided to NMFS.

(7) Reporting

(a) Throughout NEG Port and Pipeline Lateral operations, Northeast Gateway and Algonquin shall provide a monthly Monitoring Report. The Monitoring Report shall include:

(i) Both copies of the raw visual EBRV lookout sighting information of marine mammals that occurred within 2 miles

of the EBRV while the vessel transits within the TSS, maneuvers within the ATBA, and/or when actively engaging in the use of thrusters, and a summary of the data collected by the look-outs over each reporting period.

(ii) Copies of the raw PSO sightings information on marine mammals gathered during pipeline repair or maintenance activities. This visual sighting data shall then be correlated to periods of thruster activity to provide estimates of marine mammal takes (per species/species class) that took place during each reporting period.

(iii) Conclusion of any planned or unplanned/emergency repair and/or maintenance period, a report shall be submitted to NMFS summarizing the repair/maintenance activities, marine mammal sightings (both visual and acoustic), empirical source-level measurements taken during the repair work, and any mitigation measures taken.

(b) During the maintenance and repair of NEG Port components, weekly status reports shall be provided to NOAA (both NMFS and SBNMS) using standardized reporting forms. The weekly reports shall include data collected for each distinct marine mammal species observed in the repair/maintenance area during the period that maintenance and repair activities were taking place. The weekly reports shall include the following information:

(i) Location (in longitude and latitude coordinates), time, and the nature of the maintenance and repair activities;

(ii) Indication of whether a DP system was operated, and if so, the number of thrusters being used and the time and duration of DP operation;

(iii) Marine mammals observed in the area (number, species, age group, and initial behavior);

(iv) The distance of observed marine mammals from the maintenance and repair activities;

(v) Changes, if any, in marine mammal behaviors during the observation;

(vi) A description of any mitigation measures (power-down, shutdown, etc.) implemented;

(vii) Weather condition (Beaufort sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover etc.);

(viii) Condition of the observation (visibility and glare); and

(ix) Details of passive acoustic detections and any action taken in response to those detections.

(d) Injured/Dead Protected Species Reporting

(i) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by the proposed IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), NEG and/or Algonquin shall immediately cease activities and immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the Northeast Regional Stranding Coordinators (*Mendy.Garron@noaa.gov* or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) the name and type of vessel involved;

(C) the vessel's speed during and leading up to the incident;

(D) description of the incident;

(E) status of all sound source use in the 24 hours preceding the incident;

(F) water depth;

(G) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(H) description of marine mammal observations in the 24 hours preceding the incident;

(I) species identification or description of the animal(s) involved;

(J) the fate of the animal(s); and

(K) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with NEG and/or Algonquin to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. NEG and/or Algonquin may not resume their activities until notified by NMFS via letter, email, or telephone.

(ii) In the event that NEG and/or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), NEG and/or Algonquin will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Northeast Stranding Coordinators (*Mendy.Garron@noaa.gov* or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300, within 24 hours of the discovery. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with NEG and/or Algonquin to determine whether modifications in the activities are appropriate.

(iii) In the event that NEG or Algonquin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (if the IHA is issued) (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), NEG and/or Algonquin shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Shane.Guan@noaa.gov* and the NMFS Northeast Stranding Coordinators (Mendy.Garron@noaa.gov or *Lanni.Hall@noaa.gov*) or by phone at 978–281–9300, within 24 hours of the discovery. NEG and/or Algonquin shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. NEG and/or Algonquin can continue its operations under such a case.

Endangered Species Act (ESA)

On February 5, 2007, NMFS concluded consultation with MARAD and the USCG, under section 7 of the ESA, on the proposed construction and operation of the Northeast Gateway LNG facility and issued a biological opinion. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. An incidental take statement (ITS) was issued following NMFS' issuance of the 2007 IHA.

On November 15, 2007, Northeast Gateway and Algonquin submitted a letter to NMFS requesting an extension for the LNG Port construction into December 2007. Upon reviewing

Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS Permits and Conservation Division (PR1) recognized that the potential take of some marine mammals resulting from the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates. Therefore, NMFS Northeast Regional Office (NERO) reinitiated consultation with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility. On November 30, 2007, NMFS NERO issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales.

However, both biological opinions only analyzed ESA-listed species for activities under the initial short construction period and during operations, and did not take into consideration potential impacts to marine mammals that could result from the subsequent LNG Port and Pipeline Lateral maintenance and repair activities. In addition, NEG also revealed that significantly more water usage and vessel operating air emissions are needed from what was originally evaluated for the LNG Port operation. NMFS PR1 has initiated consultation with NMFS NERO under section 7 of the ESA on the issuance of an IHA to NEG under section 101(a)(5)(D) of the MMPA for the proposed activities that include increased NEG Port and Algonquin Pipeline Lateral maintenance and repair and water usage for the LNG Port operations this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the Northeast Gateway's LNG Port Facility in Massachusetts Bay.

Dated: November 12, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–27466 Filed 11–15–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BC69

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Elliott Bay Seawall Project in Seattle, Washington

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the City of Seattle's Department of Transportation (SDOT) for the take of nine species of marine mammals incidental to pile driving activities associated with the Elliott Bay Seawall Project (EBSP).

DATES: Effective from October 22, 2013, through October 21, 2014.

ADDRESSES: The LOA and supporting documentation are available for review on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the Office of Protected Resources, National Marine Fisheries Service 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth in the regulations. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Regulations governing the taking of harbor seals (Phoca vitulina), California sea lions, Steller sea lions (*Eumetopias jubatus*), harbor porpoise, Dall's porpoise, southern resident and transient killer whales, gray whales, and humpback whales, by harassment, incidental to pile driving activities in Elliott Bay, were issued on October 21, 2013 (78 FR 63396, October 24, 2013), and remain in effect until October 21, 2018. For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during pile driving activities associated with the Elliott Bay Seawall.

Pursuant to those regulations, NMFS issued an LOA, effective from October 22, 2013, through October 21, 2014, which authorizes the incidental take of the nine marine mammal species listed above that may result from construction associated with the Elliott Bay Seawall project. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Limited impact pile driving; (2) containment of impact pile driving; (3) additional sound attenuation measures; (4) ramp-up of pile-related activities; (5) marine mammal exclusion zones; and (6) shutdown and delay procedures.

SDOT will also conduct visual monitoring and underwater acoustic monitoring for mitigation and research purposes.

Reports will be submitted to NMFS at the time of request for a renewal of the LOA, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires. This LOA will be renewed based on review of the annual monitoring report and provided that NMFS makes the required findings.

Dated: November 12, 2013.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–27465 Filed 11–15–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–59]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–59 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 13, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 08 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-59, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Romania for defense articles and services estimated to cost $457 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FOR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Romania

(ii) *Total Estimated Value:*

Major Defense Equipment*	$101 million
Other	356 million
TOTAL	457 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Weapons, equipment, and support for 12 F–16 MLU Block 15 aircraft that will be procured through a third party transfer from Portugal. Articles and services will include:

13 Embedded Global Positioning Systems/Inertial Navigation Systems (EGPS/INS) with GPS Security Devices, Airborne
3 AN/ALQ–131 Electronic Countermeasure Pods
30 AIM–120C Advanced Medium Range Air-to-Air Missiles (AMRAAM)
5 AIM–120C Captive Air Training Missiles (CATMs)
60 AIM–9M Sidewinder Missiles
4 AIM–9M CATMs
48 LAU–129 Launchers
10 GBU–12 Enhanced Guided Bomb Units
18 AGM–65H/KB Maverick Missiles
4 AGM–65 CATMs
15 Multifunctional Information Distribution System/Low Volume Terminals
2 Multifunctional Information Distribution System Ground Support Systems

Also included are spare and repair parts, support equipment, tanker support, ferry services, repair and return services, software development/integration, test and equipment, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor

technical services, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (QAH)

(v) *Prior Related Cases:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology:* See Attached Annex.

(viii) *Date Report Delivered to Congress: 08 Nov 2013*

*as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—Weapons, Equipment, and Support for F–16 Block 15 MLU Aircraft

The Government of Romania has requested a possible sale of weapons, equipment, and support for 12 F–16 MLU Block 15 aircraft that will be procured through a third party transfer from Portugal. Articles and services will include:

13 Embedded Global Positioning Systems/Inertial Navigation Systems (EGPS/INS) with GPS Security Devices, Airborne
3 AN/ALQ–131 Electronic Countermeasure Pods
30 AIM–120C Advanced Medium Range Air-to-Air Missiles (AMRAAM)
5 AIM–120C Captive Air Training Missiles (CATMs)
60 AIM–9M Sidewinder Missiles
4 AIM–9M CATMs
48 LAU–129 Launchers
10 GBU–12 Enhanced Guided Bomb Units
18 AGM–65H/KB Maverick Missiles
4 AGM–65 CATMs
15 Multifunctional Information Distribution System/Low Volume Terminals
2 Multifunctional Information Distribution System Ground Support Systems

Also included are spare and repair parts, support equipment, tanker support, ferry services, repair and return services, software development/integration, test and equipment, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical services, and other related elements of logistics and program support. The estimated cost is $457 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve security of a NATO ally which continues to be an important force for political stability and economic progress. The proposed sale of weapons, equipment, and support for the transferred F–16s will support Romania's needs for its own self-defense and enhance the interoperability of these aircraft with those of the U.S. and other NATO nations.

The proposed sale will support the Romanian Air Force's (RoAF) efforts to equip and utilize the 12 F–16 aircraft it is procuring from Portugal. These aircraft will provide the RoAF with a fleet of modernized multi-role combat aircraft. This proposed sale of weapons, equipment, and follow-on F–16 support will enable Romania to support both its own air defense needs and coalition operations. The RoAF will have no difficultly absorbing these systems into its armed forces.

The proposed sale of this follow-on support will not alter the basic military balance in the region. The principal contractors will be:

Elbit Systems of America Fort Worth, Texas
Pratt and Whitney East Hartford, Connecticut
BAE Systems Inc. Arlington, Virginia
Lockheed Martin Corp. Fort Worth, Texas
Northrup Grumman Aerospace Systems Redondo Beach, California
ViaSat Inc. Carlsbad, California
Data Link Solutions LLC Cedar Rapids, Iowa
Snap-On Inc. Kenosha, Wisconsin
Booz Allen Hamilton Engineering Services, LLC McLean, Virginia

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Romania.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–9M–8/9 Sidewinder Missile includes the following advanced technology: Active Optical Target Detector (AOTD), Gyro Optics Assembly within the Guidance Control Section (GCS), Infrared Countermeasures (IRCM), Detection and Rejection Circuitry, and a reduced smoke rocket motor. The equipment/hardware, software, and maintenance are classified Confidential. Manuals and technical documents are classified Secret. Performance and operating information is classified Secret.

2. The LAU–129 Guided Missile Launcher is capable of launching the AIM–9 family of missile or AIM–120 Advanced Medium Range Air-to-Air Missile (AMRAAM). The LAU–129 launcher provides mechanical and electrical interface between missile and aircraft. There are five versions produced strictly for foreign military sales. The only difference between these launchers is the material they are coated with or the color of the coating.

3. The AIM–120 AMRAAM is a radar-guided missile featuring digital technology and micro-miniature solid-state electronics. The AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high- and low-flying and maneuvering targets. The AMRAAM All Up Round (AUR) is classified Confidential, major components and subsystems range from Unclassified to Confidential, and technical data and other documentation are classified up to Secret.

4. The GBU–12 (500 lb) is a laser guidance kit and tail assembly for general-purpose bombs (MK–82). The hardware is Unclassified and the ballistics are Confidential.

5. AGM–65 Maverick: The AGM–65 air-to-ground missile hardware is Unclassified, but has an overall classification of Secret. The Secret aspects of the Maverick system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures. Manuals and technical documents that are necessary for operational use and organizational maintenance have portions that are classified Confidential. Performance and operating logic of countermeasures circuits are Secret.

6. The Multifunctional Information Distribution System-Low Volume Terminal (MIDS–LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS–LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. The system will provide jamming-resistant, wide-area communications on a Link-16 network among MIDS and Joint Tactical Information Distribution System (JTIDS) equipped platforms. The MIDS/LVT and

MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software. Group A provision only will be transferred initially.

7. EGI LN–260: The Embedded GPS–INS (EGI) LN–260 is a sensor that combines GPS and inertial sensor inputs to provide accurate location information for navigation and targeting. The EGI LN–260 is Unclassified. The GPS crypto variable keys needed for highest GPS accuracy are classified up to Secret.

8. The ALQ–131 is a pod-mounted Receiver/Processor that detects, analyzes, identifies and prioritizes threat radars for effective jamming. The Receiver/Processor is a wideband, frequency agile super heterodyne receiver with a self-contained processor for signal sorting and threat ID. It provides the jammer with power management while look-through maximizes jammer effectiveness. It has been a standard jamming system for USAF and 11 other countries.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar advanced capabilities.

10. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 2013–27538 Filed 11–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0216]

Privacy Act of 1974; System of Records

AGENCY: Defense Health Agency, DoD.

ACTION: Notice to amend nineteen Record Systems.

SUMMARY: The TRICARE Management Activity (TMA) transitioned to the Defense Health Agency (DHA) effective October 1, 2013. The Defense Health Agency is now realigning the System of Records Notices (SORNS) to the Defense Health Agency's compilation of Privacy Act SORNS. The realignment of the nineteen system identifiers reflect the new numbering system that will be used by the Defense Health Agency.

DATES: This proposed action will be effective on December 19, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 18, 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. Linda S. Thomas, Director, Defense Health Agency Privacy and Civil Liberties Office, Defense Health Agency Headquarters, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or by phone at (703) 681–7500.

SUPPLEMENTARY INFORMATION: The Defense Health Agency notices for systems of records 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** or at the Defense Privacy and Civil Liberties Office Web site *http://dpclo.defense.gov/privacy/SORNs/component/osd/index.html.* The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below.

Dated: November 12, 2013.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

Defense Health Agency

How Systems of Records Are Designated

In the Department of Defense (DoD), systems of records are grouped by the DoD Component responsible for that system and its system of records notice. Each DoD Component has an assigned letter denominator for systems of records for which it is responsible. The Defense Health Agency, which was established on October 1, 2013, is assigned 'E' as its letter denominator.

DEFENSE HEALTH AGENCY PRIVACY ACT SYSTEMS OF RECORDS NOTICES

System identifier		System name
From:	To:	
DHA 04 DoD	EDHA 04 DoD	Defense Bone Marrow Donor Program.
DHA 05	EDHA 05	Military Deployment Issues Files.
DHA 06	EDHA 06	Designated Provider Managed Care System Records.
DHA 07	EDHA 07	Military Health Information System.
DHA 08	EDHA 08	Health Affairs Survey and Study Data Base.
DHA 09	EDHA 09	Medical Credentials/Risk Management Analysis System (CCQAS).
DHA 10	EDHA 10	DoD Women, Infants, and Children Overseas Participant Information Management System.
DHA 11	EDHA 11	Defense Medical Human Resources System internet (DMHRSi).
DHA 12	EDHA 12	Third Party Collection System.
DHA 16 DoD	EDHA 16 DoD	Special Needs Program Management Information System (SNPMIS) Records.

DEFENSE HEALTH AGENCY PRIVACY ACT SYSTEMS OF RECORDS NOTICES—Continued

System identifier		System name
From:	To:	
DHA 17 DoD	EDHA 17 DoD	Defense Nutrition Management Information System (NMIS).
DHA 18	EDHA 18	Research Regulatory Oversight Records.
DHA 19	EDHA 19	Defense Occupational & Environmental Health Readiness System—Industrial Hygiene (DOEHRS–IH).
DHA 23	EDHA 23	Pharmacy Data Transaction Service (PDTS).
DHA 24	EDHA 24	Defense and Veterans Eye Injury and Vision Registry (DVEIVR).
DTMA 01	EDTMA 01	Health Benefits Authorization Files.
DTMA 02	EDTMA 02	Medical/Dental Care and Claims Inquiry Files.
DTMA 03	EDTMA 03	Legal Opinion Files.
DTMA 04	EDTMA 04	Medical/Dental Claim History Files.

[FR Doc. 2013–27469 Filed 11–15–13; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

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 will take place:

Name of Committee: Board of Visitors (BoV), Defense Language Institute (DLI) Foreign Language Center Subcommittee.

Date: December 11, 2013 and December 12, 2013.

Time of Meeting: Approximately 7:45 a.m. through 4:30 p.m. Please allow extra time for gate security for both days.

Location: Defense Language Institute Foreign Language Center and Presidio of Monterey (DLIFLC & POM), Building 614, Conference Room, Monterey, CA 93944.

Purpose of the Meeting: The purpose of the meeting is to provide an overview of DLIFLC's Foreign Language Program to the BoV. In addition, the meeting will involve administrative matters.

Proposed Agenda: Summary—December 11—Board administrative details, DLIFLC current initiatives and lifelong learning. December 12—The Board will have time to compile observations pertaining to agenda items on December 11 and deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

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. Seating is on a first come basis. No member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board. Although open to the public, gate access is required. Contact the Sub-Committee's Alternate Designated Federal Officer, below, for gate access procedures.

Sub-Committee's Alternate Designated Federal Officer or Point of Contact: Dr. Robert Savukinas, Sub-Committee's Alternate Designated Federal Officer: ATFL–APO, Monterey, CA 93944, *Robert.Savukinas@us.army.mil,* (831) 242–5828.

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public may submit written statements to the Board of Visitors of the DLI in response to the agenda. All written statements shall be submitted to the ADFO for DLI Board of Visitors (see **FOR FURTHER INFORMATION CONTACT**). Statements must be received by the ADFO at least 10 work days prior to the meeting. Written statements received after this date may not be provided to or considered by the Board of Visitors of the DLI until its next meeting. The ADFO will review all timely submissions with the Chairperson, and ensure they are provided to the members of the respective subcommittee before the meeting. After reviewing written comments, the Chairperson and the ADFO may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting. The ADFO, in consultation with the Chairperson, may allot a specific amount of time for the members of the public to present their issues for review and discussion.

FOR FURTHER INFORMATION CONTACT: For information, please contact Dr. Robert Savukinas, at *robert.savukinas@us.army.mil.* Written submissions are to be submitted to the following address: Defense Language Institute Foreign Language Center, ATTN: Alternate Designated Federal Officer (Savukinas), ATFL–APO, Monterey, CA 93944.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–27517 Filed 11–15–13; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of 30-Day Public Review Period and Availability of Final Environmental Assessment and Draft Finding of No Significant Impact: Former Naval Air Station Alameda, Alameda, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice provides information on the 30-day public review period and availability of a Final Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the Department of Navy's (DoN) transfer of excess property at Naval Air Station (NAS) Alameda, Alameda, California.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly A. Ostrowski, Director, Naval Facilities Engineering Command, Base Realignment and Closure Program Management Office, West, 1455 Frazee Road, Suite 900, San Diego, CA 92108–4310, telephone 619–532–0993.

SUPPLEMENTARY INFORMATION: The Proposed Action is the transfer of approximately 624 acres of excess federal property at the former NAS Alameda from the DoN to the Department of Veterans Affairs (VA) via

a Federal-to-Federal transfer. VA will be responsible for the subsequent construction and operation of an outpatient clinic (OPC), offices, and National Cemetery on approximately 112 acres of land (referred to as the ''VA Development Area'').

Based on information gathered during preparation of the Final EA and based upon the findings in the Final EA, DoN finds that implementation of the Proposed Action, with the VA's implementation and monitoring of the mitigation measures identified in the FONSI, would not have a significant impact on the human environment and an Environmental Impact Statement is not required for the transfer of excess property and VA's development of an OPC, offices, cemetery, and associated infrastructure at the former NAS Alameda.

The FONSI is available for public review for 30 days before becoming final at which time the proposed action may be implemented. The FONSI public review period ends 30 days after issuance of the Notice of Availability.

Dated: November 8, 2013.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–27428 Filed 11–15–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–13–000]

Houston Pipe Line Company LP; Notice of Application

Take notice that on October 28, 2013, Houston Pipe Line Company LP (HPL), 1300 Main Street, Houston, Texas 77002, filed an application in Docket No. CP14–13–000 under section 3 of the Natural Gas Act (NGA), and Subpart B of Part 153 of the Commission's regulations requesting authorization to site, construct, operate, and maintain certain natural gas pipeline facilities to export and/or import natural gas between the United States and the Republic of Mexico (Border Crossing Project) at a point on the International Boundary between the United States in Hidalgo County, Texas and the Republic of Mexico in the vicinity of the City of Reynosa, State of Tamaulipas. Furthermore, HPL requests that the Commission issue a Presidential Permit authorizing HPL to site, construct, operate, and maintain the Border Crossing Project pursuant to Subpart C of Part 153 of the Commission's regulations to export and/or import natural gas between the United States and Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Mr. Jim Wright, Deputy General Counsel, Houston Pipe Line Company LP, 1300 Main Street, Houston, TX 77002, or by calling (713) 989–7010 (telephone) or (713) 989–1212 (fax).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 29, 2013.

Dated: November 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27524 Filed 11–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2124–000]

Midcontinent Independent System Operator, Inc.; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued on October 25, 2013, and as required in the Commission's October 16, 2013, order in this docket, there will be a technical conference in this proceeding on November 19, 2013, at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, Hearing Room 6.[1] The technical conference will be led by staff, and will be open for the public to attend. Attendees may register in advance at the following Web page: *https://www.ferc.gov/whats-new/registration/miso-11–19–13-form.asp.* Advance registration is not required, but is encouraged. Parties attending in person should still allow time to pass through building security procedures before the 9:00 a.m. (Eastern Time) start time of the conference.

The conference will not be webcast, but will be accessible via telephone. Parties wishing to participate by phone should fill out the registration form and check the box indicating that they wish to participate by conference call, and do so no later than 5:00 p.m. (Eastern Time) on Friday, November 15, 2013. Parties selecting this option will receive a confirmation email containing a dial-in number and a password before the conference. To the extent possible, individuals calling from the same location should share a single telephone line.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information regarding this conference, contact Cristie DeVoss at *cristie.devoss@ferc.gov* or 202–502–8441, or Melissa Nimit at *melissa.nimit@ferc.gov* or 202–502–6638.

The conference will consist of three sessions, as detailed below. For each session, a representative of Midcontinent Independent System Operator, Inc. (MISO) and a representative of MISO's Independent Market Monitor should be prepared to make opening statements that address the questions below. After statements by the MISO and Independent Market Monitor representatives, Commission staff will ask questions; as time permits, other attendees (including telephone participants) may also ask questions. The times given below are approximate and may change, as needed.

Session 1: Schedule 46 (9:00 a.m.–10:15 a.m.)

1. Explain in detail each step of the Constraint Management Charge Allocation Factor determination process under proposed Schedule 46.

a. For step one, define the terms ''Hourly Real-Time RSG MWP'' and ''Resource CMC Real-time RSG MWG'' and explain why the terms are equal for each hour and active transmission constraint, as stated in Schedule 46. Also, explain the determination of the Constraint Management Charge capacity committed (CMC_CAP_COM).

b. For step two, define the terms ''RES_LP_VOL,'' ''TP_Next_Hour,'' ''$RT_BLL_MTR_{GEN}$,'' and ''TP_Current_Hour.'' Explain the determination of the hourly Headroom Available (HR_AVAIL), the Operations Headroom Need (HR_NEED), and the Capacity MW Needed (CAP_MW_NEED).

c. For step three, explain the criteria for determining whether a resource was available for commitment for a capacity resource commitment analysis period. Also, explain how MISO will select the Constraint Management Charge Replacement Resource (CMC_RR) and determine the associated Capacity Commitment Make-Whole Payment (CAP_COM_MWP).

d. For step four, explain the determination of the Capacity Contribution (CAP_CON), Constraint Management Charge Contribution (CMC_CON), and Constraint Management Charge Allocation Factor.

2. Explain in detail how the calculation of the Constraint Management Charge Allocation Factor under proposed Schedule 46 accounts for real-time Revenue Sufficiency Guarantee (RSG) costs allocated to Voltage and Local Reliability, the RSG Second Pass Distribution, and Day-Ahead Schedule Deviation and Headroom Charges. For example, explain why the product of the aggregate applicable real-time RSG credits and the difference between one and the Constraint Management Charge Allocation Factor equals the RSG costs funded through Day-Ahead Schedule Deviation and Headroom Charges, pursuant to the proposed revisions to section 40.3.3.a.v.

Break: (10:15 a.m.–10:30 a.m.)

Session 2: Constraint Management Charges (10:30 a.m.–12:00 p.m.)

3. The description of the Constraint Management Charge in proposed Schedule 46 states that the Constraint Management Charge Allocation Factor Study determines the share of real-time RSG costs attributable to the ''commitment of Resources for Active Transmission Constraints.'' Should this instead be ''Resources committed in any R[eliability] A[ssessment] C[ommitment] process or the L[ook] A[head] C[ommitment] process for an Active Transmission constraint and not otherwise attributable to Topology Adjustment and Transmission De-rates,'' consistent with the definition of the Constraint Management Charge in section 1.537a of the existing MISO tariff?

4. Provide numerical examples demonstrating (a) MISO's existing Constraint Management Charge formula under sections 40.3.3.a.iv and v, and (b) how MISO's proposed revisions to its tariff will change this formula. Provide examples illustrating these formulas in the event that the Constraint Management Charge rate cap does and does not apply.

5. MISO states that the Constraint Management Charge Allocation Factor should be a better indicator than the Constraint Contribution Factor of the real-time RSG costs attributable to an active transmission constraint and that the Constraint Management Charge should ''no longer be limited by the C[onstraint] C[ontribution] F[actor] of the Resource committed to address the relevant constraint.''[2]

a. Explain in detail why MISO should continue using the Constraint Contribution Factor in section 40.3.3.a.iv to calculate the ''adjusted deviations'' used to determine the real-time RSG Constraint Management Charges to be paid by market participants in sections 40.3.3.a.iv(a) and 40.3.a.iv(b).

[1] *Midcontinent Independent System Operator, Inc.,* 145 FERC ¶ 61,044 (2013).

[2] MISO August 7, 2013 Filing at 4, 7–8.

b. In the event that the Constraint Management Charge rate cap does not apply, explain in detail why MISO should continue using the Constraint Contribution Factor in the denominator of the Constraint Management Charge formula provided in section 40.3.3.a.v to calculate the ''adjusted deviations,'' pursuant to section 40.3.3.a.iv, and to adjust topology adjustments or transmission de-rates.

c. In the event that the Constraint Management Charge rate cap applies, explain in detail why MISO should use the Constraint Management Charge Allocation Factor, rather than the Constraint Contribution Factor, to adjust the applicable hourly economic maximum dispatch amounts in the denominator of the Constraint Management Charge rate.

6. MISO proposes in section 40.3.3.a.v to modify the numerator of the Constraint Management Charge rate by multiplying the aggregate real-time RSG credits in an hour attributable to resources committed in the Reliability Assessment Commitment or Look-Ahead Commitment processes by ''the Constraint Management Charge Allocation Factor, pursuant to Schedule 46.''

a. In the event that the Constraint Management Charge rate cap does not apply, explain in detail how MISO's proposal to begin adjusting the numerator of the rate by the Constraint Management Charge Allocation Factor, while continuing to use the existing Constraint Contribution Factor to calculate adjusted deviations and adjust topology adjustments or transmission de-rates in the denominator of the rate, will affect the applicable Constraint Management Charge rate. For example, will the proposal result in a decrease in Constraint Management Charge rates?

b. In the event that the Constraint Management Charge rate cap applies, explain in detail how MISO's proposal to begin using the Constraint Management Charge Allocation Factor to adjust the numerator and denominator of the rate will affect the applicable Constraint Management Charge rate. Specifically, by multiplying both the numerator and denominator of the rate by the same term, does MISO intend those terms to cancel (e.g., so that the Constraint Management Charge rate cap will equal the applicable Economic Maximum Dispatch amounts)?

Break (12:00 p.m.–1:00 p.m.)

Session 3: Day-Ahead Schedule Deviation and Headroom Charge (1:00 p.m.–2:45 p.m.)

7. MISO states that load zones with net injections ''impact the management of congestion and may also result in a Post-Notification Deadline deviation in the Day-Ahead Schedule Deviation Charge rate formula.'' [3] Explain in detail how load zones with net injections cause the incurrence of real-time RSG costs, including any costs associated with Headroom Need.

8. Explain why MISO proposes in section 40.3.3.a.viii(6) to use ''any positive difference'' between a load zone's actual energy withdrawal or injection adjusted by any associated demand response injections and its demand forecast in effect at the notification deadline when determining Day-Ahead Schedule Deviation and Headroom Charges. Contrast this with MISO's use, pursuant to section 40.3.3.a.iii(4), of ''any difference'' between a load zone's demand forecast in effect at the notification deadline and its actual energy withdrawal or injection adjusted by any associated demand response injections when determining Constraint Management Charges.

9. Explain in detail the determination of Day-Ahead Schedule Deviation and Headroom Charges if the sum of the Market-Wide Net Deviations and Headroom Need is (1) less than or equal to zero, (2) greater than or equal to the Economic Committed Capacity, or (3) greater than zero but less than the Economic Committed Capacity. Explain how this calculation accounts for situations where the Market-Wide Net Deviations are negative but the Headroom Need is positive, such that their sum is greater than zero.

10. MISO maintains that deviations that cause the commitment of additional resources are ''the most relevant'' causes of real-time RSG costs and that ''the operative fact is the commitment of additional Resources in [sic] R[eliability] A[ssessment] C[ommitment], not the pricing circumstances of the market into which those Resources will be committed.'' [4]

a. Describe the extent to which supply-increasing deviations that occur after the notification deadline affect the incurrence of real-time RSG costs, such as by reducing costs by augmenting available capacity and increasing costs by reducing real-time prices.

b. Using actual 2012 data, explain the extent to which supply-increasing deviations that occurred after the notification deadline caused the incurrence of real-time RSG costs.

c. Explain whether the implementation of MISO's Look-Ahead Commitment process would affect the incurrence of real-time RSG costs due to supply-increasing deviations that occur after the notification deadline.

Conference Conclusion: Next Steps (2:45 p.m.–3:00 p.m.)

Staff will conclude the conference and outline next steps.

Dated: November 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27526 Filed 11–15–13; 8:45 am]

BILLING CODE 6717–01–P

[3] *Id.* at 19.

[4] *Id.* at 17.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14546–000]

Houtama Hydropower LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 14, 2013, Houtama Hydropower LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the McKay Dam Hydroelectric Project (project) to be located at McKay Dam near Pendleton in Umatilla County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize flows at the existing McKay Reservoir, and would consist of the following new features: (1) A 48-inch diameter, 60-foot-long steel penstock that extends from the existing dam penstock to a powerhouse; (2) a 20-foot by 30-foot powerhouse; (3) a single 2.3-megawatt turbine/generator; (4) a switchyard with a 69 kilovolt (kV) step-up transformer; (5) an approximately 3,000-foot-long, 69-kV transmission line interconnecting to the Pacific Power distribution system; and (6) appurtenant facilities. The estimated annual generation of the project would be 5 gigawatt-hours.

Applicant Contact: Mr. William C. Hampton, CEO, Houtama Hydropower

LLC, 1044 NW 12th Drive, Pendleton, OR 97801–1268; phone: (541) 969–2276.

FERC Contact: Sean O'Neill; phone: (202) 502–6462.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14546–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14546) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27525 Filed 11–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14555–000]

Mid-Atlantic Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 9, 2013, Mid-Atlantic Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Tuttle Creek Hydroelectric Project (Tuttle Creek Project or project) to be located on Big Blue River, in the city of Manhattan, Riley County, Kansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 350-foot-long, 16-foot-diameter steel penstock; (2) a new 100-foot-long, 50-foot-wide concrete powerhouse, containing one 7.9-megawatt (MW) turbine generator unit; (3) a new 2.8-mile-long, 25-kilovolt (kV) transmission line; (4) an existing 860-foot-long, 20-foot-diameter horseshoe conduit; (5) a new 40-foot-long, 50-foot-wide switchyard connecting to the existing Weststar Substation; and (6) appurtenant facilities. The estimated annual generation of the Tuttle Creek Project would be 30,500 megawatt-hours per year.

Applicant Contact: Ms. Kristina Johnson, Mid-Atlantic Hydro, LLC, 5425 Wisconsin Avenue, Suite 600, Chevy Chase, MD 20815; phone: (301) 718–4432.

FERC Contact: Chelsea Hudock; phone: (202) 502–8448, email: *chelsea.hudock@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14555–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14555) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27529 Filed 11–15–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13679–004]

JD Products, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 1, 2013, JD Products, LLC (JD Products) filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the proposed San Onofre Electricity Farm Project (project). The proposed project would utilize up to 1,314 generation units, with an estimated installed capacity of 2,000 megawatts with a projected average annual generation of about 17,519 megawatthours. The requested project boundary comprises of approximately 6 square nautical miles of coastal waters and lands located along the coast of San Diego County, California, near the towns of San Onofre and San Clemente, and include portions of the San Onofre California State Park and the United States Marine Corps Base Camp Pendleton.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing or construction activities or to otherwise enter upon lands or waters owned by others without the owners' express permission.

Applicant Contact: Chong Hun Kim, JD Products, LLC., 16807 Woodridge Circle, Fountain Valley, CA 92708; (714)964–5419.

FERC Contact: Kenneth Hogan, (202) 502–8434, or via email at: *Kenneth.hogan@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60

days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link.

For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and 5 copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13679) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27527 Filed 11–15–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–9902–86–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Compliance Assurance Monitoring Program (Renewal) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the information collection request, which is currently approved through December 31, 2013. Public comments were previously requested via the *Federal* Register (78 FR 35631) on June 13, 2013 during a 60-day public comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0152 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Angela Hackel, Office of Air Quality and Planning Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5262; fax number: (919) 541–3207; email address: *hackel.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this information collection request. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit: *http://www.epa.gov/dockets.*

EPA ICR Number: 1663.08.

OMB Control Number: 2060–0376.

Abstract: The Clean Air Act (the CAA) contains several provisions directing EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in Section 504 (operating permits provisions) and Section 114 (enforcement provisions) of the CAA. Section 504(b) directs EPA to implement monitoring and certification requirements through the operating permits program. This section allows EPA to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions.'' Section 114(a)(3) requires EPA to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the provides additional authority concerning monitoring, reporting, and record keeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. EPA promulgated the Compliance Assurance Monitoring (CAM) rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

Form Numbers: None.

Respondents/affected entities: All facilities required to have an operating permit under Title V of the CAA and the state, local and tribal permitting authorities that implement the CAM program.

Respondent's obligation to respond: Mandatory under Title V of the CAA.

Estimated number of respondents: 23,235

Frequency of response: At least every 6 months per Title V and the implementing regulations at 40 CFR 70.6(a)(3)(iii)(A) and (B).

Total estimated burden: 50,473 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,031,643 (per year), which includes no annualized capital or operation and maintenance costs.

Changes in Estimates: There is decrease of 7,403,108 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is a result of the fact that most facilities are now using electronic monitoring systems that automatically record the output of the monitor, thus, resulting in a decrease in the number of labor hours needed to

record the monitoring results. Additionally, all affected facilities with existing Title V permits have now submitted their CAM monitoring approach in their permit renewal applications, therefore, significantly reducing the costs for new monitoring development. Also, we reviewed the reporting and recordkeeping requirements of the Title V permit program vis-à-vis those required under the CAM program. We found that, with the exception of sources required to develop a quality improvement plan, sources were meeting the reporting and recordkeeping requirements for CAM by complying with the requirements of the Title V program. We revised some of our assumptions to account for the additional requirements set forth under the CAM rule that are not outlined in the Title V program, while at the same time ensuring that requirements met under the Title V program were not being re-counted in this assessment. Furthermore, in order to reflect projected trends for the next 3 years, we updated some of the formulas used to calculate burden.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27426 Filed 11–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0079; FRL—9902–88–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; 8-Hour Ozone National Ambient Air Quality Standard (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), 8-Hour Ozone National Ambient Air Quality Standard, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 45188) on July 26, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–0079, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mr. H. Lynn Dail, Air Quality Policy Division, Office of Air Quality Planning and Standards, Mail Code C539–01, Environmental Protection Agency, T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541–2363; fax number: (919) 541–0824; email address: *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

EPA ICR Number: 2236.04.

OMB Control Number: 2060–0594.

Abstract: This ICR assesses the burden (in hours and dollars) of the 1997 8-hour Ozone National Ambient Air Quality Standard (NAAQS) Implementation Rule as well as the periodic reporting and record keeping necessary to maintain the rule. The rule was proposed on June 2, 2003, (68 FR 32802) and promulgated in two Phases: Phase 1 published on April 30, 2004, (69 FR 23951) and Phase 2 published on November 29, 2005 (70 FR 71612). The rule includes requirements that involve collecting information from states with areas that remain designated non-attainment for the 1997 8-hour ozone NAAQS. These information collection milestones include state submission of an attainment demonstration SIP, a RFP SIP submission, and a RACT SIP. However, not all of the milestones and associated burden and administrative costs estimates apply to every designated nonattainment area. The burden estimated is for six of the thirty-eight non-attainment areas that were reclassified to a higher classification resulting in new SIP revisions required. The remaining thirty-two non-attainment areas have either met the requirements or have their requirements suspended.

Form Numbers: None.

Respondents/affected entities: States and regional entities.

Respondent's obligation to respond: Mandatory as required by the Clean Air Act, Section 110.

Estimated number of respondents: 6 (total).

Frequency of response: Annual.

Total estimated burden: 11,667 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $759,500 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 5,000 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This is due to a number of reasons that include: (1) The burden associated with one remaining non-attainment area that may receive a mandatory reclassification is estimated to be the same as areas completing the initial SIP framework because of the work they must complete to reevaluate databases, emissions inventories, legal authorities, state rule development, publication and public hearing to comply with the standards; (2) EPA's final rule of May 14, 2012 (77 FR 28423) assigning former subpart 1 ozone non-attainment areas re-designations under subpart 2, resulted in non-attainment areas with additional burden for completing SIP revisions; (3) the number of non-attainment areas has decreased as areas have come into compliance with the standards; and (4) the number of non-attainment areas with SIP revisions required has decreased as areas have either submitted the requirements or the planning

requirements have been suspended with a Clean Data Determination.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27434 Filed 11–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0333; FRL–9902–94–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Air Emission Standards for Tanks, Surface Impoundment and Containers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Air Emission Standards for Tanks, Surface Impoundment and Containers (40 CFR Part 264, Subpart CC, and 40 CFR Part 265, Subpart CC) (Renewal)'' (EPA ICR No. 1593.09, OMB Control No. 2060–0318), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0333, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: This ICR renewal is being submitted for the Air Emission Standards for Tanks, Surface Impoundments and Containers (40 CFR Part 264, Subpart CC and 40 CFR Part 265, Subpart CC), which were promulgated on December 6, 1994. The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous wastes in tanks, surface impoundments and containers that are subject to subparts I, J or K of these parts, except for Sections 264.1 and 265.1 and those management units identified at Sections 264.1080(b) and 265.1080(b). Also, the requirements of this subpart apply to large quantity generators that manage hazardous wastes in either tanks, or containers (262.34(a)(1)(i and ii)). The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes or additions to the Provisions specified at 40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC.

Form Numbers: None.

Respondents/affected entities: Facilities that treat, store, or dispose of RCRA Subtitle C hazardous waste.

Respondent's obligation to respond: Mandatory (40 CFR part 264, subpart CC and 40 CFR part 265, subpart CC)

Estimated number of respondents: 6,209 (total).

Frequency of response: Occasionally, annually, and semiannually.

Total estimated burden: 712,293 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $82,092,685 (per year), includes $12,418,000 for operation & maintenance costs annualized capital and no annualized capital/start-up costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden hours and costs from the most recently approved ICR. The previous ICR used rounded numbers, while this ICR uses exact values in calculating burden hours. In addition, this ICR uses updated labor rates from the Bureau of Labor Statistics to calculate burden costs.

There is also an increase of one response in this ICR due to a correction. The previous ICR did not account for the annual project report for the Sisterville Plant when calculating the total number of responses.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27436 Filed 11–15–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0050; FRL 9902–89–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Implementation of Ambient Air Protocol Gas Verification Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Implementation of Ambient Air Protocol Gas Verification Program (Renewal) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 30300) on May 22, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor

and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0050, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurie Trinca, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–0520; fax: 919–541–1903; email: *trinca.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For further information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR Information: EPA ICR Number 2375.02; OMB Control Number 2060–0648.

Abstract: This ICR includes ambient air monitoring data reporting and recordkeeping activities associated with the 40 CFR part 58, appendix A, Ambient Air Quality Surveillance Quality Assurance Regulations. These data and information are collected by state, local, and tribal air quality management agencies and reported to the EPA.

The EPA Ambient Air Quality Monitoring Program's quality assurance requirements in 40 CFR part 58, appendix A, require: ''2.6 Gaseous and Flow Rate Audit Standards. Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for CO, SO_2, NO, and NO_2 must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM), NIST Standard Reference Materials (SRM), and Netherlands Measurement Institute (NMI) Primary Reference Materials (valid as covered by Joint Declaration of Equivalence) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program or not use ''EPA'' in any form of advertising.''

These requirements give assurance to end users that all specialty gas producers selling EPA Protocol Gases are participants in a program that provides an independent assessment of the accuracy of their gases' certified concentrations. In 2010, EPA developed an Ambient Air Protocol Gas Verification Program that provides end users with information about participating producers and verification results. Each year, EPA will attempt to compare gas cylinders from every specialty gas producer being used by ambient air monitoring organizations. Cylinders will be verified at a pre-determined time each quarter. In order to make the appropriate selection, EPA needs to know what specialty gas producers are being used by the monitoring organizations. Therefore, EPA needs information from each primary quality assurance organization every year on specialty gas producers being used and whether the monitoring organization would like to participate in the verification for the upcoming calendar year.

Form Numbers: None.

Respondents/affected entities: State, local, and Tribal air quality management agencies.

Respondent's obligation to respond: Mandatory under 40 CFR part 58.

Estimated number of respondents: 211 (total).

Frequency of response: Yearly.

Total estimated burden: 70 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,674 (per year). There are no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–27435 Filed 11–15–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2013–3005]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

SUMMARY: The Export-Import Banks of the United States (Ex-Im Bank), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the applicant for Ex-Im Bank assistance.

The Application for Short Term Letter of Credit Export Credit Insurance Policy is used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program. Export-Import Bank customers are able to submit this form on paper or electronically.

The application tool can be reviewed at: *http://www.exim.gov/pub/pending/eib92-34.pdf.*

DATES: Comments must be received on or before December 18, 2013 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB–2013–0046) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–EIB92–34.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–34 Application for Short-Term Letter of Credit Export Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: This form is used by a financial institution (or broker acting on its behalf) to obtain approval for coverage of a short-term letter of credit. The information allows the Ex-Im Bank

staff to make a determination of the eligibility of the applicant and transaction for Ex-Im Bank assistance under its programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 11.

Estimated Time per Respondent: 1 hr.

Annual Burden Hours: 11.

Frequency of Reporting of Use: On occasion.

Government Reviewing Time per Year: 11 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $468 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $598.

Kalesha Malloy,

Agency Clearance Officer.

[FR Doc. 2013–27521 Filed 11–15–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: CBS RADIO ANNAPOLIS LLC, Station WLZL, Facility ID 20983, BMPH–20131022ALD, From ANNAPOLIS, MD, To COLLEGE PARK, MD; FAMILY LIFE MINISTRIES, INC., Station WCIK, Facility ID 20631, BPH–20130924AJT, From BATH, NY, To AVOCA, NY; PRITCHARD BROADCASTING CORPORATION, Station WQKQ, Facility ID 7635, BPH–20130930BFH, From CARTHAGE, IL, To DALLAS CITY, IL; SMILE FM, Station WKKM, Facility ID 93344, BPED–20130814ADM, From SPEAKER TOWNSHIP, MI, To GRANT TOWNSHIP, MI; SOUTHERN ELECTRONICS COMPANY, INC., Station WONA–FM, Facility ID 61281, BPH–20130620AAY, From WINONA, MS, To SHERMAN, MS; SOUTHERN WABASH COMMUNICATIONS OF MIDDLE TENNESSEE, INC., Station WBGB, Facility ID 172966, BPED–20130909AAI, From SCOTTSVILLE, KY, To PORTLAND, TN; SSR COMMUNICATIONS, INC., Station KIMW, Facility ID 191575, BMPH–20130913ACG, From HAYNESVILLE, LA, To HEFLIN, LA; THE MONTANA RADIO COMPANY, LLC, Station KKRK, Facility ID 189560, BPH–20130918ADF, From WHITEHALL, MT, To HELENA VALLEY SE., MT; THE MONTANA RADIO COMPANY, LLC, Station KIMO, Facility ID 83110, BPH–20130918ADH, From HELENA VALLEY SE., MT, To TOWNSEND, MT.

DATES: The agency must receive comments on or before January 17, 2014.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2013–27576 Filed 11–15–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCMENT: 78 FR 68444 (November 14, 2013)

DATE AND TIME: *Tuesday, November 19, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

CHANGES IN THE MEETING: The meeting will begin at 11:00 a.m.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–27673 Filed 11–14–13; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011: Docket 2010–0083; Sequence 22]

Federal Acquisition Regulation; Submission for OMB Review; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension, with changes, to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A notice was published in the **Federal Register** at 78 FR 38341, on June 26, 2013. One comment was received.

DATES: Submit comments on or before December 18, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0011.

Instructions: Please submit comments only and cite Information Collection 9000–0011, Preaward Survey Forms, (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–219–0202 or email *Cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interests and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have in his or her possession or must obtain information sufficient to be satisfied that the prospective contractor: (i) Has adequate financial resources, or the ability to obtain such resources; (ii) is able to comply with the required delivery schedule; (iii) has a satisfactory record of performance; (iv) has a satisfactory record of integrity; and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence. This data is entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. These standard forms are not cumulative. The surveying activity completes only the applicable standard form(s) necessary to determine contractor responsibility in each case.

B. Discussion and Analysis

The analysis of the public comments is summarized as follows:

1. Necessity of the information collection requirement.

Comment: According to the respondent, agencies should be seeking to create savings by reducing or eliminating such information collection requirements. However, the respondent did not challenge the propriety of this underlying information collection requirement.

Response: FAR 9.106–1 requires that preaward surveys be completed only when the information on hand or readily available to the contracting officer, including information from sources other than the offeror, is not sufficient to make a determination regarding responsibility. While not all of these requirements are necessary in all cases, some are required regularly, thus preventing their reduction or elimination without negatively impacting the ability of the Government to assess contractor responsibility and protect the Government's interests in maintaining the integrity of the acquisition process.

2. OMB approval to extend the approval of this information collection requirement.

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because the analysis significantly underestimates the paperwork burden imposed by this requirement and has therefore not provided sufficient justification for the requested extension. The respondent further stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the ''collective burden of compliance'' required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

Response: The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for contractors to report requirements, regardless the number of responses. If the agencies have determined that the information is essential to protect the interests of the Government, then the extension should be approved.

3. Accuracy of data estimates.

Comment: The respondent questioned the estimated number of respondents (3,540), and how the estimated number of respondents was derived. In addition, the respondent apparently understood the renewal request to say that ''preaward surveys are never justified under this information collection.'' Further, the respondent asked that ''OMB insist that the Agencies provide the actual number of responses received annually.''

Response: The respondent's comment that the information collection renewal request stated that preaward surveys are never justified fundamentally misunderstood the submission. While the conduct of a preaward survey is unnecessary unless other information sources are inadequate for a determination of the firm's responsibility in accordance with the requirements of FAR subpart 9.1, when a preaward survey is conducted, it is the Government that bears the burden of the effort. The Government's work in conducting a preaward survey is not the subject of this information collection, so it is not addressed in the supporting documents. That does not mean, however, that there is no such effort or that there are no preaward surveys. The information collection is focused solely on the time that a firm's employees must take to complete one or more of the forms at issue.

With regard to the estimate of 3,540 respondents, that number was clearly stated to be an estimate, not an actual number. We are unable to provide an actual number, because that information is not available through the Federal Procurement Data System (FPDS), nor is it collected in any single location.

However, the basis used for the estimate has been reconsidered due to the comment. Initially, we estimated that 30 percent of the contracts awarded in Fiscal Year 2012 (according to FPDS statistics) that were over the simplified acquisition threshold and that did not use FAR part 12 commercial acquisition procedures had a preaward survey conducted and therefore required the firm to complete at least one of the standard forms included in the information collection request. Upon reconsideration, it became obvious that a preaward survey would only be needed if the firm had not previously been a Government contractor. The revised estimate is that only 15 percent of such awards are first-time Government contract awards. This reduces the basis of the estimate from 3,540 contracts to 1,771 contracts.

4. Timing of request for extension.

Comment: The respondent noted that this information collection is soliciting comments during an emergency extension period OMB granted in March 2013. The respondent reiterated OMB's

comment that the agencies should have in place an internal planning process so that completion of the public notification and comment period required by 5 CFR 1320 occurs prior to an information collection's expiration date. Regular order allows the agencies and the public to have a meaningful and on-the-record dialogue on information collection extensions.

Response: Although ideally it is preferable to complete the renewal process prior to expiration, an emergency extension may be necessary in order to allow the public the opportunity for input into the process.

5. The collective burden of compliance.

Comment: The respondent objects to the overall collective burden imposed by the Government on all respondents.

Response: The Councils cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. The Councils can only effectively address each individual information collection requirement that is under consideration for OMB approval. The Councils constantly review information collection requirements imposed by FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute.

C. Annual Reporting Burden

A preaward survey would be needed only if the firm had not previously been a Government contractor and therefore had no record of past performance. The data from FPDS for FY 2012 showed a total of 11,805 contracts awarded Governmentwide that were over the $150,000 simplified acquisition threshold, and for which commercial acquisition procedures were not used. Initially, we estimated that preaward surveys were completed for 30 percent of the total or 3,540. After reconsideration, it became obvious that a preaward survey would only be needed if the firm had not previously been a Government contractor. The revised estimate is that only 15 percent of awards will potentially require a preaward survey. The estimate is reduced from 3,540 contracts to 1,771 contracts. Of the six Standard Forms (1403, 1404, 1405, 1406, 1407, and 1408), we estimated that Standard Form 1403 is used most frequently because it is a general form and accounts for 30 percent or 531 times, Standard Forms 1404 and 1407 account for 15 percent or 266 times, Standard Form 1408 accounts for 20 percent or 354 times, and Standard Forms 1405 and 1406 account 10 percent or 177 times.

Standard Form 1403—Preaward Survey of Prospective Contractor (General)

Respondents: 531.
Responses Annually: 1.
Total Responses: 531.
Hours per Response: 24.
Total Burden Hours: 12,744.

Standard Form 1404—Preaward Survey of Prospective Contractor Technical

Respondents: 266.
Responses Annually: 1.
Total Responses: 266.
Hours per Response: 24.
Total Burden Hours: 6,384.

Standard Form 1405—Preaward Survey of Prospective Contractor Production

Respondents: 177.
Responses Annually: 1.
Total Responses: 177.
Hours per Response: 24.
Total Burden Hours: 4,248.

Standard Form 1406—Preaward Survey of Prospective Contractor Quality Assurance

Respondents: 177.
Responses Annually: 1.
Total Responses: 177.
Hours per Response: 24.
Total Burden Hours: 4,248.

Standard Form 1407—Preaward Survey of Prospective Contractor Financial Capability

Respondents: 266.
Responses Annually: 1.
Total Responses: 266.
Hours per Response: 24.
Total Burden Hours: 6,384.

Standard Form 1408—Preaward Survey of Prospective Contractor Accounting System

Respondents: 354.
Responses Annually: 1.
Total Responses: 354.
Hours per Response: 24.
Total Burden Hours: 8,496.

D. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Karlos Morgan,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2013–27450 Filed 11–15–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Collection of Information for Agency for Healthcare Research and Quality's (AHRQ) Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Comparative Database.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 14th, 2013 and allowed 60 days for public comment. No substantive comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 18, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by

email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *dorislefkowitz@AHRO.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Collection of Information for Agency for Healthcare Research and Quality's (AHRQ) Consumer Assessment of Healthcare Providers and Systems (CAHPS) Health Plan Survey Comparative Database

Request for information collection approval. The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) reapprove, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CARPS) Database for Health Plans: OMB Control number 0935–0165, expiration July 31, 2013. The CAHPS Health Plan Database consists of data from the AHRQ CAHPS Health Plan Survey. Health plans in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The CAHPS Database was developed by AHRQ in 1998 in response to requests from health plans, purchasers, and the Centers for Medicare & Medicaid Services (CMS) to provide comparative data to support public reporting of health plan ratings, health plan accreditation and quality improvement.

Background on the CAHPS Health Plan Survey. The CAHPS Health Plan Survey is a tool for collecting standardized information on enrollees' experiences with health plans and their services. The development of the CAHPS Health Plan Survey began in 1995, when AHRQ awarded the first set of CAHPS grants to Harvard, RTI, and RAND. In 1997 the CAHPS 1.0 survey was released by the CAHPS Consortium. The CAHPS Consortium refers to the research organizations involved in the development, dissemination, and support of CAHPS products. The current Consortium includes AHRQ, CMS, RAND, Yale School of Public Health, and Westat.

Since that time, the Consortium has clarified and updated the survey instrument to reflect field test results; feedback from industry experts; reports from health plan participants, data collection vendors, and other users; and evidence from cognitive testing and focus groups. In November 2006, the CAHPS Consortium released the latest version of the instrument: The CAHPS Health Plan Survey 4.0. The development of this update to the Health Plan Survey has been part of the ''Ambulatory CAHPS (A–CAHPS) Initiative,'' which arose as a result of extensive research conducted with users. AHRQ released the CAHPS Health Plan Survey 4.0, along with guidance on how to customize and administer it. The National Quality Forum endorsed the 4.0 version of the Health Plan Survey in July 2007.

Rationale for the information collection. The CAHPS Health Plan Database uses data from AHRQ's standardized CAHPS Health plan survey to provide comparative results to health care purchasers, consumers, regulators and policy makers across the country. The Database also provides data for AHRQ's annual National Healthcare Quality and National Healthcare Disparities Reports. Voluntary participants include public and private employers, State Medicaid agencies, State Children's Health Insurance Programs (SCHIP), the Centers for Medicare & Medicaid Services (CMS), and individual health plans.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (a)(8).

Method of Collection

Each year State Medicaid agencies, and individual health plans decide whether to participate in the database and prepare their materials and dataset for submission to the CARPS Health Plan Database. Participating organizations are typically State Medicaid agencies with multiple health plans. However, individual health plans are also encouraged to submit their data to the CARPS Database. The number of data submissions per registrant varies from participant to participant and year to year because some participants submit data for multiple health plans, while others may only submit survey data for one plan.

Each organization that decides to participate in the database must have their point-of-contact (POC) complete a registration form providing their contact information for access to the on-line data submission system, sign and submit a DUA, and provide health plan characteristics such as health plan name, product type, type of population surveyed, health plan state, and plan name to appear in the reporting of their results.

Each vendor that submits files on behalf of a Medicaid agency or individual health plan must also complete the registration form in order to obtain access to the on-line submission system. The vendor, on behalf of their client, may also complete additional information about survey administration (CAHPS survey version used, mode of survey administration, total enrollment count, description of how the sample was selected), submit a copy of the questionnaire used, and submit one data file per health plan. Commercial health plan data is received directly from NCQA. Medicare health plan data is received from CMS.

Survey data from the CAHPS Health Plan Database is used to produce four types of products: (1) An annual chartbook available to the public on the CAHPS Database Web site (*https://www.cahpsdatabase.ahrq.gov/CAHPSIDB/Public/Chartbook.aspx*); (2) individual participant comparative reports that are confidential and customized for each participating organization (e.g., health plan, Medicaid agency) that submits their data; (3) a research database available to researchers wanting to conduct additional analyses; and (4) data tables provided to AHRQ for inclusion in the National Healthcare Quality and National Healthcare Disparities Reports.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondent to participate in the database. The burden hours pertain only to the collection of Medicaid data from State Medicaid agencies and individual Medicaid health plans because those are the only entities that submit data through the data submission process (other data are obtained directly from NCQA and CMS as noted earlier in Section 2). The 80 POCs in exhibit 1 are a combination of an estimated 60 State Medicaid agencies and individual health plans, and 20 estimated vendors.

Each State Medicaid agency, health plan or vendor will register online for submission. The online Registration form will require about 5 minutes to complete. Each submitter will also

complete a Health Plan information form of information about each Health Plan such as the name of the plan, the product type (e.g., HMO, PPO), the population surveyed (e.g., adult Medicaid or child Medicaid), the health plan State, total enrollment at the time the sample frame was generated, mode of survey administration (mail, telephone, IVR) and how the sample was selected. The online Health Plan Information form takes on average 30 minutes to complete per health plan with each POC completing the form for 4 plans on average. The data use agreement will be completed by the 60 participating State Medicaid agencies or individual health plans. Vendors do not sign or submit DUAs. The DUA requires about 3 minutes to sign and return by fax or mail. Each submitter will provide a copy of their questionnaire and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provide by the CAHPS Database. Since the unit of analysis is at the health plan level, submitters will upload one data file per health plan. Once a data file is uploaded the file will be automatically checked to ensure it conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to fix any errors in their data file and resubmit if necessary. It will take about one hour to submit the data for each plan, and each POC will submit data for 4 plans on average. The total burden is estimated to be 490 hours annually.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $20,202 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	80	1	5/60	7
Health Plan Information Form	80	4	30/60	160
Data Use Agreement	60	1	3/60	3
Data Files Submission	80	4	1	320
Total	300	NA	NA	490

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate*	Total cost burden
Registration Form	80	7	47.34\a\	$331
Health Plan Information Form	80	160	47.34\a\	7,574
Data Use Agreement	60	3	85.02\b\	255
Data Files Submission	80	320	37.63\c\	12,042
Total	300	490	NA	20,202

*National Compensation Survey: Occupational wages in the United States May 2012, "U.S. Department of Labor, Bureau of Labor Statistics."
(a) Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
(b) Based on the mean hourly wage for Chief Executives (11–1011).
(c) Based on the mean hourly wages for Computer Programmer (15–1131).

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 31, 2013.

Richard Kronick,

Director.

[FR Doc. 2013–27176 Filed 11–15–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–14–0636]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and

send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. Written comments should be received within 60 days of this notice.

Proposed Project: Centers for Disease Control and Prevention (CDC) Secure Public Health Emergency Response Communications Network (Epi-X) (OMB Control No. 0920–0636, exp. 5/31/2014)—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

From 2009–2012, CDC conducted incident specific, public health emergency response operations on average of six public health incidents a year with an average emergency response length of 50 days for each incident. The effectiveness and efficiency of CDC's response to any public health incident depends on information at the agency's disposal to characterize and monitor the incident, make timely decisions, and take appropriate actions to prevent or reduce the impact of the incident.

Available information in anticipation of, during and following public health incident responses is often incomplete, is not easily validated by state and local health authorities, and is sometimes conflicting. This lack of reliable information often creates a high level of uncertainty with potential negative impacts on public health response operations. Secure communications with CDC's state, local, territorial, and tribal public health partners is essential to resolve conflicting information, validate incident status, and establish and maintain situational awareness. Reliable, secure communications are essential for the agency to gain and maintain accurate situational awareness, make informed decisions, and to respond in the most appropriate manner possible in order to minimize the impact of an incident on the public health of the United States.

This generic Information Collection Request (ICR) is being revised to: (1) Remove verbiage limiting data collection to activation of the Incident Management Structure, (2) broaden categories under which data may be collected to increase its utilization, and (3) provide clarity regarding the data elements.

(Epi-X) is CDC's Web-based communication system for securely communicating in immediate anticipation of, during and following public health emergencies that have multi-jurisdictional impacts and implications. The incidents of September 11, 2001 illustrated the need for an encrypted and secure communications system that would permit CDC to communicate urgently with partners at the state and local levels, and to notify them 24/7, when necessary. Similarly, *Epi-X* was specifically designed to provide public health decision-makers at the state and local levels a secure, reliable tool for communicating sensitive, unusual, or urgent public health incidents to neighboring jurisdictions as well as to CDC.

CDC has recognized a need to expand the use of *Epi-X* to collect specific response related information in anticipation of, during and following public health emergencies. Proposed data collection instruments under this generic ICR will be designed to ensure ready access to public health and disease epidemiology information.

Authorized officials from state and local health departments affected by the public health incident will be informed of this data collection first through an *Epi-X* Facilitator, who will work closely with *Epi-X* program staff and the *Epi-X* Information Collection Request Liaison to ensure that *Epi-X* incident specific information collections are understood. The survey instruments will contain specific questions relevant to the current and ongoing public health incident and response activities.

Respondents will receive the survey instrument(s) as an official CDC email, which is clearly labeled, ''*Epi-X* Emergency Public Health Incident Information Request.'' The email message will be accompanied by a link to an *Epi-X Forum* discussion Web page. Respondents can provide their answers to the survey questions by posting information within the discussion. The total estimated burden for the generic information collection is 73,200 hours for three years.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
State Epidemiologists	*Epi-X* Emergency Public Health Incident Information Request.	50	104	1	5,200
County Health Officials	*Epi-X* Emergency Public Health Incident Information Request.	1,600	12	1	19,200
Total					24,400

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–27485 Filed 11–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0728]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Notifiable Disease Surveillance System (NNDSS) [*0920–0728,* Exp, Jan 31, 2014]—Revision—Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Division of Health Informatics and Surveillance (DHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The Nationally Notifiable Disease Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These *reportable conditions,* which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Currently approximately 300 conditions are reportable in one or more of the states. Since infectious disease agents and environmental hazards often cross geographical boundaries, public health departments have to be able to share data on certain conditions across jurisdictions and coordinate program activities to prevent and control the conditions. Each year, the Council of State and Territorial Disease Epidemiologists (CSTE), supported by CDC, performs an assessment of conditions reported to state, territorial and local jurisdictions to determine which should be designated *nationally notifiable conditions.* For conditions that are nationally notifiable, case notifications are voluntarily submitted to CDC so that information can be shared across jurisdictional boundaries and both surveillance and prevention and control activities can be coordinated at regional and national levels.

CDC requests a three year approval for a Revision of the National Notifiable Diseases Surveillance System (NNDSS) information collection, [National Electronic Disease Surveillance System (NEDSS, OMB Control No. *0920–0728,* Expiration Date 01/31/2014]. This request has been developed in coordination with four other CDC applications to OMB for nationally notifiable diseases case notification: Control Numbers 0920–0128, (Congenital Syphilis Surveillance), *0920–0819* (Nationally Notifiable Sexually Transmitted Disease (STD) Morbidity Surveillance) *0920–0009* (National Disease Surveillance Program—I. Case Reports) and *0920–0004* (National Disease Surveillance Program—II. Disease Summaries). This consolidation of information collection 0920–0128 and some parts of information collections 0920–0819, 0920–0009 and 0920–0004, is an important step in implementing CDC's longer term strategy of developing a more coordinated and integrated infectious diseases surveillance system that reduces overlap and duplication; increases interoperability, integration and efficiency; and thereby reduces burden to state, territorial and local health departments that report infectious disease data to CDC. Due to the coordination, this NNDSS application includes 11 conditions and many additional data elements for the case notifications that were not previously included in NNDSS OMB application Control No. *0920–0728.* For many conditions submitted to CDC, participating public health departments also submit data elements which are specific to each condition. With the coordination with other CDC programs conducting surveillance on notifiable conditions, this application includes disease-specific tables for 68 diseases. The 2010 NNDSS OMB application included disease-specific data elements for only 14 of those conditions.

Because this information collection request includes case notifications that were not part of the 2010 NNDSS/NEDSS application, replaces one application and replaces parts of three other OMB applications, burden estimates have been adjusted to incorporate burden estimates from the other four applications. The estimates are adjusted for the increased number of conditions reported to NNDSS, the expansion of core data elements, and the inclusion of more disease-specific tables. These changes have increased the burden estimates in this application in comparison with the burden estimates in the 2010 NNDSS/NEDSS OMB application (OMB Control No. *0920–0728).* As CDC works with state, territorial and local health departments to develop and implement new information technologies to submit these data through NNDSS, burden will also increase as the public health departments commit resources to implementing the new technologies. However, over the next 3 years, as the new automated electronic systems are implemented, burden will be decreased. There are no costs to respondents other than their time. The estimated annual burden is 28,340 hours.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	50	52	10
Territories	5	52	5
Cities	2	52	10

LeRoy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–27447 Filed 11–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) is publishing the names of the Performance Review Board Members who are reviewing performance for Fiscal Year 2013.

FOR FURTHER INFORMATION CONTACT: Sharon O'Brien, Deputy Director, Executive and Scientific Resources Office, Human Capital and Resources Management Office, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop K–15, Atlanta, Georgia 30341, Telephone (770) 488–1781.

SUPPLEMENTARY INFORMATION: Title 5, U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following persons will serve on the CDC Performance Review Boards or Panels, which will oversee the evaluation of performance appraisals of Senior Executive Service members for the Fiscal Year 2013 review period:

Christine Branche, Co-Chair
James Seligman, Co-Chair
Barbara Bowman
Janet Collins
Hazel Dean
Jane Gentleman
Joseph Henderson
Jennifer Parker
Tanja Popovic
Steve Redd
Tom Sinks
Kevin Smagh

Dated: November 8, 2013.

Stacey Hoffman,

Acting Director, Division of Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 2013–27501 Filed 11–15–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1394]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in the guidance for industry on special protocol assessment.

DATES: Submit either electronic or written comments on the collection of information by January 17, 2014.

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Special Protocol Assessment—(OMB Control Number 0910–0470)—Extension

The ''Guidance for Industry on Special Protocol Assessment'' describes Agency procedures to evaluate issues related to the adequacy (e.g., design, conduct, analysis) of certain proposed studies. The guidance describes procedures for sponsors to request special protocol assessment and for the Agency to act on such requests. The guidance provides information on how the Agency interprets and applies provisions of the Food and Drug Administration Modernization Act of 1997 and the specific Prescription Drug User Fee Act of 1992 (PDUFA) goals for special protocol assessment associated with the development and review of PDUFA products. The guidance describes the following two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol and (2) the submission of a request for special protocol assessment.

Notification for a Carcinogenicity Protocol

As described in the guidance, a sponsor interested in Agency assessment of a carcinogenicity protocol should notify the appropriate division in FDA's Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) of an intent to request special protocol assessment at least 30 days

prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the Agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol.

Request for Special Protocol Assessment

The guidance asks that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the Agency in triplicate with Form FDA 1571 attached. The guidance also suggests that the sponsor submit the cover letter to a request for special protocol assessment via facsimile to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the Agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and recordkeeping burden has been approved by OMB under OMB control number 0910–0014.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via fax to the appropriate division in CDER or CBER to enable Agency staff to prepare for the arrival of the protocol for assessment. The Agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) To ensure that each request is kept in the administrative file with the entire IND and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the appropriate Agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

The guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may quickly and efficiently respond to the request:

- Questions to the Agency concerning specific issues regarding the protocol; and
- All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the Agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who requests special protocol assessment.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for notifications for a carcinogenicity protocol and requests for a special protocol assessment.

Notification for a Carcinogenicity Protocol. Based on the number of notifications for carcinogenicity protocols and the number of carcinogenicity protocols currently submitted to CDER and CBER, CDER estimates that it will receive approximately 50 notifications of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately 23 sponsors. CBER estimates that it will receive approximately one notification of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately one sponsor. The hours per response, which is the estimated number of hours that a sponsor would spend preparing the notification and background information to be submitted in accordance with the guidance, is estimated to be approximately 8 hours.

Requests for Special Protocol Assessment. Based on the number of requests for special protocol assessment currently submitted to CDER and CBER, CDER estimates that it will receive approximately 300 requests for special protocol assessment per year from approximately 145 sponsors. CBER estimates that it will receive approximately14 requests from approximately 11 sponsors. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the Agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on the Agency's experience with these submissions, FDA estimates approximately 15 hours on average would be needed per response.

FDA estimates the burden of this collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notification for carcinogenicity protocols	24	2.1	51	8	408
Requests for special protocol assessment	156	2	314	15	4,710
Total					5,118

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27503 Filed 11–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1119]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the information collection entitled ''Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers'' that appeared in the **Federal Register** of September 18, 2013 (78 FR 57391). In the notice requesting comment on the proposed information collection, we requested comments on the information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). We are taking this action in response to a request for an extension to allow interested persons additional time to submit comments on the proposed information collection.

DATES: FDA is extending the comment period on the proposed information collection. Submit either electronic or written comments by February 18, 2014.

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

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 18, 2013 (78 FR 57391), FDA published a notice with a 60-day comment period to request comment on a proposed collection of information related to ''Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers.'' Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

We have received a request to extend the comment period for the proposed collection of information. The request noted that we intend to issue a draft guidance document further explaining the forms that are the subject of the collection of information and requested that the comment period for the proposed collection of information be extended to match the comment period that will be announced in a future notice requesting comments on such a draft guidance document. The requestor expected that a likely comment period for the draft guidance would be 60 days.

We have considered the request and are extending the comment period for the information collection for 90 days, until February 18, 2014. We believe that a 90-day extension allows adequate time for interested persons to submit comments without significantly delaying our submission of the proposed collection of information to OMB for review under the PRA. We are not granting the specific request to extend the comment period to match the date when we publish a notice of availability for a related draft guidance because we cannot say with certainty when that notice will publish. However, we expect to issue that notice in a timely manner such that we would announce a comment period until approximately February 18, 2014. In addition, we note that comments are welcome on guidance documents at any time (21 CFR 10.115(g)(5)).

II. Request for 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: November 13, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27537 Filed 11–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0878]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 18, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0330. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient (NDI)—21 CFR 190.6 (OMB Control Number 0910–0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains an NDI, a manufacturer or distributor of dietary supplements or of an NDI is to submit to us (as delegate for the Secretary of Health and Human Services) information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing an NDI will reasonably be expected to be safe. Part 190 (21 CFR part 190) implements these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing an NDI, or of an NDI, to submit to the Office of Nutrition, Labeling, and Dietary Supplements notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the name of the NDI, (3) a description of the dietary supplements that contain the NDI, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable us to monitor the introduction into the food supply of NDIs and dietary supplements that contain NDIs, in order to protect consumers from the introduction of unsafe dietary supplements into interstate commerce. We use the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing an NDI is in full compliance with the FD&C Act. We are currently developing an electronic means for submitting this information.

Description of Respondents: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement and dietary ingredient manufacturers, packagers and re-packagers, holders, labelers and re-labelers, distributors, warehouses, exporters, and importers.

In the **Federal Register** of August 26, 2013 (78 FR 52773), FDA published a 60-day notice requesting public comment on the proposed collection of information; two comments were received with one containing multiple comments. Some comments were outside the scope of the four collection of information topics being solicited and therefore will not be discussed in this document.

One comment suggested providing drop-down menus to facilitate data entry. FDA appreciates this suggestion and will continue to consider various configurations for submitting information in electronic form that are most effective and efficient for respondents. Another comment stated that FDA's estimate of 20 hours per notification is not accurate. The comment indicated that 40 to 60 hours were required to extract and summarize relevant information from the firm's files, and that an additional 20 to 40 hours was needed to format the information to meet NDI requirements. FDA deliberated over this comment, but believes that collecting and compiling data under applicable regulatory requirements for the premarket notification program places a minimal burden on respondents. As noted both in our August 26, 2013, notice and in this document, § 190.6(a) requires each manufacturer or distributor of an NDI, or dietary supplement containing an NDI, to submit notification of the basis for their conclusion that the supplement or ingredient will reasonably be expected to be safe. Because we are requesting only that information that the manufacturer or distributor should have already developed, we believe that 20 hours per submission is an appropriate burden estimate.

Both comments note that in the **Federal Register** of July 5, 2011 (76 FR 39111), FDA issued a draft guidance entitled ''Dietary Supplements: New Dietary Ingredient Notifications and Related Issues'' (available at *http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/DietarySupplements/ucm257563.htm*) and suggested that FDA underestimated the reporting burden of the notification procedures under § 190.6 because we failed to take into account the provisions of the draft guidance. FDA considered this response but submits that the notification procedure requirements set forth in its regulations at § 190.6 remain unchanged. The collection of information in this instant analysis is exclusive of the draft guidance and pertains only to the subject regulations. However, as stated in the notice of availability for the draft guidance, FDA does intend to publish a 60-day notice inviting comment on the information collection burden associated with that document and will carefully evaluate all comments it receives.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
190.6	55	1	55	20	1,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because we are requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing an NDI is in full compliance with the FD&C Act. In the past, commenters argued that our burden estimate is too low. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing an NDI, or of an NDI, to submit notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6 requests simply the extraction and summarization of the safety data that should have already been developed by the manufacturer or distributor. Thus, we estimate that extracting and summarizing the relevant

information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the FD&C Act will require a burden of approximately 20 hours of work per submission.

We estimate that 55 respondents will submit one premarket notification each and that it will take a respondent 20 hours to prepare the notification, for a total of 1,100 hours. The estimated number of premarket notifications and hours per response is an average based on our experience with notifications received during the last 3 years and information from firms that have submitted recent premarket notifications.

Dated: November 13, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27536 Filed 11–15–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 4–5, 2013.

Time: December 04, 2013, 12:30 p.m. to 5:45 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. Please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) for more information.

Place: National Institutes of Health, Rockledge II, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

Time: December 05, 2013, 8:30 a.m. to 12:45 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. Please check the meeting agenda at OBA Meetings Page (available at the following URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*) for more information.

Place: National Institutes of Health, Rockledge II, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 12, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–27455 Filed 11–15–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**.

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services.

LAST NAME	FIRST NAME
ETZINGER	MICHAEL
CLARK	WESTLEY
HENDRIKSSON	MARLA
DEL VECCHIO	PAOLO
ENOMOTO	KANA
DELPHIN-RITTMON	MIRIAM
HARDING	FRANCES
DELANY	PETER
BEADLE	MIRTHA
KADE	DARYL
POWER	KATHRYN
BENOR	DAVID
FLEMING	MARY

Michael Etzinger,

Executive Officer and Director, Office of Management, Technology and Operations.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2013–27423 Filed 11–15–13; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0047; OMB No. 1660–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the SalesForce Customer Relationship Management System.

DATES: Comments must be submitted on or before January 17, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0047. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Traci D. Crawford, Program Analyst, FEMA, Office of External Affairs, (202) 646–3164 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA Office of External Affairs, Public Affairs Division, is implementing the SalesForce Customer Relationship Management (CRM) system to improve the response to correspondences from individuals seeking information from a FEMA program office pursuant to Exec. Order No. 13411, which calls for improvements to the delivery of Federal disaster assistance by providing disaster survivors with ''prompt and efficient access to Federal disaster assistance, as well as information regarding assistance available from State and local government and private sector sources.'' The SalesForce CRM provides a centralized portal to manage frequently asked questions relating to Federal, State, local, and tribal information.

Collection of Information

Title: The SalesForce Customer Relationship Management System Web-form allowing an Individual to Submit Correspondence to FEMA.

OMB Number: 1660–NEW.

Type of Information Collection: New information collection.

FEMA Forms: None.

Abstract: FEMA correspondence teams respond to questions from individuals covering various topics. Depending on the topic searched, the CRM queries the database of pre-approved questions and answers. If the search result does not provide the desired answer, the citizen is provided a link to the web-form to submit their inquiry (i.e. question/comment) to the proper component (i.e. program office) for a response. In general, a citizen's inquiry may range from publications requests, how to apply for grants, or reimbursement criterion. The minimal collection of Personally Identifiable Information (PII) is necessary for FEMA correspondence teams to carry out their mission of responding to citizens who seek assistance.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, Tribal Government.

Number of Respondents: 25,000.

Number of Responses: 25,000.

Estimated Total Annual Burden Hours: 833 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, Tribal Government.	SalesForce /No Form ...	25,000	1	25,000	0.0333 (2 mins.)	833	$30.81	$25,664.73
Total	.....	25,000	.....	25,000	.....	833	.....	$25,664.73

• Note: The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $25,664.73. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $645,008.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 8, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27494 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–22–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0033; OMB No. 1660–0123]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 18, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Regional Catastrophic Preparedness Grant Program (RCPGP).

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0123.

Form Titles and Numbers: FEMA Form 089–19, RCPGP Investment Justification Template; FEMA Form 089–26, RCGCP (Sample) Detailed Project Plan Template; FEMA Form 089–17, RCPT Membership List.

Abstract: The RCPGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 1,762 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $88,240.96. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $33,963.52.

Dated: November 8, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27510 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0034; OMB No. 1660–0125]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 18, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Homeland Security Grant Program (HSGP).

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0125.

Form Titles and Numbers: FEMA Form 089–1, HSGP Investment Justification; FEMA Form 089–16, OPSG Operations Order Report; FEMA Form 089–20, OPSG Inventory of Operation Orders.

Abstract: The HSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

The Homeland Security Grant Program (HSGP) is a primary funding mechanism for building and sustaining national preparedness capabilities. HSGP is comprised of three separate grant programs: the State Homeland Security Program (SHSP), the Urban Areas Security Initiative (UASI), and the Operation Stonegarden (OPSG). Together, these grants fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration costs.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 322.

Estimated Total Annual Burden Hours: 333,502 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $12,719,764. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $2,617,570.

Dated: November 8, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27498 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0045; OMB No. 1660–0047]

Agency Information Collection Activities: Proposed Collection; Comment Request; Request for Federal Assistance Form—How To Process Mission Assignments in Federal Disaster Operations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the collection of information necessary to allow FEMA to support the needs of States during disaster situations through the use of other Federal agency resources.

DATES: Comments must be submitted on or before January 17, 2014.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0045. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Patricia Pritchett, Program Specialist, Response Directorate, Operations Division, National Response Coordination Center, Federal Emergency Management Agency, (202) 646–3411 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Under Section 653 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq), FEMA is authorized to provide assistance to States based on needs before, during and after a disaster has impacted the state. For a major disaster, the Stafford Act authorizes FEMA to direct any agency to utilize its existing authorities and resources in support of State and local assistance response and recovery efforts. *See* 42 U.S.C. 5170(a)(1). For an emergency, the Stafford Act authorizes FEMA to direct any agency to utilize its existing authorities and resources in support of State and local emergency assistance efforts. *See* 42 U.S.C. 5192(a)(1). This information collected explains which State(s) require assistance, what needs to be accomplished, details any resource shortfalls, and explains what assistance is required to meet these needs. Title 44 CFR 206.5 provides the mechanism by which FEMA collects the information necessary to determine what resources are needed and if a mission assignment is appropriate.

Collection of Information

Title: Request for Federal Assistance Form—How to Process Mission Assignments in Federal Disaster Operations.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0047.

FEMA Forms: FEMA Form 010–0–7, Resource Request Form; FEMA Form 010–0–8, Mission Assignment.

Abstract: If, during the course of a State's response to a disaster, the State determines that its capacity to respond exceeds its available resources, a request to FEMA for assistance can be made. This request documents how the response requirements exceed the capacity for the State to respond to the situation on its own and what type of assistance is required. FEMA reviews this information and can task other Federal Agencies with a mission assignment to assist the State in its response to the situation.

Affected Public: State, local or Tribal Government.

Number of Respondents: 10.

Number of Responses: 9,620.

Estimated Total Annual Burden Hours: 2,453 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, local or Tribal Government.	FEMA Form 010–0–7/ Resource Request Form.	10	640	6,400	20 minutes	2,133	$56.69	$120,919.77

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, local or Tribal Government.	FEMA Form 010–0–8/ Mission Assign-ment.	10	320	3,200	3 minutes	160	56.69	9,070.40
State, local or Tribal Government.	Training/No Form.	10	2	20	8 hours	160	56.69	9,070.40
Total	.....	10	.....	9,620	.....	2,453	.....	$139,060.57

• Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $139,060.57. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $36,994.20.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 8, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–27496 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0036.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 17, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: None.

Abstract: The Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes is used to document duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes. This declaration, which is completed by the ultimate consignee and submitted to CBP by the importer or the agent of the importer, is used to assist CBP personnel in determining whether the imported articles should be free of duty. It is provided for under 19 U.S.C. 1202,

HTSUS Subheading 9801.00.40, and 19 CFR 10.67(a)(3) which requires a declaration to Customs and Border Protection (CBP) stating that the articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 55.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 165.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 27.

Dated: November 13, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–27543 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Prior Disclosure

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0074.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 56242) on September 12, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 18, 2013 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Prior Disclosure.

OMB Number: 1651–0074.

Form Number: None.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3,500.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Response: 1 hour.

Dated: November 13, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–27547 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 27, 2013.

DATES: Effective Dates: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 27, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and

Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 37 Panagrossi Circle, East Haven, CT 06512, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*

Dated: October 30, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–27492 Filed 11–15–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–99]

30-Day Notice of Proposed Information Collection: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 18, 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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 10, 2013.

A. Overview of Information Collection

Title of Information Collection: Quality Control for Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–0203.

Type of Request: Revision of a currently approved.

Form Number: None.

Description of the need for the information and proposed use: The Department is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.3 million households covered by the Public Housing and Section 8 housing subsidies. The Quality Control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program officers are then responsible for designing and implementing corrective actions. In addition to providing current estimates of error, results will be compared with those from previous years' studies. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed. The first QC study was completed in 1996 and found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 from data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had decreased, probably because this information was increasingly subject to automated computational checks. HUD has initiated a program of corrective actions and increased monitoring since 2000 and recent studies of tenant certification and recertification actions showed significant error reductions in income and rent determinations. Future studies are planned on an annual basis, as required by legislation. Program monitoring and income matching policies being implemented may eliminate the need for an independent, statistically valid measure of program errors provided by the current study design, but such procedures have yet to be fully implemented and evaluated. The Improper Payments Act of 2002 requires that the Department report on the error measurements annually. This propose data collection approval request is for studies to be conducted in 2011, 2012, 2013 and 2014 of prior year certification and recertification actions.

Respondents (i.e. affected public): Recipients of Public Housing and Section 8 Housing Assistance subsidies.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: For each study, approximately 600 PHA/program sponsor staff will need to be asked about recertification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the total interview times are expected to be less than 40 minutes per PHA or project. Researchers will survey approximately 2,400 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but is estimated to require an average of about 50 minutes per interview. The time estimates

provided are based on the 2011 QC survey. The proposed surveys will continue to make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they reduce interview times. The software also provides for consistency check and ensures that all needed data have been collected, thereby reducing the need for the follow-up contacts.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: November 6, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–27504 Filed 11–15–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–06]

Second Allocation, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public of a second allocation of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2) for the purpose of assisting recovery in the most impacted and distressed areas identified in major disaster declarations due to Hurricane Sandy and other eligible events in calendar years 2011, 2012 and 2013. This allocation provides $5.1 billion primarily to assist Hurricane Sandy recovery as well as recovery from Hurricane Irene and Tropical Storm Lee. The Notice also establishes requirements governing the use of these funds.

DATES: Effective Date: November 25, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Allocation and Related Information
II. Use of Funds
III. Timely Expenditure
IV. Grant Amendment Process
V. Authority To Grant Waivers
VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements
VII. Mitigation and Resilience Methods, Policies, and Procedures
VIII. Catalog of Federal Domestic Assistance
IX. Finding of No Significant Impact
Appendix A: Allocation Methodology

I. Allocation and Related Information

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) made available $16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The law provides that funds shall be awarded directly to a State or unit of general local government (UGLG) (hereafter local government) at the discretion of the Secretary. Unless noted otherwise, the term ''grantee'' refers to any jurisdiction receiving a direct award from HUD under this Notice.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG–DR grants under the Appropriations Act to $15.18 billion. Through a **Federal Register** Notice published March 5, 2013, the Department allocated $5.4 billion for the areas most impacted by Hurricane Sandy (78 FR 14329). Subsequent notices allocated funds for major disasters occurring in 2011 and 2012 (excluding Hurricane Sandy) and a future notice will address funding for qualifying major disasters occurring in 2013.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD computes allocations based on the best available data that cover all the eligible affected areas. The initial allocation to Hurricane Sandy grantees was based on unmet housing and economic revitalization needs. The data used to calculate the allocation did not include unmet infrastructure restoration needs as damage estimates were preliminary at that time. As more data regarding unmet infrastructure needs are now available, this Notice provides the following Round 2 awards totaling $5.1 billion:

TABLE 1—HURRICANE SANDY ALLOCATIONS

Grantee	Second allocation	First allocation	Total
New York City	$1,447,000,000	$1,772,820,000	$3,219,820,000
New Jersey	1,463,000,000	1,829,520,000	3,292,520,000
New York State	2,097,000,000	1,713,960,000	3,810,960,000

TABLE 1—HURRICANE SANDY ALLOCATIONS—Continued

Grantee	Second allocation	First allocation	Total
Connecticut	66,000,000	71,820,000	137,820,000
Maryland	20,000,000	8,640,000	28,640,000
Rhode Island	16,000,000	3,240,000	19,240,000
Total	5,109,000,000	5,400,000,000	10,509,000,000

To ensure funds provided under this Notice address unmet needs within the ''most impacted and distressed'' counties, each local government receiving a direct award under this Notice must expend its entire CDBG–DR award within its jurisdiction (e.g., New York City must expend all funds within New York City). State grantees may expend funds in any county that received a Presidential disaster declaration in 2011, 2012, or 2013 subject to the limitations described in Table 2.

Table 2 identifies a minimum percentage that must be spent in the HUD-identified Hurricane Sandy affected Most Impacted and Distressed counties. The opportunity for certain grantees to expend 20 percent of their allocations outside the most impacted and distressed counties identified by HUD enables those grantees to respond to highly localized distress identified via their own data.

TABLE 2—MOST IMPACTED AND DISTRESSED COUNTIES WITHIN WHICH FUNDS MAY BE EXPENDED

Grantee	Counties from the following major declared disasters are eligible for CDBG–DR funds (FEMA declaration No.)	Hurricane Sandy most impacted and distressed counties	Minimum percentage that must be expended in Hurricane Sandy most impacted and distressed counties
New York City	All Counties	All Counties	100
New York	1957, 1993, 4020, 4031, 4085, 4111, 4129.	Nassau, Rockland, Suffolk, Westchester, and all Counties in New York City (Bronx, Kings, New York, Queens, Richmond).	80
New Jersey	1954, 4021, 4033, 4039, 4048, 4070, 4086.	Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, Union.	80
Connecticut	1958, 4023, 4046, 4087, 4106	Fairfield, New Haven	80
Rhode Island	4027, 4089, 4107	Washington	80
Maryland	4034, 4038, 4075, 4091	Somerset	80

This Notice builds upon the requirements of the **Federal Register** Notices published by the Department on March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578) and August 2, 2013 (78 FR 46999), referred to collectively in this Notice as the ''Prior Notices.'' The Prior Notices are available at:

http://www.gpo.gov/fdsys/pkg/FR-2013-03-05/pdf/2013-05170.pdf

http://www.gpo.gov/fdsys/pkg/FR-2013-04-19/pdf/2013-09228.pdf

http://www.gpo.gov/fdsys/pkg/FR-2013-08-02/pdf/2013-18643.pdf

Executive Order 13632, published at 77 FR 74341, established the Hurricane Sandy Rebuilding Task Force, to ensure government-wide and region-wide coordination to help communities as they are making decisions about long-term rebuilding and to develop a comprehensive rebuilding strategy. Section 5(b) of Executive Order 13632 requires that HUD, ''as appropriate and to the extent permitted by law, align [the Department's] relevant programs and authorities'' with the Hurricane Sandy Rebuilding Strategy (the Rebuilding Strategy). Accordingly, this Notice is further informed by both the Rebuilding Strategy released by the Task Force on August 19, 2013 and Rebuild by Design (RBD), an initiative of the Hurricane Sandy Rebuilding Task Force and HUD. RBD is aimed at addressing structural and environmental vulnerabilities that Hurricane Sandy exposed in communities throughout the region and developing fundable solutions to better protect residents from future disasters. The Rebuilding Strategy and information about RBD can be found, respectively, at:

http://portal.hud.gov/hudportal/documents/huddoc?id=HSRebuildingStrategy.pdf

http://www.rebuildbydesign.org/what-is-rebuild-by-design/

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster recovery related purposes. Consistent with the Rebuilding Strategy, it is essential to build back stronger and more resilient. This allocation provides additional funds to Sandy-impacted grantees to support investments in mitigation and resilience and directs grantees to undertake comprehensive planning to promote regional resilience as part of the recovery effort.

The Appropriations Act requires that prior to the obligation of CDBG–DR funds, a grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. In an Action Plan for Disaster Recovery (Action Plan), grantees must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act) or allowed by a waiver or alternative requirement published in this Notice and the prior Notices; and (2) respond to a disaster-related impact. HUD has previously approved an Action Plan for each grantee receiving an allocation of funds in this Notice. Grantees are now directed to submit a substantial Action Plan Amendment in order to access funds provided in this Notice. For more guidance on requirements for substantial Action Plan Amendments,

please see Sections IV and VI of this Notice.

As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other federal program when used to carry out an eligible CDBG–DR activity. However, pursuant to the requirements of the Appropriations Act, CDBG–DR funds may not be used for expenses reimbursable by, or for which funds are made available by FEMA or the United States Army Corps of Engineers (USACE).

Consistent with the allocation methodology in Appendix A of the Notice, the State of New York must either ensure that: (1) A portion of its allocation is used to address resiliency and local cost share requirements for damage to both the Metropolitan Transportation Authority infrastructure in New York City and the Port Authority of New York and New Jersey; or (2) must demonstrate that such resiliency needs and local cost share has otherwise been met. The State of New Jersey must undertake one of the same actions with regard to the Port Authority. New York City must review the methodology to inform an analysis to address the recovery and resilience needs of the New York City Housing Authority (NYCHA).

III. Timely Expenditure of Funds

The Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee and funds are obligated to a grantee upon HUD's signing of a grantee's CDBG–DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the deadline and that it desires to retain, the grantee must submit a letter to HUD not less than 30 days in advance justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. The Office of Management and Budget has provided HUD with authority to act on grantee waiver requests but grantees are cautioned that such waivers may not be approved. Approved waivers will be published in the **Federal Register**. Funds remaining in the grantee's line of credit at the time of its expenditure deadline will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD.

IV. Grant Amendment Process

To access funds allocated by this Notice grantees must submit a substantial Action Plan Amendment to their approved Action Plan. Any substantial Action Plan Amendment submitted after the effective date of this Notice is subject to the following requirements:

- Grantee consults with affected citizens, stakeholders, local governments and public housing authorities to determine updates to its needs assessment; in addition, grantee prepares a comprehensive risk analysis (see section VI(2)(d) of this Notice);
- Grantee amends its citizen participation plan to reflect the requirements of this Notice (e.g., new requirement for a public hearing);
- Grantee publishes a substantial amendment to its previously approved Action Plan for Disaster Recovery on the grantee's official Web site for no less than 30 calendar days and holds at least one public hearing to solicit public comment;
- Grantee responds to public comment and submits its substantial Action Plan Amendment to HUD (with any additional certifications required by this Notice) no later than 120 days after the effective date of this Notice;
- HUD reviews the substantial Action Plan Amendment within 60 days from date of receipt and approves the Amendment according to criteria identified in the Prior Notices and this Notice;
- HUD sends an Action Plan Amendment approval letter, revised grant conditions (may not be applicable to all grantees), and an amended unsigned grant agreement to the grantee. If the substantial Amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Amendment within 45 days of the notification letter;
- Grantee ensures that the HUD-approved substantial Action Plan Amendment (and updated Action Plan) is posted on its official Web site;
- Grantee signs and returns the grant agreement;
- HUD signs the grant agreement and revises the grantee's line of credit amount (this triggers the two year expenditure deadline for any funds obligated by this grant agreement);
- If it has not already done so, grantee enters the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submits it to HUD within the system;
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to *24 CFR part 58* (or paragraph A.20 under section VI of the March 5, 2013 Notice) and, as applicable, receives from HUD or the state an approved Request for Release of Funds and certification;
- Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan Amendment approval as provided for in paragraph (3)(g) of Section VI of this Notice; and
- Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update.

V. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD's obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the Notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. The following requirements apply only to the CDBG–DR funds appropriated in the Appropriations Act.

Grantees may request additional waivers and alternative requirements to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this Notice. Under the requirements of the Appropriations Act, regulatory waivers are effective five days after publication in the **Federal Register**.

1. *Incorporation of general requirements, waivers, alternative*

requirements, and statutory changes previously described. Grantees are advised that general requirements, waivers and alternative requirements provided for and subsequently clarified or modified in the Prior Notices, apply to all funds under this Notice, except as modified herein. These waivers and alternative requirements provide additional flexibility in program design and implementation to support resilient recovery following Hurricane Sandy, while also ensuring that statutory requirements unique to the Appropriations Act are met. Waivers or alternative requirements previously issued pursuant to specific grantee requests remain in effect under their initial terms.

2. *Action Plan for Disaster Recovery waiver and alternative requirement—Infrastructure Programs and Projects.* Grantees are advised that HUD will assess the adequacy of a grantee's response to each of the elements outlined in this subsection as a basis for the approval of a substantial Action Plan Amendment that includes infrastructure programs and projects. However, grantees need not resubmit responses to elements approved by HUD unless warranted by changing conditions or if project-specific analysis is required.

Section VI(A)(1) of the March 5, 2013 Notice (''Action Plan for Disaster Recovery waiver and alternative requirement''), as amended by the April 19, 2013 Notice, is modified to require:

a. *Applicability.* The following guidance and criteria are applicable to all infrastructure programs and projects in an Action Plan Amendment submitted to HUD after the effective date of this Notice. Infrastructure programs and projects funded pursuant to the Prior Notices and submitted in an Action Plan Amendment after the effective date of this Notice are also subject to these requirements. The following guidance and criteria are based on recommendations of the Rebuilding Strategy.

b. *Definition of an Infrastructure Project and Related Infrastructure Projects.*

(1) Infrastructure Project: For purposes of this Notice, an infrastructure project is defined as an activity, or a group of related activities, designed by the grantee to accomplish, in whole or in part, a specific objective related to critical infrastructure sectors such as energy, communications, water and wastewater systems, and transportation, as well as other support measures such as flood control. This definition is rooted in the implementing regulations of the National Environmental Policy Act (NEPA) at 40 CFR part 1508 and 24 CFR Part 58. Further, consistent with HUD's NEPA implementing requirements at 24 CFR 58.32(a), in responding to the requirements of this Notice, a grantee must group together and evaluate as a single infrastructure project all individual activities which are related to one another, either on a geographical or functional basis, or are logical parts of a composite of contemplated infrastructure-related actions.

(2) Related Infrastructure Project: Consistent with 40 CFR part 1508, *infrastructure projects* are ''related'' if they automatically trigger other projects or actions, cannot or will not proceed unless other projects or actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification.

c. *Impact and Unmet Needs Assessment.* The March 5, 2013 Notice required grantees to consult with affected citizens, stakeholders, local governments and public housing authorities to determine the impact of Hurricane Sandy and any unmet disaster recovery needs. Grantees are required to update their impact and unmet needs assessments to address infrastructure projects, or any other projects or activities not previously considered, but for which an unmet need has become apparent.

d. *Comprehensive Risk Analysis.* Each grantee must describe the science-based risk analysis it has or will employ to select, prioritize, implement, and maintain infrastructure projects or activities. At a minimum, the grantee's analysis must consider a broad range of information and best available data, including forward-looking analyses of risks to infrastructure sectors from climate change and other hazards, such as the Northeast United States Regional Climate Trends and Scenarios from the U.S. National Climate Assessment, the Sea Level Rise Tool for Sandy Recovery, or comparable peer-reviewed information, as well as the regional analysis developed in Phase 2 of the Rebuild by Design competition. The grantee should also consider costs and benefits of alternative investment strategies, including green infrastructure options. In addition, the grantee should include, to the extent feasible and appropriate, public health and safety impacts; direct and indirect economic impacts; social impacts; environmental impacts; cascading impacts and interdependencies within and across communities and infrastructure sectors; changes to climate and development patterns that could affect the project or surrounding communities; and impacts on and from other infrastructure systems. The analyses should, wherever possible, include both quantitative and qualitative measures and recognize the inherent uncertainty in predictive analysis. Grantees should work with other grantees to undertake regional risk baseline analyses, to improve consistency and cost-effectiveness.

The description of the comprehensive risk analysis must be sufficient for HUD to determine if the analysis meets the requirements of this Notice.

e. *Resilience Performance Standards.* Using the guidelines in the Rebuilding Strategy, grantees are required to identify and implement resilience performance standards that can be applied to each infrastructure project. The grantee must describe its plans for the development and application of resilience performance standards in any Action Plan Amendment submitted pursuant to this Notice.

f. *Green Infrastructure Projects or Activities.* In any Action Plan Amendment submitted pursuant to this Notice, each grantee must describe its process for the selection and design of green infrastructure projects or activities, and/or how selected projects or activities will incorporate green infrastructure components. For the purposes of this Notice, green infrastructure is defined as the integration of natural systems and processes, or engineered systems that mimic natural systems and processes, into investments in resilient infrastructure. Green infrastructure takes advantage of the services and natural defenses provided by land and water systems such as wetlands, natural areas, vegetation, sand dunes, and forests, while contributing to the health and quality of life of those in recovering communities.

In addition, the HCD Act authorizes public facilities activities that may include green infrastructure approaches that restore degraded or lost natural systems (e.g., wetlands and sand dunes ecosystems) and other shoreline areas to enhance storm protection and reap the many benefits that are provided by these systems. Protecting, retaining, and enhancing natural defenses should be considered as part of any coastal resilience strategy.

g. *Additional Requirements for Major Infrastructure Projects.* Action Plan Amendments that propose a major infrastructure project will not be approved unless the project meets the criteria of this Notice. HUD approval is required for each major infrastructure project with such projects defined as having a total cost of $50 million or

more (including at least $10 million of CDBG–DR funds), or benefits multiple counties. Additionally, two or more *related infrastructure projects* that have a combined total cost of $50 million or more (including at least $10 million of CDBG–DR funds) must be designated as major infrastructure projects. Projects encompassed by this paragraph are herein referred to as ''Covered Projects.'' Prior to funding a Covered Project, the grantee must incorporate each of the following elements into its Action Plan (i.e., via a substantial Action Plan Amendment):

(1) *Identification/Description.* A description of the Covered Project, including: Total project cost (illustrating both the CDBG–DR award as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA), CDBG eligibility (i.e., a citation to the HCD Act, applicable **Federal Register** notice, or a CDBG regulation), how it will meet a national objective, and the project's connection to Hurricane Sandy or other disasters cited in this Notice.

(2) *Use of Impact and Unmet Needs Assessment, the Comprehensive Risk Analysis and the Rebuild by Design Collaborative Risk Analysis.* A description of how the Covered Project is supported by the grantee's updated impact and unmet needs assessment, as well as the grantee's comprehensive risk analysis.

The grantee must describe how Covered Projects address the risks, gaps, and vulnerabilities in the region as identified by the comprehensive risk analysis. Grantees must also describe how the collaborative risk analysis developed through the Rebuild by Design initiative has been or will be used for the evaluation of Covered Projects.

(3) *Transparent and Inclusive Decision Processes.* A description of the transparent and inclusive processes that have been or will be used in the selection of a Covered Project(s), including accessible public hearings and other processes to advance the engagement of vulnerable populations. Grantees should demonstrate the sharing of decision criteria, the method of evaluating a project(s), and how all project stakeholders and interested parties were or are to be included to ensure transparency including, as appropriate, stakeholders and parties with an interest in environmental justice or accessibility.

(4) *Long-Term Efficacy and Fiscal Sustainability.* A description of how the grantee plans to monitor and evaluate the efficacy and sustainability of Covered Projects, including how it will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and/or alter funding sources if necessary.

(5) *Environmentally Sustainable and Innovative Investments.* A description of how the Covered Project(s) will align with the commitment expressed in the President's Climate Action Plan to ''identify and evaluate additional approaches to improve our natural defenses against extreme weather, protect biodiversity, and conserve natural resources in the face of a changing climate . . .''

h. *HUD Review of Covered Projects.* HUD may disapprove any Action Plan Amendment that proposes a Covered Project that does not meet the above criteria. In the course of reviewing an Action Plan Amendment, HUD will advise grantees of the deficiency of a Covered Project, and grantees must revise their plans accordingly to secure HUD approval. In making its decision, HUD will consider input from other relevant federal agencies. Each grantee is encouraged to consult with the Regional Coordination Working Group prior to the inclusion of a Covered Project in its Action Plan. HUD will also submit any Covered Project(s) identified in an Action Plan to the Regional Coordination Working Group for comment, and will consider the group's views prior to approval or disapproval of the project(s). Consistent with the Rebuilding Strategy Infrastructure Resilience Guidelines, the goal of this coordination effort is to promote a regional and cross-jurisdictional approach to resilience in which neighboring communities and states come together to: identify interdependencies among and across geography and infrastructure systems; compound individual investments towards shared goals; foster leadership; build capacity; and share information and best practices on infrastructure resilience.

3. *Action Plan for Disaster Recovery waiver and alternative requirement—Housing, Business Assistance, and General Requirements.* The Prior Notices are modified as follows:

a. *Public and assisted multifamily housing.* In the March 5, 2013 Notice, paragraph 1(a)(6) at 78 FR 14334, grantees were required to describe how funds would be used to address the rehabilitation, mitigation and new construction needs of each impacted Public Housing Authority (PHA) within its jurisdiction. In addition to this continuing requirement for PHAs, grantees under this Notice must now describe how they will address the rehabilitation, mitigation and new construction needs of other assisted multifamily housing developments impacted by the disaster, including HUD-assisted multifamily housing, low income housing tax credit (LIHTC) financed developments and other subsidized and tax credit-assisted affordable housing. For CDBG DR purposes, HUD-assisted multifamily housing continues to be defined by paragraph VI.A.1.a. (1) of the March 5, 2013 Notice at 78 FR 14332. Grantees should focus on protecting vulnerable residents and should consider measures to protect vital infrastructure (e.g., HVAC and electrical equipment) from flooding. Grantees are strongly encouraged to provide assistance to PHAs and other assisted and subsidized multifamily housing to help them elevate critical infrastructure and rebuild to model resilient building standards. Examples of such standards include the I-Codes developed by the International Code Council (ICC), the Insurance Institute for Business and Home Safety (IBHS) FORTIFIED home programs, and standards under development by the American National Standards Institute (ANSI) and the American Society of Civil Engineers (ASCE).

b. *Liquid Fuel Supply Chain Assistance.* The March 5, 2013 Notice, paragraph (d)(3) at 78 FR 14335, and paragraph 41 at 78 FR 14347, are amended, as necessary, to require the following: If a grantee provides CDBG–DR assistance to a small business in the liquid fuel supply chain, the award agreement must require the adoption of measures to mitigate impacts to the liquid fuel supply chain during future disasters. Risk mitigation measures should include processes or methods to ensure that fueling stations along critical evacuation routes remain functional, or quickly restore functionality, during power outages. This requirement applies to any small business in the liquid fuel supply chain that applies for CDBG–DR assistance after the effective date of this Notice. Grantees are reminded that pursuant to the March 5, 2013 Notice, grantees are prohibited from assisting businesses, including private utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121 and as further modified by this Notice. Please review the modified definition of a small business in paragraph 10 of this section of the Notice, particularly with regard to businesses covered by this section.

c. *Certification of proficient controls, processes and procedures.* The

Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Grantees submitted this certification pursuant to paragraph VI.E.42(q) of the March 5, 2013 Notice. In any Action Plan Amendment submitted after the effective date of this Notice, grantees are required to identify any material changes in its processes or procedures that could potentially impact the Secretary's or the grantee's prior certification. Grantees are advised that HUD may revisit any prior certification based on a review of an Action Plan Amendment submitted for this allocation of funds, as well as monitoring reports, audits by HUD's Office of the Inspector General, citizen complaints or other sources of information. As a result of HUD's review, the grantee may be required to submit additional documentation or take appropriate actions to sustain the certification.

d. *Certification of Resilience Standards.* Paragraph 42 at 78 FR 14347 of the March 5, 2013 Notice is amended to additionally require the grantee to certify that it will apply the resilience standards required in section VI (2)(e) of this Notice.

e. *Amending the Action Plan.* Paragraph 1(k) at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to submit a substantial Action Plan Amendment to HUD within 120 days of the effective date of this Notice. All Action Plan Amendments submitted after the effective date of this Notice must be prepared in accordance with the Prior Notices, as modified by this Notice. In addition, they must budget all, or a portion, of the funds allocated under this Notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG–DR award. The last date that grantees may submit an Action Plan Amendment is June 1, 2017 given that HUD must obligate all CDBG–DR funds not later than September 30, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

f. *HUD Review/Approval.* Consistent with the requirements of section 105(c) of the Cranston-Gonzalez National Affordable Housing Act, HUD will review each grantee's substantial Action Plan Amendment within 60 days from the date of receipt. This timeframe allows HUD's federal partners to view the Amendment and provide feedback. The Secretary may disapprove an Amendment if it is determined that it does not meet the requirements of the Prior Notices, as amended by this Notice. Once an Amendment is approved, HUD will issue a revised grant agreement to the grantee.

g. *Projection of expenditures and outcomes.* Paragraph 1(l) at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to amend its Action Plan to update its projection of expenditures and outcomes within 90 days of its Action Plan Amendment approval. The projections must be based on each quarter's expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. Projections should include the entire amount allocated by this Notice. Amending the Action Plan to accommodate these changes is not considered a substantial amendment. Guidance on preparing the projections is available on HUD's Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi/afwa.*

4. *Citizen participation waiver and alternative requirement.* Paragraph 3 at 78 FR 14338 of the March 5, 2013 Notice is modified to require grantees to publish substantial Action Plan Amendments for comment for 30 days prior to submission to HUD. Grantees are reminded of both the citizen participation requirements of that Notice and that HUD will monitor grantee compliance with those requirements and the alternative requirements of this Notice. In addition, this Notice establishes the requirement that at least one public hearing must held regarding any substantial Action Plan Amendment submitted after the effective date of this Notice, including any subsequent substantial amendment proposing or amending a Covered Project. Citizens and other stakeholders must have reasonable and timely access to these public hearings. Grantees are encouraged to conduct outreach to community groups, including those that serve minority populations, persons with limited English proficiency, and persons with disabilities, to encourage public attendance at the hearings and the submission of written comments concerning the Action Plan Amendment.

The grantee must continue to make the Action Plan, any amendments, and all performance reports available to the public on its Web site and on request and the grantee must make these documents available in a form accessible to persons with disabilities and persons of limited English proficiency, in accordance with the requirements of the March 5, 2013 Notice. Grantees are also encouraged to outreach to local nonprofit and civic organizations to disseminate substantial Action Plan Amendments submitted after the effective date of this Notice. During the term of the grant, the grantee must provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds. This objective should be achieved through effective use of the grantee's comprehensive Web site mandated by the Appropriations Act.

5. *Reimbursement of disaster recovery expenses.* In addition to pre-award requirements described in the March 5, 2013 Notice, grantees are subject to HUD's guidance issued July 30, 2013—''Guidance for Charging Pre-Award Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants'' (CPD Notice 2013–05). The CPD Notice is available on the CPD Disaster Recovery Web site at: *http://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_preaward_notice.pdf.*

6. *Duplication of benefits.* In addition to the requirements described in the March 5, 2013 Notice and the **Federal Register** Notice published November 16, 2011 (76 FR 71060), grantees receiving an allocation under this Notice are subject to HUD's guidance issued July 25, 2013—''Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance''. This guidance is available on the CPD Disaster Recovery Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program offices/administration/hudclips/notices/cpd*

7. *Eligibility of needs assessment and comprehensive risk analysis costs.* Grantees may use CDBG–DR funds to update their impact and unmet needs assessments and to develop the comprehensive risk analysis for infrastructure projects required by this Notice, consistent with the overall 20 percent limitation on the use of funds for planning, management and administrative costs.

8. *Eligibility of mold remediation costs.* Mold remediation is an eligible CDBG–DR rehabilitation activity (see the HCD Act, e.g., 42 U.S.C. 5305(a)(4)). Like other eligible activities, however, the activity encompassing mold remediation must address a direct or indirect impact caused by the disaster.

9. *Eligibility of public services and assistance to impacted households.* Grantees are reminded that households impacted by Hurricane Sandy and other qualifying events in 2011, 2012 and 2013, may be assisted as part of an eligible public service activity, subject to applicable CDBG regulations. Public service activities often address needs such as employment and training, child care, health, etc. Income payments, defined as a series of subsistence-type grant payments are made to an individual or family for items such as food, clothing, housing, or utilities, are generally ineligible for CDBG–DR assistance. However, per the CDBG regulations, grantees may make emergency grant payments for up to three consecutive months, to the provider of such items or services on behalf of an individual or family.

Additionally, as provided by the HCD Act, funds for public services activities may be used as a matching requirement, share, or contribution for any other federal program when used to carry out an eligible CDBG–DR activity. However, the activity must still meet a national objective and address all applicable CDBG cross-cutting requirements.

10. *Small business assistance—Modification of the alternative requirement to allow use of the Employer Identification Number (EIN).* In the March 5, 2013 Notice, the Department instituted an alternative requirement to the provisions at 42 U.S.C. 5305(a) prohibiting grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by Small Business Administration (SBA) at 13 CFR part 121 in order to target assistance to the businesses most responsible for driving local and regional economies. To determine whether an entity is a small business under the SBA definition, the grantee must take into account all of its affiliations. Typically, companies that have common ownership or management are considered affiliated. Per the SBA regulations, if businesses are affiliated, the number of jobs and revenue for those businesses must be aggregated. However, this could preclude a number of small businesses from receiving assistance—particularly in cases where one or more persons have control (i.e., ownership or management) of multiple small businesses that each have separate employer identification numbers (EIN), file separate tax returns, or even operate in different industries. Thus, HUD is modifying its definition of a small business: Businesses must continue to meet the SBA requirements at 13 CFR part 121 to be eligible for CDBG–DR assistance, except that the size standards will only apply to each EIN. Businesses that share common ownership or management may be eligible for CDBG–DR assistance, as long as each business with a unique EIN meets the applicable SBA size standards.

11. *Eligibility of Local Disaster Recovery Manager costs.* Consistent with the recommendation of the Rebuilding Strategy, grantees may use CDBG–DR funds to fill Local Disaster Recovery Manager (LDRM) positions, which are recommended by the National Disaster Recovery Framework. Additional information about the National Disaster Recovery Framework can be found at *http://www.fema.gov/long-term-recovery.* A LDRM may coordinate and manage the overall long-term recovery and redevelopment of a community, which includes the local administration and leveraging of multiple federally-funded projects and programs. A LDRM may also ensure that federal funds are used properly, and can help local governments address the need for long-term recovery coordination. For additional guidance, grantees should consult the CPD Notice ''Allocating Staff Costs between Program Administration Costs vs. Activity Delivery Costs in the Community Development Block Grant (CDBG) Program for Entitlement Grantees, Insular Areas, Non-Entitlement Counties in Hawaii, and Disaster Recovery Grants,'' at: *http://portal.hud.gov/huddoc/13-07cpdn.pdf.*

VII. Mitigation and Resilience Methods, Policies, and Procedures

Executive Order 13632 established the Hurricane Sandy Rebuilding Task Force. The Task Force was charged with identifying and working to remove obstacles to resilient rebuilding while taking into account existing and future risks and promoting the long-term sustainability of communities and ecosystems in the Sandy-affected region. The Task Force was further tasked with the development of a rebuilding strategy, which was released on August 19, 2013. The Executive Order directs HUD and other federal agencies, to the extent permitted by law, to align its relevant programs and authorities with the Rebuilding Strategy. The requirements set forth elsewhere in this Notice related to the selection of infrastructure projects and assistance to public and assisted multifamily housing reflect recommendations in the Rebuilding Strategy. To further address these recommendations, each grantee is strongly encouraged to incorporate the following components into its long term strategy for recovery from Hurricane Sandy, and to reflect the incorporation of these components, to the extent appropriate, in Action Plan Amendments.

1. *Regional environmental review and permitting; opportunities to expedite environmental review.* To expedite environmental review and permitting for critical infrastructure projects in the Sandy-affected region, and ensure that the most complex projects are delivered as efficiently as possible, the Rebuilding Strategy recommended and federal agencies have created the Sandy Regional Infrastructure Permitting and Review Team. This interagency body will help to ensure that projects or activities funded by the Appropriations Act, including CDBG–DR funds, will incorporate best practices and align federal and state processes where appropriate. It is expected that this coordination will lead to considerable savings in time and cost. Where appropriate, grantees should identify opportunities to expedite and improve other types of review processes, including historic review and other environmental analyses, through programmatic agreements or consultation, and through participation in the Regional Coordination Working group referenced in Section VI (2) of this Notice. HUD will be providing additional guidance on the operation of both the Permitting and Review Team and the Regional Coordination Working Group.

2. *Small business assistance.* To support small business recovery, grantees are encouraged to work with, and/or fund, small business assistance organizations that provide direct and consistent communication about disaster recovery resources to affected businesses. Selected organizations should have close relationships with local businesses and knowledge of their communities' needs and assets. In addition, grantees may support outreach efforts by a Community Development Finance Institution (CDFI) to small businesses in vulnerable communities.

3. *Energy Infrastructure.* Where necessary for recovery, CDBG–DR funds may be used to support programs, projects and activities to enhance the resiliency of energy infrastructure. Energy infrastructure includes

electricity transmission and distribution systems, including customer-owned generation where a significant portion of the generation is provided to the grid; and liquid and gaseous fuel distribution systems, both fixed and mobile. CDBG–DR recipients may use funds from this allocation for recovery investments that enhance the resiliency of energy infrastructure so as to limit potential damages and future disturbance and thus reduce the need for any future federal assistance under such an event. CDBG–DR funds may be used to support public-private partnerships to enhance the resiliency of privately-owned energy infrastructure, if the CDBG–DR assisted activities meet a national objective and can be demonstrated to relate to recovery from the direct or indirect effects of Hurricane Sandy or other eligible disasters under this Notice. Such projects may include microgrids or energy banks that may provide funds to entities consistent with all applicable requirements. Grantees should review DOE's report, ''U.S. Energy Sector Vulnerabilities to Climate Change and Extreme Weather,'' available at: *http://energy.gov/sites/prod/files/2013/07/f2/20130716-Energy%20Sector%20Vulnerabilities%20Report.pdf.* This report assesses vulnerabilities and provides guidance on developing a new approach for electric grid operations. In developing this component of its long term recovery plan, grantees are reminded that pursuant to the March 5, 2013 Notice, grantees are prohibited from assisting businesses that do not meet the definition of a small business as defined by SBA at 13 CFR part 121 and as further modified by this Notice. The March 5, 2013 Notice also prohibits assistance to private utilities.

4. *Providing jobs to local workforce.* In complying with Section 3 of the Housing and Urban Development Act of 1968, grantees are encouraged to continue efforts, through specialized skills training programs and other initiatives, to: (a) Employ very-low and low-income individuals; and (2) award contracts to local businesses, for Hurricane Sandy rebuilding and rebuilding from other eligible disasters under this Notice (e.g., mold remediation and construction (including elevation), ecosystem and habitat restoration, green infrastructure and coastal engineering).

5. *Project labor agreements.* Executive Order 13502 (Use of Project Labor Agreements for Federal Construction Projects) governs the use of project labor agreements for large-scale construction projects procured by the federal government. Similarly, grantees are encouraged to make use of Project Labor Agreements (PLAs) on large-scale construction projects in areas responding to disasters. Public housing authorities receiving CDBG–DR funds are governed by PLA requirements established by the Department's Office of Public and Indian Housing. Executive Order 13502 can be found at: *http://www.whitehouse.gov/the-press-office/executive-order-use-project-labor-agreementsfederal-construction-projects.*

6. *Mitigating future risk.* Grantees should include programs to implement voluntary buyout programs or elevate or otherwise flood-proof all structures that were impacted by the disaster (whether they are homes, businesses or utilities) to mitigate flood or sea level rise risk as indicated by relevant data sources. Reducing risk is essential to the economic well-being of communities and business and is therefore an essential part of any disaster recovery. Elevating at least one foot higher than the latest FEMA-issued base flood elevation or best available data (which includes advisory base flood elevation data), as required by the April 19, 2013 Notice has the added benefit of making flood insurance more affordable, particularly for economically disadvantaged home and business owners. The relevant data source and best available data under Executive Order 11988 is the latest FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps. Thus, in addition to the elevation requirements of the April 19, 2013 Notice, the Department strongly encourages grantees to elevate all structures impacted by the disaster (including housing), even those requiring repairs of low or moderate damage, in addition to those requiring substantial rehabilitation in response to Hurricane Sandy. FEMA maps are available here: *https://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1.* Additional Hurricane Sandy-specific information can be found here: *http://www.region2coastal.com/sandy/table.*

In addition, all rehabilitation projects should apply appropriate construction standards to mitigate risk, which may include: (a) Raising utilities or other mechanical devices above expected flood level; (b) wet flood proofing in a basement or other areas below ABFE/best available data + 1 foot; (c) using water resistant paints or other materials; or (d) dry flood proofing non-residential structures by strengthening walls, sealing openings, or using waterproof compounds or plastic sheeting on walls to keep water out.

Grantees are reminded of the mandatory mitigation requirements described in the April 19, 2013 Notice. That is, reconstruction and substantial improvement projects located in a floodplain, according to the best available data as defined above, must be designed using the base flood elevation plus one foot as the baseline standard for lowest floor elevation. If higher elevations are required by locally adopted code or standards, those higher standards apply.

In addition to the mandatory requirements of the April 19, 2013 Notice, grantees may also engage in voluntary risk mitigation measures. For example, instead of elevating non-residential structures that are not critical actions, as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that below the flood level, the structure is flood proofed to the level of the best available base flood data plus one foot. Flood proofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy, or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes.

In undertaking mitigation activities, grantees are also encouraged to include projects identified that are ultimately identified through the Rebuild by Design initiative referenced in Section I of this Notice.

7. *Leveraging funds and evidence-based strategies.* Grantees are encouraged, where appropriate, to leverage grant funds with public and private funding sources—including through infrastructure banks, Community Development Finance Institutions, and other intermediaries—and to make use of evidence-based strategies, including social impact bonds and other pay-for-success strategies.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section

102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: November 12, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

Appendix A—Allocation Methodology

The first allocation of $5.4 billion for Disaster Recovery needs associated with Sandy was based on preliminary data associated with unmet housing and business needs. The second allocation of $5.1 billion reflects updated housing and business unmet needs that have more complete information on insurance coverage, infrastructure data from FEMA, the Department of Transportation, and the Corps of Engineers.

This allocation is calculated is based on relative share of needs HUD has estimated are required to rebuild to a higher standard consistent with CDBG program requirements and the goals set forth in the Hurricane Sandy Rebuilding Strategy.

HUD calculates the cost to rebuild the most impacted and distressed homes, businesses, and infrastructure back to pre-disaster conditions. From this base calculation, HUD calculates both the amount not covered by insurance and other federal sources to rebuild back to pre-disaster conditions as well as a ''resiliency'' amount which is calculated at 30 percent of the total basic cost to rebuild back the most distressed homes, businesses, and infrastructure to pre-storm conditions. The repair unmet needs are combined with the resiliency needs to calculate the total severe unmet needs estimated to achieve long-term recovery. The formula allocation is made proportional to those calculated severe unmet needs.

Available Data

The ''best available'' data HUD staff have identified as being available to calculate unmet needs at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data on housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss;
- FEMA, Department of Transportation, and Corps of Engineers data on infrastructure; and
- Action Plans and supplemental data submitted by Sandy CDBG Grantees.

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

- Each of the FEMA inspected owner units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA inspected *real property* damage.
  - Minor-High: $3,000 to $7,999 of FEMA inspected *real property* damage.
  - Major-Low: $8,000 to $14,999 of FEMA inspected *real property* damage (if basement flooding only, damage categorization is capped at major-low).
  - Major-High: $15,000 to $28,800 of FEMA inspected *real property* damage and/or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $28,800 of FEMA inspected *real property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a real property FEMA inspected damage of $8,000 or flooding over 4 foot. Furthermore, a homeowner is determined to have unmet needs if they have received a FEMA grant to make home repairs. For homeowners with a FEMA grant and insurance for the covered event, HUD assumes that the unmet need ''gap'' is 20 percent of the difference between total damage and the FEMA grant.

- FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:
  - Minor-Low: Less than $1,000 of FEMA inspected *personal property* damage.
  - Minor-High: $1,000 to $1,999 of FEMA inspected *personal property* damage.
  - Major-Low: $2,000 to $3,499 of FEMA inspected *personal property* damage (if basement flooding only, damage categorization is capped at major-low).
  - Major-High: $3,500 to $7,499 of FEMA inspected *personal property* damage or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $7,500 of FEMA inspected *personal property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of ''most impacted'' in this legislative language, homes are determined to have a high level of damage if they have damage of ''major-low'' or higher. That is, they have a FEMA personal property damage assessment of $2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of $30,000 or less. Units are occupied by a tenant with income less than $30,000 are used to calculate likely unmet needs for affordable rental housing. For those units occupied by tenants with incomes under $30,000, HUD estimates unmet needs as 75 percent of the estimated repair cost.

- The median cost to fully repair a home for a specific disaster *to code* within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

Calculating Unmet Infrastructure Needs

- To proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the state match requirement. This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and state match requirement. Those activities are categories: C-Roads and Bridges; D-Water Control Facilities; E-Public Buildings; F-Public Utilities; and G-Recreational-Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are sub-allocated to New York City from the New York State total based on the distribution of initial project-level estimates obtained from FEMA.

For the second round of CDBG–DR funding for Sandy recovery, HUD included three additional sources of information:

1. US Army Corps of Engineers (USACE) Infrastructure Resilience Coordination. Many USACE Sandy projects require very high local cost shares. However, Federal requirements only allow grantees to no more than $250,000 of CDBG–DR funding towards local match requirements for these projects. As such, this calculation only includes $250,000 per USACE project where local match is higher than that amount.

2. DOT, Federal Highway Administration (FHWA) Sandy Recovery Grants—Emergency

Relief (ER). We include an estimate of the local cost share from this program. To calculate this estimate, we only include 20% of non-quick release Sandy ER project estimates as of July 2013.

3. DOT, Federal Transit Administration (FTA) Transit Emergency Relief (ER). We include the 10% local cost share for these transit projects. Note, since much of the New York City transit damage is owned by a state organization, the Metropolitan Transportation Authority, New York State receives the vast majority of need from this grant. Also note that the State of New Jersey receives 66% of the local match requirement from the Port Authority's match requirement; New York State receives 34% of the Authority's match requirement.

Calculating Economic Revitalization Needs

- Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster that content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160) * calculated unmet real content loss.
- Because applications denied for poor credit or income are the most likely measure of needs requiring the type of assistance available with CDBG–DR funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as severe unmet needs. Only properties with total real estate and content loss in excess of $30,000 are considered severe damage for purposes of identifying the most impacted areas.

○ Category 1: real estate + content loss = below 12,000

○ Category 2: real estate + content loss = 12,000 – 30,000

○ Category 3: real estate + content loss = 30,000 – 65,000

○ Category 4: real estate + content loss = 65,000 – 150,000

○ Category 5: real estate + content loss = above 150,000

- To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage *Resiliency Needs.*

CDBG Disaster Recovery Funds are often used to not only support rebuilding to pre-storm conditions, but also to build back much stronger. For Sandy, HUD has required that grantees use their funds in a way that results in rebuilding back stronger so that future storms do less damage and recovery can happen faster. To calculate these resiliency costs, HUD multiplied it estimates of total repair costs for seriously damaged homes, small businesses, and infrastructure by 30 percent. Total repair costs are the repair costs including costs covered by insurance, SBA, FEMA, and other federal agencies. The resiliency estimate at 30 percent of damage is intended to reflect some of the unmet needs associated with building to higher standards such as elevating homes, voluntary buyouts, hardening, and other costs in excess of normal repair costs. Data on damage to public housing for purpose of calculating resiliency need was based on damage estimates from both FEMA and HUD's Office of Public and Indian Housing.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5738–N–01]

Statutorily Mandated Designation of Difficult Development Areas for 2014

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice designates ''Difficult Development Areas'' (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (IRC). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually. In addition to announcing the 2014 DDA designations, this notice announces a change in the designation methodology for metropolitan DDAs, beginning with the 2016 designations. The revised methodology will use Small Area Fair Market Rents (SAFMRs), rather than metropolitan-area Fair Market Rents (FMRs), for designating metropolitan DDAs and was originally described in a notice published in the **Federal Register** on Thursday, October 27, 2011.

The designations of ''Qualified Census Tracts'' (QCTs) under IRC Section 42, published on April 20, 2012, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, at 451 Seventh Street SW., Room 8234, Washington, DC 20410–6000; telephone number 202–402–5878 or email address *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number 202–622–3040, fax number 202–622–4753. For questions about the ''HUB Zones'' program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, U.S. Small Business Administration, at 409 Third Street SW., Suite 8800, Washington, DC 20416; telephone number 202–205–8885, fax number 202–205–7167, or send an email to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments, at 202–708–8339. (The previous are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800–245–2691 (this is a toll-free number) for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available on the Internet at: *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION: This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2013 Fair Market Rents (FMRs), FY2013 income limits, and 2010 Census population counts.

This notice also announces the adoption of a revised methodology, beginning with the 2016 metropolitan DDA designations, which will be the first to rely on the use of Small Area FMRs, estimated at the ZIP-code level and based on the relationship of ZIP-code rents to metropolitan-area rents, as the housing cost component of the DDA formula, rather than metropolitan-area FMRs. This revised methodology was first described in a **Federal Register** notice published on October 27, 2011 (76 FR 66741), entitled ''Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2012.''

2010 Census, 2000 Census, and Metropolitan Area Definitions

Data from the 2010 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 10–02 on December 1, 2009. FY2013 FMRs and FY2013 income limits used to designate DDAs are based on these Metropolitan

Statistical Area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the IRC (26 U.S.C. 42), including the LIHTC found at Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI) or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (i.e., 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)) or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in IRC Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Explanation of HUD Designation Methodology

A. 2014 Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used the 2010 Census population for metropolitan and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 10–02 on December 1, 2009, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2013 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and metropolitan FMRs based on the Final FY2013 FMRs used for the Housing Choice Voucher (HCV) program.

In formulating the FY2013 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of

the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census based 40th-percentile recent-mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2013 FMR areas and FMRs are available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr13*. Complete details on HUD's process for determining FY2013 income limits are available at *http://www.huduser.org/portal/datasets/il/il13/index.html*.)

HUD's unit of analysis for designating metropolitan DDAs consists of: Entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each metropolitan HMFA and each nonmetropolitan county, HUD calculated a ratio. HUD used the final FY2013 two-bedroom FMR and the FY2013 four-person VLIL for this calculation.

a. The numerator of the ratio, representing the development cost of housing, was the area's final FY2013 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted an FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 76 FR 52058), HUD used the 40th-percentile rent to ensure nationwide consistency of comparisons.

b. The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2010 Census Bureau population of all metropolitan areas and all nonmetropolitan areas.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas. The cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the U.S. Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 10–02, defining metropolitan areas:

> ''OMB establishes and maintains the definitions of Metropolitan . . . Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions[.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan . . . Statistical Areas.''

Following OMB guidance, the estimation procedure for the FY2013 FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions in order to separate subparts of these areas in cases where FMRs (and, in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the FMR and income limit estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea FMRs within MSAs based on the boundaries of ''Old FMR Areas'' (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include the June 30, 1999, OMB definitions of MSAs and Primary MSAs (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as

nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs and Income Limits when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census base AMGI). MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HMFAs to distinguish such areas from OMB's official definition of MSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated metropolitan DDAs are included in the list of DDAs.

Future Designations

HUD will designate metropolitan DDAs according to current policy for 2015. Beginning with the 2016 metropolitan area designations, HUD will use SAFMRs defined at the ZIP Code level within metropolitan areas as the measure of ''construction, land, and utility costs relative to area median gross income'' rather than FMRs established for HMFAs. In general, HUD estimates SAFMRs by multiplying the ratio of ZIP–code area to metropolitan-area median gross rent by the metropolitan-area FMRs (a complete description of how SAFMRs are estimated is available at *http://www.huduser.org/portal/datasets/fmr/fmr2013f/FY13_SAFMR_Notice.pdf.*

HUD's unit of analysis for designating metropolitan ZIP Code level small DDAs (SDDAs) will consist of Census-defined 5-digit ZIP Code Tabulation Areas (ZCTAs) that closely correspond to U.S. Postal Service-established 5-digit ZIP codes. In cases where ZCTAs span metropolitan area boundaries, the ZCTA will be separated into two areas in order to calculate the SAFMR. Similarly, ZCTAs located on the boundary of a metropolitan and nonmetropolitan area will be split since nonmetropolitan DDAs will be designated separately at the full county level. As in current DDA policy, nonmetropolitan counties would not be broken along ZCTA or any other lines under the SDDA policy. ZCTAs that span more than one metropolitan CBSA would have different FMRs in each CBSA as they do under current metropolitan FMR policy, so that the part of a ZCTA in one metropolitan area may be a DDA while the other part of a ZCTA in another metropolitan area (or nonmetropolitan county) is not. Nonmetropolitan DDAs will continue to be designated by nonmetropolitan county or county equivalent area.

HUD is providing, for reference purposes only, the list of ZIP codes that would qualify as SDDAs in 2014 if this methodology were in place.[1] The hypothetical 2014 SDDAs rely on FY2013 SAFMRs that are based on the FY2013 metropolitan FMRs and 2006–2010 American Community Survey (ACS) ZIP code median rent data to estimate the intrametropolitan rent relationships among ZCTAs. HUD will update the hypothetical SDDAs in 2015 to account for changes in metropolitan-level FMRs and VLILs, and will update the metropolitan VLILs and the metropolitan component of the SAFMRs for purposes of designating SDDAs for 2016. The 2017 SDDAs will remain unchanged from the 2016 SDDAs. For 2018, SDDAs will be redesignated using updated rent relationships from the 2011–2015 ACS and to incorporate updated metropolitan area definitions. Thereafter, HUD will redesignate SDDAs every 5 years, as established for QCT designation.

The procedure used in making 2014 hypothetical SDDA calculations follows:

1. For each metropolitan ZCTA, a ratio was calculated using the final FY2013 two-bedroom SAFMR and the FY2013 four-person VLIL.[2]

a. The numerator of the ratio, representing the development cost of housing, was the area's final FY2013 SAFMR. In general, the SAFMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 76 FR 52058), SAFMRs are calculated based on the 40th percentile rents because ZCTAs are too small to meet the regulatory requirements for 50th percentile FMR status.

b. The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent-of-AMGI base).

2. The ratios of the SAFMR to the LIHTC income-based rent limit were arrayed in descending order.

3. The hypothetical SDDAs are those with the highest ratios cumulative to 20 percent of the 2010 population of all metropolitan ZCTAs.

Effective Date

The 2014 lists of DDAs are effective:

(1) for allocations of credit after December 31, 2013; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2013.

If an area is not on a subsequent list of DDAs, the 2014 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service or (b) the bonds were issued.

[1] Hypothetical 2014 SDDAs, illustrating the methodology, are available at *http://qct.huduser.org/.*

[2] Note that the VLIL is measured at the metropolitan level, while the SAFMR is at the ZCTA level.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in the project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of the U.S. Department of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the U.S. Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the U.S. Census Bureau; and to establish the effective dates of such lists. The Secretary of the U.S. Treasury Department, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

The 2013 designations of QCTs under IRC Section 42 published April 20, 2012 (77 FR 23735) remain in effect. The above language regarding 2014 and subsequent designations of DDAs also applies to the designations of QCTs published April 20, 2012, and to subsequent designations of QCTs.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2014 DDA that is not a designated DDA in 2015. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2014. Credits are allocated to Project A on October 30, 2015. Project A is eligible for the increase in basis accorded a project in a 2014 DDA because the application was filed before January 1, 2015 (the assumed effective date for the 2015 DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2014 DDA that is not a designated DDA in 2015 or 2016. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2014. Credits are allocated to Project B on March 30, 2016. Project B is NOT eligible for the increase in basis accorded a project in a 2014 DDA because, although the application for an allocation of tax credits was filed before January 1, 2015 (the assumed effective date of the 2015 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2014 DDA that was not a DDA in 2013. Project C was placed in service on November 15, 2013. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2014. The bonds that will support the permanent financing of Project C are issued on September 30, 2014. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2014 DDA, because the project was placed in service before January 1, 2014.

(Case D) Project D is located in an area that is a DDA in 2014, but is not a DDA in 2015. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2014. Bonds are issued for Project D on April 30, 2015, but Project D is not placed in service until January 30, 2016. Project D is eligible for the increase in basis available to projects located in 2014 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2015, within the 365-day period after a complete application for tax-exempt bond financing was filed; (2) the application was filed during a time when the location of Project D was in a DDA; and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2014 DDA that is not a designated DDA in 2015. The first phase of Project E received an allocation of credits in 2014, pursuant to an application filed March 15, 2014, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2015. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2015. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2014 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2014 DDA that is not a designated DDA in 2015. The first phase of Project F received an allocation of credits in 2014, pursuant to an application filed March 15, 2014, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2016. Credits are allocated to the second phase of Project F on October 30, 2016. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, not eligible for the increase in basis accorded a project in a 2014 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the

year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of Section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the IRC, as amended, for use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: November 11, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–27505 Filed 11–15–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0012; OMB Control Number 1014–0022; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: General; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will resubmit to the Office of Management and Budget (OMB) for review and approval. The resubmission of this information collection request (ICR) is necessary to include a form that we developed to clarify and facilitate submission of certain voluntary paperwork requirements in the regulations under Subpart A, General. The new form is BSEE–0011 and entails no additional information collection burden to that already approved by OMB for the Subpart A regulations.

DATES: You must submit comments by January 17, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email cheryl.blundon@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Cheryl Blundon; 381 Elden Street HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0022 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart A, General.

OMB Control Number: 1014–0022.

Form(s): BSEE–0011.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

These authorities and responsibilities are among those delegated to the Bureau of Safety and Environmental Enforcement (BSEE). The regulations at 30 CFR 250, Subpart A, concern the general regulatory requirements of the oil, gas, and sulphur operations on the OCS. This specific collection pertains to a new form, BSEE–0011, iSEE, Internet-Based Safety and Environmental Enforcement Reporting System, that was created to clarify what information is needed when someone reports an apparent violation. Regulations governing reports and investigations of possible violations are covered under § 250.193 and are for the most part,

(a) Any person may report to BSEE any hazardous or unsafe working condition on any facility engaged in OCS activities, and any possible violation or failure to comply with:

(1) Any provision of the Act,

(2) any provision of a lease, approved plan, or permit issued under the Act,

(3) any provision of any regulation or order issued under the Act, or

(4) any other Federal law relating to safety of offshore oil and gas operations.

(b) To make a report under this section, a person is not required to know whether any legal requirement listed in (a) has been violated.

(c) When BSEE receives a report of a possible violation, or when a BSEE employee detects a possible violation, BSEE will investigate according to BSEE procedures.

Regulations at 30 CFR 250, Subpart A, implement these statutory requirements. We use the information to investigate potential violations related to OCS activities.

BSEE developed a new form that respondents must use to submit certain information collection requirements under § 250.193. This form entails no additional burden as it only clarifies and facilitates the submission of the currently approved information collection requirements to which the form pertains. This resubmitted ICR is revised to only include the new Form BSEE–0011, iSEE, Internet-Based Safety and Environmental Enforcement Reporting System. No burden hours have been changed from the currently OMB approved collection. The information on BSEE–0011 is as follows: The first 4 parts of the form are for the purposes of asking follow-up questions if necessary—First and Last Name, Email Address, Phone number.

—The Category of Information section is used to specify what type of potential violation is being reported so that it can be routed internally to the appropriate BSEE personnel.

—The Region drop down menu is used to specify which region the potential violation occurred in so that it can be routed internally to the appropriate BSEE personnel.

—The Location Information provides BSEE with the ability to locate (using various data options as entered by the reporting party) where the potential violation took place. We request, Company Name, Area Block, Lease Number, Production Facility Name, Drilling Rig Name, GPS Coordinate Latitude and Longitude, Other, if this information is known.

—Date of Offense—self-explanatory.

—Detailed Description of Problem or Event—self-explanatory.

We will protect personally identifiable information about individuals according to the *Privacy Act* (5 U.S.C. 552a) and DOI's implementing regulations (43 CFR 2). We will also protect proprietary information under the *Freedom of Information Act* (5 U.S.C. 552), DOI's implementing regulations (43 CFR 2); as well as 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR 252, *OCS Oil and Gas Information Program.*

Frequency: On occasion.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees, operators and/or the general public.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this one requirement is 9 hours and continues to remain the same in this request. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart A	Reporting or recordkeeping requirement	Hour burden
193; Form BSEE–0011	Report apparent violations or non-compliance	1.5

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

The form BSEE–0011 is as follows:

BILLING CODE 4310–22–P

U.S. DEPARTMENT OF THE INTERIOR
Bureau of Safety and Environmental Enforcement

OMB Control No. 1014-xxxx
OMB Expiration Date: xx/xx/xxxx

iSEE
Internet-Based Safety and Environmental Enforcement Reporting System

Please provide as much information as you can about the suspected violation or noncompliance as well as the location. The iSEE does not require you to provide personal information. You can remain anonymous. However, if you provide contact information we can contact you back to ensure there is enough detail in your report to enable BSEE to take appropriate action.

Last Name: _____ **First Name:** _____

Email Address: _____ **Phone Number:** _____

Category of Information being reported:

☐ **Safety of Personnel/Property** ☐ **Environmental** ☐ **Marine Trash and Debris** ☐ **Injured or Dead Protected Species** ☐ **Discovery of Shipwreck** ☐ **Other** _____
_____

Region: ☐ **Gulf of Mexico** ☐ **Pacific** ☐ **Alaska/Artic**

Location Information if Known: Company Name:
_____

Area Block: _____ **Lease Number:** _____ **Production Facility Name:** _____

Drilling Rig Name: _____

GPS Coordination Latitude and Longitude: _____

Date of Offense: _____ **Other:** _____

REPORT: Violations of Lease Stipulations; Noncompliance with environmental mitigation measures; Noncompliance with conditions of approval on a permit; Noncompliance with NPDES permits. **Examples:** Bypassing oil spill prevention equipment; Disabling required safety equipment; etc.

Please describe in detail the problem or event:

DO NOT REPORT:

Emergencies and other sudden threats to public health, such as: Accident/Injuries/Deaths; Oil/chemical spills

Report an incident using BSEE Incident Reporting http://bsee.gov/Inspection-and-Enforcement/Accidents-and-Incidents/Reporting.aspx

Report an oil spill or chemical discharge online to the National Response Center http://www.nrc.uscg.mil/ or call 1-800-424-8802.

PRIVACY ACT STATEMENT: The iSEE Reporting System website is a free service that provides the ability for the electronic reporting of suspected VIOLATIONS of, or NONCOMPLIANCE with, any and all safety or environmentally-related laws or regulations, as well as any VIOLATIONS of or NONCOMPLIANCE with any associated lease, plan, or permit requirements that occur offshore. All requested personal information on the violation form is voluntary; however, some personal information may be necessary in order to contact you if an investigation takes place. Any information provided on the violation form will be used to aid in the investigation of suspected VIOLATIONS of, or NONCOMPLIANCE with, any and all safety or environmentally-related laws or regulations, as well as any VIOLATIONS of or NONCOMPLIANCE with any associated lease, plan, or permit requirements that occur offshore. The BSEE will not share personal information provided with third parties for any reason. Please review the BSEE Privacy Policy for how information is handled: http://www.bsee.gov/Privacy-BSEE/.

Paperwork Reduction Act of 1995 (PRA) Statement: The PRA (44 U.S.C. 3501 *et seq.*) requires us to inform you that BSEE collects this information to ensure that facility management is knowledgeable of the incident of noncompliance issued; corrective action is taken in a reasonable period of time; and for component or facility shut-in enforcement actions, that the identified component or facility is not returned to operation without the prior notice to the appropriate BSEE office. Responses are mandatory (43 U.S.C. 1331 *et seq.*). No proprietary information is collected. An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for this form is estimated to average 1.5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. You may direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Bureau of Safety and Environmental Enforcement, 381 Elden Street, Herndon, VA 20170.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–27531 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–VH–C

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0010; OMB Control Number 1014–0012; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act; Proposed Collection; Comment Request

ACTION: 60-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under 30 Part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

DATES: You must submit comments by January 17, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.gov.* Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0012 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch at (703) 787–1605 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

OMB Control Number: 1014–0012.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1334(f)(1) states ''Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the Outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles: (A) The pipeline

must provide open and nondiscriminatory access to both owner and non-owner shippers.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Regulations at §§ 291.106(b) and 108 require a nonrefundable processing fee of $7,500 that a shipper must pay when filing a complaint to BSEE. Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients.

These authorities and responsibilities are among those delegated to BSEE; and 30 CFR Part 291 implements these statutory requirements. These regulations concern open and nondiscriminatory access to pipelines, and are the subject of this collection.

The BSEE will use the submitted information to initiate a more detailed investigation into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. Informal resolution of the complaint is an option via a hotline or alternative dispute resolution. The BSEE may request additional information upon completion of the initial investigation.

Commercial or financial information submitted to the Department of the Interior relative to minerals removed from the Federal OCS may be proprietary. The BSEE will protect information considered proprietary and will not disclose documents exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). The BSEE will protect personally identifiable information about individuals according to the Privacy Act (5 U.S.C. 552a) and DOI's implementing regulations (43 CFR part 2). No items of a sensitive nature are collected. Responses to this ICR are required to obtain and retain a benefit, or are voluntary.

Frequency: On occasion.

Description of Respondents: Shippers who do business on the OCS and companies that pay royalties on the OCS.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 51 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 291	Reporting & recordkeeping requirement	Hour burden
		Non-hour cost burden
105, 106, 108, 109, 111	Submit complaint (with fee) to BSEE and affected parties. Request confidential treatment and respond to BSEE decision.	50
		$7,500 processing fee
106(b), 109	Request waiver or reduction of fee	1
104(b), 107, 111	Submit response to a complaint. Request confidential treatment and respond to BSEE decision.	Information that is required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4).
110	Submit required information for BSEE to make a decision.	
114, 115(a)	Submit appeal on BSEE final decision.	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: The currently OMB approved non-hour cost burdens total $7,500. We have identified one non-hour cost burden for this collection. The BSEE requires that shippers pay a nonrefundable fee of $7,500 for a complaint submitted to BSEE. We have not identified any other non-hour cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

BSEE Information Collection Clearance Officer: Cheryl Blundon (703) 787–1607.

Dated: November 7, 2013.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2013–27532 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N270; FXRS85550300000–XXX–FF03R04000]

Draft Long Range Transportation Plan for U.S. Fish and Wildlife Service Lands in the Midwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft long range transportation plan for public review and comment. The Draft Long Range Transportation Plan outlines a strategy for improving and maintaining transportation assets that provide access to Service-managed lands in the Midwest Region (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin) over the next 20 years.

DATES: We must receive written comments on or before December 18, 2013.

ADDRESSES: *Document Review:* If you wish to review the draft plan, you may obtain a copy by visiting our Web site at *http://www.fws.gov/midwest/planning/currentplans.html.*

Alternatively, you may contact Brandon Jutz, Regional Transportation Coordinator, Midwest Region, U.S. Fish and Wildlife Service, 5600 American Boulevard West, Suite 990, Bloomington, MN (612–713–5407).

Submitting Comments: If you wish to comment on the plan, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Regional Transportation Coordinator, at the above address.
- *Hand-delivery:* Regional Transportation Coordinator, at the above address.
- *Fax:* 612–713–5288.
- *Email: Brandon_Jutz@fws.gov.*

For additional information about submitting comments, see the ''Public Availability of Comments'' section below.

FOR FURTHER INFORMATION CONTACT: Brandon Jutz, at the above address, phone number, or email.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we make the Draft LRTP for the Midwest Region of the U.S. Fish and Wildlife Service available for public review and comment. When finalized, the LRTP will apply to Service-managed lands in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Background

The Moving Ahead for Progress in the 21st Century Act (Map-21) requires all Federal land management agencies to conduct long-range transportation planning in a manner that is consistent with metropolitan planning organization and State departments of transportation planning. This LRTP was initiated within the Service to achieve the following:

- Establish a defensible structure for sound transportation planning and decision-making.
- Establish a vision, mission, goals, and objectives for transportation planning in the Service's Midwest Region.
- Implement coordinated and cooperative transportation partnerships in an effort to improve the Service's transportation infrastructure.
- Bring the Service into compliance with the Moving Ahead for Progress in the 21st Century Act (MAP–21), which requires all Federal land management agencies (FLMA) to conduct long-range transportation planning in a manner that is consistent with metropolitan planning organization (MPO) and State department of transportation (DOT) planning.
- Integrate transportation planning and funding for wildlife refuges and fish hatcheries into existing and future Service management plans and strategies—e.g., comprehensive conservation plans (CCPs) and comprehensive hatchery management plans (CHMPs).
- Increase awareness of Alternative Transportation Systems (ATS) and associated benefits.
- Develop best management practices (BMP) for transportation improvements on Service lands.
- Serve as a pilot project for the implementation of a region-level transportation planning process within the Service.

LRTP Mission, Goals, and Objectives

Through a collaborative effort, the Refuge and Fisheries Programs, in cooperation with the planning and visitor services programs within the Service's Midwest Region, have contributed to defining the mission, goals, and objectives presented in this document. The resulting mission, goals, and objectives are intended to provide a systematic approach to guide the process for evaluating and selecting transportation improvement for the Service lands in the Midwest Region. These guiding principles have shaped the development, conclusions, and recommendations of this LRTP.

Mission

To support the Service's mission by connecting people to fish, wildlife, and their habitats through strategic implementation of transportation programs.

Goals and Objectives

This long-range transportation plan has six categories of goals: Resource protection, safety and condition, welcome and orientation, planning, partnerships, and sustainability. Under each goal, we present distinct objectives that move us to the goal.

- Natural Resource Protection: Ensure that the transportation program helps to conserve and enhance fish, wildlife, and plant resources and their habitats.

Objective 1: Identify, research, and adopt BMPs for planning, design, construction, and maintenance that mitigate impacts of transportation.

Objective 2: Reduce transportation-related conflicts with fish and wildlife corridors on or adjacent to Service lands.

- Safety and Conditions: Provide a safe and reliable transportation network to and within Service lands.

Objective 1: Identify and reduce safety problems and modal conflicts to and within Service lands.

Objective 2: Ensure that mission-critical transportation assets are maintained in ''good'' condition.

- Welcome and Orientation: Develop and maintain a transportation network that enhances the welcoming and orienting experience of visitors.

Objective 1: Provide public information to enable visitors to easily get to refuges and hatcheries and to use their sites.

Objective 2: Engage the visitors with compelling information so he/she has a better understanding of the purpose of wildlife conservation and enjoyment of natural resources.

Objective 3: Create a consistent and recognizable identity throughout all Service units by using standard materials for readily observed physical elements associated with the transportation system.

• Planning: Integrate appropriate transportation planning into Service plans and processes.

Objective 1: Ensure consistency and coordination between the project, unit, regional, and national levels of planning.

Objective 2: Define need for infrastructure improvements, and prioritize projects using a scientific and objective process.

• Partnerships: Develop partnerships to leverage resources and develop integrated transportation solutions.

Objective 1: Maximize leveraging opportunities for both funding and resources.

Objective 2: Work with partners to address shared transportation issues that impact Service goals.

• Sustainability: Adopt and promote sustainable transportation practices.

Objective 1: Address climate change and other environmental factors at all levels of transportation planning, design, project delivery, and maintenance.

Objective 2: Improve access to and within Service lands by transit or non-motorized transportation and information systems.

Objective 3: Reduce fossil fuel energy consumption.

Next Steps

After this comment period ends, we will analyze the comments and address them in the form of a final LRTP.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Charles M. Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–27433 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2013–N251; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group; Public Meeting and Teleconference

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting and teleconference meeting of the Trinity Adaptive Management Working Group (TAMWG).

DATES: *Public meeting and Teleconference:* TAMWG will meet from 10 a.m. to 4:15 p.m. Pacific Time on Monday, December 9, 2013, and from 10 a.m. to 3:30 p.m. Pacific Time on Tuesday, December 10, 2013. *Deadlines:* For deadlines and directions on registering to listen to the meeting by phone, and submitting written material, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The in-person meeting will be held at the Indian Creek Lodge, 59741 California 299, Douglas City, CA 96024. You may participate in person or from your home phone.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Hadley, Redding Electric Utility, 777 Cypress Avenue, Redding, CA 96001; telephone: 530–339–7327; email: *ehadley@reupower.com.* Individuals with a disability may request an accommodation by sending an email to the point of contact and those accommodations will be provided.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity Adaptive Management Working Group (TAMWG) will hold a meeting.

Background

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

Meeting Agenda

• Designated Federal Officer (DFO) updates,
• TMC Chair report,
• Executive Director's report,
• TRRP Contracting,
• BLM Land Acquisitions,
• Hatchery update and fish projections,
• TRRCD weed management,
• Design update,
• 2014 Gravel Recommendation,
• Bylaw discussion,
• 2014 Flow Alternatives,
• Status of Klamath fall flow release,
• Mining issues,
• TRRP workgroup update, and
• Public Comment.

The final agenda will be posted on the Internet at *http://www.fws.gov/arcata.*

Public Input

If you wish to	You must contact Elizabeth Hadley (**FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the teleconference via telephone	December 2, 2013.
Submit written information or questions for the TAMWG to consider during the teleconference	December 2, 2013.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in ''Public Input,'' so that the information may be available to the TAMWG for their consideration prior to this teleconference. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could

not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 90 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: November 12, 2013.

Joseph C. Polos,

Supervisory Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2013–27499 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200.L99110000.EK0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information on the purchases of crude helium by Federal helium suppliers from the BLM and the amount of refined helium supplied by them to Federal agencies and their contractors. The Office of Management and Budget (OMB) has assigned control number 1004–0179 to this information collection.

DATES: Please submit comments on the proposed information collection by January 17, 2014.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0179'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Robert Jolley at 806–356–1002. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Jolley.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Helium Contracts (43 CFR Part 3195).

OMB Control Number: 1004–0179.

Summary: This collection of information enables the BLM to operate the Federal Helium Reserve and provide enriched crude helium to private refiners, in accordance with the Helium Amendments Act of 1960 (50 U.S.C. 167 to 167n), the Helium Privatization Act of 1996 (Pub. L. 104–273, 74 Stat. 918), and 43 CFR part 3195.

Frequency of Collection: Quarterly.

Forms: None.

Description of Respondents: Suppliers and purchasers of Federal helium.

Estimated Annual Responses: 32.

Estimated Annual Burden Hours: 104 hours.

Estimated Annual Non-Hour Costs: None.

The itemized burdens of this collection are shown below:

Type of response	Number of responses	Hours per response	Total hours (Column B × Column C)
A.	B.	C.	D.
Sales reports	32	3.25	104

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2013–27579 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.FF0000.241A]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information from participants in the oil and gas leasing program within the

National Petroleum Reserve—Alaska (NPRA). The Office of Management and Budget (OMB) has assigned control number 1004–0196 to this information collection.

DATES: Please submit comments on the proposed information collection by January 17, 2014.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0196'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Wayne Svejnoha at 907–271–4407. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 to leave a message for Mr. Svejnoha.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Oil and Gas Leasing: National Petroleum Reserve—Alaska.

OMB Control Number: 1004–0196.

Summary: This control number applies to the National Petroleum Reserve—Alaska (NPRA). In accordance with the Naval Petroleum Reserve Production Act (42 U.S.C. 6501–6508) and regulations at 43 CFR part 3130, the BLM may authorize participation in an NPRA unit agreement. Participants in such an agreement are required to comply with routine data submissions that are used to document drilling and production and ensure compliance with the unit agreement, lease terms, regulations, Onshore Oil and Gas Orders, Notices to Lessees, lease stipulations, or conditions of approval. In addition, participants in such an agreement may apply for reduction of royalty, suspension of operations or production, or a subsurface storage agreement.

Frequency of Collection: On occasion.

Forms: None.

Description of Respondents: Participants in the oil and gas leasing program within the NPRA.

Estimated Annual Responses: 21.

Estimated Annual Burden Hours: 217.75 hours.

Estimated Annual Non-Hour Costs: None.

The estimated burdens are itemized in the following table:

Type of response A.	Number of responses B.	Time per response C.	Total time (Column B × Column C) D.
Royalty reduction (43 CFR 3133.4)	1	16 hours	16 hours.
Suspension of operations (43 CFR 3135.3)	1	4 hours	4 hours.
Notification of operations (43 CFR 3135.6)	2	15 minutes	30 minutes.
Unit designation (43 CFR 3137.21 and 3137.23)	1	80 hours	80 hours.
Notification of unit approval (43 CFR 3137.25)	1	1 hour	1 hour.
Certification for modification (43 CFR 3137.52)	1	4 hours	4 hours.
Acceptable bonding (43 CFR 3137.60)	1	30 minutes	30 minutes.
Change of unit operator (43 CFR 3137.61)	1	45 minutes	45 minutes.
Certification of unit obligation (43 CFR 3137.70)	1	2 hours	2 hours.
Certification of continuing development (43 CFR 3137.71)	1	2 hours	2 hours.
Productivity for a participating area (43 CFR 3137.84)	1	12 hours	12 hours.
Unleased tracts (43 CFR 3137.87)	1	3 hours	3 hours.
Notification of productivity (43 CFR 3137.88)	1	30 minutes	30 minutes.
Notification of productivity for non-unit well (43 CFR 3137.91)	1	30 minutes	30 minutes.
Production information (43 CFR 3137.92)	1	1 hour	1 hour.
Lease extension (43 CFR 3137.111)	1	3 hours	3 hours.
Inability to conduct operations activities (43 CFR 3137.112)	1	2 hours	2 hours.
Unit termination (43 CFR 3137.130)	1	1 hour	1 hour.
Impact mitigation (43 CFR 3137.135)	1	4 hours	4 hours.
Storage agreement (43 CFR 3138.11)	1	80 hours	80 hours.
Totals	21		217.75 hours.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2013–27581 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000 L16520000.XX0000]

Notice of Meeting, Rio Grande Natural Area Commission

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission will meet as indicated below.

DATES: The meeting will be held from 10 a.m. to 3:30 p.m. on December 17, 2013.

ADDRESSES: Rio Grande Water Conservation District, 10900 East U.S. Highway 160, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, BLM Front Range District Office, 3028 Main Street, Cañon City, CO 81212. Phone: (303) 239–3861. Email: *ksullivan@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 Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan for non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics for this meeting include finalizing recommendations for the draft management plan and an update on the livestock trespass hearing. The public may offer oral comments at 10:15 a.m. or written statements, which may be submitted for the commission's consideration. Please send written comments to Kyle Sullivan at the address above by December 3, 2013.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the commission meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: *www.blm.gov/co/st/en/fo/slvfo.html.*

John Mehlhoff,

BLM Colorado Acting State Director.

[FR Doc. 2013–27500 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BISC–13990]
[PX.P0108773E.00.1]

Supplemental Draft Environmental Impact Statement/General Management Plan, Biscayne National Park, Florida

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Supplemental Draft Environmental Impact Statement for the General Management Plan, Biscayne National Park.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Supplemental Draft Environmental Impact Statement/General Management Plan (Supplemental Draft EIS) for Biscayne National Park (Park), Florida. The Supplemental Draft EIS describes and analyzes two new alternatives that have been developed since the 2011 release of the Draft Environmental Impact Statement/General Management Plan (Draft EIS). A new NPS preferred alternative has been proposed that incorporates various management prescriptions to ensure protection and enjoyment of the Park's resources, while providing access for visitors.

DATES: The NPS will accept comments for a period of 90 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. We will announce the dates, times, and locations of public meetings on the Supplemental Draft EIS through the NPS Planning, Environment, and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov/BISC* and media outlets.

ADDRESSES: Electronic copies of the Supplemental Draft EIS will be available online at *http://parkplanning.nps.gov/BISC.* A limited number of compact disks and printed copies will be also available at the Park headquarters, Biscayne National Park, 9700 SW 328 Street, Homestead, FL 33033–5634.

FOR FURTHER INFORMATION CONTACT: Superintendent Brian Carlstrom, Biscayne National Park, 9700 SW 328 Street, Homestead, FL 33033–5634 or by telephone at (305) 230–1144.

SUPPLEMENTARY INFORMATION: The NPS released the Draft EIS to the public in August 2011. Electronic copies of the Draft EIS can also be found online at *http://parkplanning.nps.gov/BISC.* During the public comment period, over 18,000 pieces of correspondence were received, which contained over 20,000 comments. A key component of the agency-preferred alternative in the Draft GMP/EIS was inclusion of a marine reserve zone. The marine reserve zone was proposed as an area in the park where fishing of any kind would be prohibited in order to allow a portion of the Park's coral reef ecosystem to recover and to offer visitors a high-quality visitor experience associated with a healthy, intact coral reef ecosystem. During the August 2011 public comment period, a number of substantive comments were received that identified both positive and negative impacts related to the establishment of the marine reserve zone. In particular, the Florida Fish and Wildlife Conservation Commission (FWC), with whom the National Park Service consults regarding fishing management actions in the Park, raised a number of significant issues about the NPS preferred alternative, including the marine reserve zone. The position of the State of Florida was that any consideration of a marine reserve zone could only occur after measurable management objectives have been clearly defined and less restrictive management measures have been appropriately implemented and evaluated in close coordination with agencies and stakeholders.

Based on the comments received, the NPS undertook an evaluative process to consider a number of management actions that could be deployed to achieve the goal of providing a diversified visitor use experience, while protecting the Park's natural and cultural resources. Two new alternatives (alternatives 6 and 7) were developed in consultation with the FWC and the National Oceanic and Atmospheric Administration. These alternatives contain many of the same elements as

the original agency preferred alternative, such as continued pursuit of a visitor center partnership in the Miami area, except that instead of including a marine reserve zone, the alternatives include a new concept referred to as a special recreation zone. In developing the two new alternatives, the NPS and partner agencies are pursuing a new and novel approach to managing special marine ecosystems in a way that seeks to accomplish the same goals as a marine reserve while accommodating recreational fishing and providing a more enjoyable and diverse visitor experience. The two alternatives are described in detail in chapter 2 of the Supplemental Draft EIS. Chapter 4 describes the key impacts of implementing each of the two alternatives.

In alternative 6 (the new agency preferred alternative), the special recreation zone would include the following activities and limitations: Fishing would be allowed year-round, with a special permit required for access to fish recreationally. There would be some zone-specific fishing restrictions (e.g., no grouper or lobster take, no spearfishing), but in general all other state fishing regulations would apply. There would be no commercial fishing allowed in the special recreation zone, with exception of the existing ballyhoo lampara net fishery. Anchoring within the zone would be prohibited; however additional mooring buoys would be added over time as needed to disperse visitor use and improve the safety of diving operations. Snorkeling and diving would be encouraged, and marine debris would be removed throughout the zone to improve the overall visitor experience for these activities. Alternative 7 is similar to alternative 6 in that it includes a special recreation zone with many of the same zone-specific fishing limitations. Differing from alternative 6, alternative 7 would not require an access permit to fish in the zone, but the area would be closed to recreational fishing during the summer months (June to September). This period is when the coral reef ecosystem is most stressed by warm water conditions and would benefit greatest from a respite in fishing pressure.

Adaptive management would be used in both new alternatives to guide long-term decision-making. Both alternatives would employ a collaborative research and monitoring program (10-year Science Plan) to inform adaptive management decisions. Under alternative 6 only, in years three, five, and eight, the NPS would evaluate effort and take to determine if the original assumptions are being met. Effort and take, in this instance, refer to fishing intensity and total harvest of fish in the zone by permitted fishermen. If the assumptions of effort and take are being exceeded, a multi-agency team would evaluate whether to reduce the number of permits to be issued for following years. For both Alternatives 6 and 7, a multi-agency team would evaluate the need for other management actions that may be warranted to reduce recreational impacts, through the adaptive management process. Depending on site-specific observations and concerns, such actions might include adjustments to the number and location of mooring buoys, changes to public messaging and law enforcement effort, and increased effort to remove marine debris. For both alternatives, a panel of experts would be convened at years five and ten to provide recommendations on the Science Plan, the monitoring results, and long-term management. After ten years the NPS would consider monitoring trends and panel recommendations, and would consult with state and federal agencies before deciding whether to continue adaptively managing visitor use in the special recreation zone or implement a marine reserve zone.

If you wish to comment on the Supplemental Draft EIS, you may submit your comments by any one of several methods. We encourage you to comment via the internet on the PEPC Web site at *http://parkplanning.nps.gov/BISC.* An electronic public comment form is provided on this Web site. You may also comment via mail to: Biscayne National Park GMP, National Park Service, M. Elmer (DSC–P), P.O. Box 25287, Denver, CO 80225–0287; or by hand delivery to Park headquarters, located at the address listed above.

Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The responsible official for this Supplemental Draft EIS is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: November 8, 2013.

Sherri Fields,

Deputy Regional Director, Southeast Region.

[FR Doc. 2013–27578 Filed 11–15–13; 8:45 am]

BILLING CODE 4310–JD–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–543]

Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy; Proposed Information Collection; Comment Request; Trade, Investment, and Industrial Policies in India Questionnaire

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the U.S. International Trade Commission (Commission) hereby gives notice that it plans to submit a request for approval of a questionnaire to the Office of Management and Budget for review and requests public comment on its draft collection.

DATES: To ensure consideration, written comments must be submitted on or before January 14, 2014.

ADDRESSES: Direct all written comments to William Powers, Project Leader, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436 (or via email at *william.powers@usitc.gov*).

Additional Information: Copies of the questionnaire and supporting investigation documents may be obtained from project leader William Powers (*william.powers@usitc.gov* or 202–708–5405) or deputy project leader Renee Berry (*renee.berry@usitc.gov* or 202–205–3498). Supporting documents may also be downloaded from the Commission Web site at *http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm.* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Web site (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Purpose of Information Collection: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–543, *Trade, Investment, and Industrial Policies in*

India: Effects on the U.S. Economy, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by both the House Committee on Ways and Means and the Senate Committee on Finance (the Committees). The Committees requested that this investigation include a survey of U.S. firms in selected industries affected by Indian trade, investment, or industrial policies. The Commission expects to deliver the results of its investigation to the Committees by December 15, 2014.

Summary of Proposal

(1) *Number of forms submitted:* 1.

(2) *Title of form:* Trade, Investment, and Industrial Policies in India Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2014.

(5) *Description of respondents:* Companies in industries particularly affected by Indian trade, investment, or industrial policies.

(6) *Estimated number of respondents:* up to 15,000.

(7) *Estimated total number of hours to complete the questionnaire per respondent:* 12 hours.

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

SUPPLEMENTARY INFORMATION:

I. Abstract

The House Committee on Ways and Means and the Senate Committee on Finance (the Committees) have directed the Commission to produce a report that examines Indian policies that discriminate against U.S. trade and investment and estimates the effects these barriers have on the U.S. economy and U.S. jobs. The Committees have requested that the report should (1) Provide an overview of trends and policies in India affecting trade and foreign direct investment; (2) describe the significant policies currently maintained by India, the U.S. sectors most affected by these policies, and Indian competitiveness in the affected sectors; (3) present case studies of the effects of particular measures; (4) quantify the economic effects of identified Indian measures on the U.S. economy; and (5) survey U.S. firms in selected sectors on their perceptions of recent changes in Indian policies and the effect these changes have on U.S. firms' strategies towards India. The Commission will base its report on a review of available data and other information, including the collection of primary data through a survey of U.S. firms in industries particularly affected by Indian policies.

II. Method of Collection

Respondents will be mailed a letter directing them to download and fill out a form-fillable PDF questionnaire. Once complete, respondents may submit it by uploading it to a secure webserver, emailing it to the study team, faxing it, or mailing a hard copy to the Commission.

III. Request for Comments

Comments are invited on (1) Whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC Web site at *http://pubapps2.usitc.gov/comments_332_543/.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

By order of the Commission.

Issued: November 12, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–27468 Filed 11–15–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Revision of a Previously Approved Collection, With Change; Comments Requested: COPS Application Package

ACTION: 60-Day notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until January 17, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change; comments requested.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and

other public and private entities that apply for COPS Office grants or cooperative agreements will be asked complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a standard template for all COPS programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5000 respondents annually will complete the form within 11 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 55,000 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Washington DC 20530.

Dated: November 12, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–27467 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application: Johnson Matthey, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on September 5, 2013, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials, to be used in the manufacture of bulk controlled substances, for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

In reference to the non-narcotic raw material, the company plans to import gram amounts to be used as reference standards for sale to its customers. Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 18, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. § 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 4, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27448 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Cerilliant Corporation

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on July 16, 2013, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methaqualone (2565)	I
JWH–250 (6250)	I
SR–18 also known as RCS–8 (7008).	I
XLR11 (7011)	I
JWH–019 (7019)	I
AKB48 (7048)	I
JWH–081 (7081)	I
SR–19 also known as RCS–4 (7104).	I
JWH–122 (7122)	I
UR–144 (7144)	I
AM–2201 (7201)	I
JWH–203 (7203)	I
Parahexyl (7374)	I
2C–T–2 (7385)	I
JWH–398 (7398)	I
5-Methoxy-3,4-methylenedioxy-amphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxy-amphetamine (7402).	I
Bufotenine (7433)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7470).	I
2C–D (7508)	I
2C–E (7509)	I
2C–H (7517)	I
2C–I (7518)	I
2C–C (7519)	I
2C–N (7521)	I
2C–P (7524)	I
2C–T–4 (7532)	I
AM–694 (7694)	I
Codeine methylbromide (9070)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Benzethidine (9606)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Lisdexamfetamine (1205)	II
Glutethimide (2550)	II
Nabilone (7379)	II

Drug	Schedule
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexane carbonitrile (8603).	II
Alphaprodine (9010)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Remifentanil (9739)	II
Carfentanil (9743)	II
Tapentadol (9780)	II

The company plans to import the listed controlled substances for manufacture and distribution to their research and forensic customers conducting drug testing and analysis.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substance listed in schedules I and II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 18, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27454 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Registration, Chattem Chemicals, Inc.

By Notice dated August 15, 2013, and published in the **Federal Register** on August 26, 2013, 78 FR 52801, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methamphetamine (1105)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate form of Tapentadol (9780); and then to bulk manufacture Tapentadol for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Chattem Chemicals, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Chattem Chemicals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27481 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Catalent CTS, LLC

By Notice dated August 15, 2013, and published in the **Federal Register** on August 26, 2013, 78 FR 53800, Catalent CTS, LLC., 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the following classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Poppy Straw Concentrate (9670)	II

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form for a clinical trial study. In addition, the company plans to import an ointment for the treatment of wounds which contains trace amounts of the controlled substances normally found in poppy straw concentrate for packaging and labeling to be used in clinical trials.

Comments and requests for any hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Catalent CTS, LLC., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Catalent CTS, LLC., that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27482 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Noramco, Inc.

By Notice dated August 14, 2013, and published in the **Federal Register** on August 21, 2013, 78 FR 51747, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import Thebaine (9333) analytical standards for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers. The company plans to import the Phenylacetone (8501) in bulk for the manufacture of a controlled substance.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

In reference to the non-narcotic raw material, any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Noramco, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Noramco, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27457 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application, National Center for Natural Products Research (NIDA MProject)

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 6, 2013, National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to cultivate marihuana in support of the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 17, 2014.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27491 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Johnson Matthey, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 5, 2013, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the

issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 17, 2014.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27488 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Morton Grove Pharmaceuticals

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 7, 2013, Morton Grove Pharmaceuticals, 6451 Main Street, Morton Grove, Illinois 60053–2633, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture a controlled substance for product development.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 17, 2014.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27490 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Johnson Matthey, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 5, 2013, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

The Thebaine (9333) will be used to manufacture other controlled substances for sale in bulk to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 17, 2014.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27483 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Lin Zhi International, Inc.

By Notice dated May 14, 2013, and published in the **Federal Register** on May 22, 2013, 78 FR 30332, Lin Zhi International, Inc., 670 Almanor Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Cocaine (9041)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances as bulk reagents for use in drug abuse testing.

In reference to drug code 7370 the company plans to bulk manufacture a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lin Zhi International, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lin Zhi International, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 4, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27486 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration: AMPAC Fine Chemicals, LLC.

By Notice dated July 23, 2013, and published in the **Federal Register** on July 31, 2013, 78 FR 46372, AMPAC Fine Chemicals, LLC., Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company is a contract manufacturer. In reference to Poppy Straw Concentrate the company will manufacture Thebaine intermediates to sell to its customers for further manufacture. No other activity for this drug code is authorized for registration.

No comments or objections have been received. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of AMPAC Fine Chemicals, LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated AMPAC Fine Chemicals, LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 4, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27484 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Apertus Pharmaceuticals

By Notice dated July 23, 2013, and published in the **Federal Register** on July 31, 2013, 78 FR 46372, Apertus Pharmaceuticals, 331 Consort Drive, St Louis, Missouri 63011, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards for distribution to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Apertus Pharmaceuticals to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated Apertus Pharmaceuticals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 5, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–27487 Filed 11–15–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement,'' to the Office of Management and Budget (OMB) for review and approval for reinstatement, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 18, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201308-1220-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to reinstate a previously approved

information collection. The BLS conducts the Current Population Survey Displaced Worker, Job Tenure, and Occupational Mobility supplement biennially, and the supplement was last collected in January 2012. This supplement gathers information on workers who have lost or left their jobs because their plant or company closed or moved, there was insufficient work for the workers to perform, or their position or shift was abolished. The BLS will collect data on the extent to which displaced workers received advance notice of job cutbacks or the closing of their plant or business. The supplement also gathers data on the types of jobs reemployed workers have found and will compare current earnings with those from the lost job. In addition, the supplement will query for the incidence and nature of occupational changes in the preceding year.

The survey also probes for the length of time workers, including those who have not been displaced, have been with their current employer. The BLS will collect additional data on the receipt of unemployment compensation, the loss of health insurance coverage, and the length of time spent without a job.

Information collected by this survey will be used to estimate the size and nature of the population affected by job displacements and to determine the needs and scope of programs serving adult displaced workers. The information will also will be used to assess employment stability by determining the length of time workers have been with their current employer and to estimate the incidence of occupational change over the course of a year. Combining the questions on displacement, job tenure, and occupational mobility will enable analysts to obtain a more complete picture of employment stability.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on July 29, 2013 (78 FR 50450).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0104. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Current Population Survey—Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

OMB Control Number: 1220–0104.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 55,000.

Total Estimated Number of Responses: 55,000.

Total Estimated Annual Burden Hours: 7,333.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 12, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–27424 Filed 11–15–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before December 18, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the

requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–047–C.

Petitioner: Carter Roag Coal Company, LLC, 1023 Lanham Cemetery Road, Tallmansville, West Virginia 26237.

Mine: Pleasant Hill Mine, MSHA I.D. No.46–08194, located in Randolph County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. In support of the alternative method, the petitioner proposes to continue performing the weekly examinations and functional testing of the deluge fire suppression systems installed at conveyor belt drives. The petitioner states that:

(1) A person trained in the testing procedures specific to the water deluge-type fire suppression systems utilized at each belt drive of the mine affected by this petition will conduct an examination, functional test, and residual pressure measurements consisting of the following:

(a) A visual examination of each of the water deluge-type fire suppression systems in the affected mine.

(b) A functional test of the water deluge-type fire suppression systems by actuating the system and observing its performance.

(c) Taking residual pressure measurements at the most hydraulically demanding nozzle to determine whether the system meets the manufacturer's specifications.

(d) Keeping a record of the results of the examinations, function tests, and residual pressure measurements in a book maintained on the surface for that purpose. Such record book will be made available to the authorized representative of the Secretary and retained at the mine for one year after the last recorded examination.

(2) Any malfunctioning or clogged nozzle(s) detected as a result of the weekly examination or functional test will be corrected immediately.

(3) The procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

The petitioner will submit to the District Manager proposed provisions for each applicable 30 CFR part 48 training plan specifying the procedures to be used to conduct the weekly functional test, as well as initial and refresher training (including addressing any necessary conditions specified in the proposed decision and order granting approval).

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–048–C.

Petitioner: Pocahontas Coal Company, LLC, 109 Appalachian Drive, Beckley, West Virginia 25801.

Mine: Josephine 2 Mine, MSHA I.D. No. 46–07191, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. In support of the alternative method, the petitioner proposes to continue performing the weekly examinations and functional testing of the deluge fire suppression systems installed at conveyor belt drives. The petitioner states that:

(1) A person trained in the testing procedures specific to the water deluge-type fire suppression systems utilized at each belt drive of the mine affected by this petition will conduct an examination, functional test, and residual pressure measurements consisting of the following:

(a) A visual examination of each of the water deluge-type fire suppression systems in the affected mine.

(b) A functional test of the water deluge-type fire suppression systems by actuating the system and observing its performance.

(c) Taking residual pressure measurements at the most hydraulically demanding nozzle to determine whether the system meets the manufacturer's specifications.

(d) Keeping a record of the results of the examinations, function tests, and residual pressure measurements in a book maintained on the surface for that purpose. Such record book will be made available to the authorized representative of the Secretary and retained at the mine for one year after the last recorded examination.

(2) Any malfunctioning or clogged nozzle(s) detected as a result of the weekly examination or functional test will be corrected immediately.

(3) The procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

The petitioner will submit to the District Manager proposed provisions for each applicable 30 CFR part 48 training plan specifying the procedures to be used to conduct the weekly functional test, as well as initial and refresher training (including addressing any necessary conditions specified in the proposed decision and order granting approval).

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–049–C.

Petitioner: Affinity Coal Company, LLC, 111 Affinity Complex Road, Sophia, West Virginia 25921.

Mine: Affinity Mine, MSHA I.D. No. 46–08878, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. In support of the alternative method, the petitioner proposes to continue performing the weekly examinations and functional testing of the deluge fire suppression systems installed at conveyor belt drives. The petitioner states that:

(1) A person trained in the testing procedures specific to the water deluge-type fire suppression systems utilized at each belt drive of the mine affected by this petition will conduct an examination, functional test, and residual pressure measurements consisting of the following:

(a) A visual examination of each of the water deluge-type fire suppression systems in the affected mine.

(b) A functional test of the water deluge-type fire suppression systems by actuating the system and observing its performance.

(c) Taking residual pressure measurements at the most hydraulically demanding nozzle to determine whether the system meets the manufacturer's specifications.

(d) Keeping a record of the results of the examinations, function tests, and residual pressure measurements in a book maintained on the surface for that purpose. Such record book will be made available to the authorized representative of the Secretary and retained at the mine for one year after the last recorded examination.

(2) Any malfunctioning or clogged nozzle(s) detected as a result of the weekly examination or functional test will be corrected immediately.

(3) The procedure used to perform the functional test will be posted at or near each belt drive that utilizes a deluge-type water spray fire suppression system.

The petitioner will submit to the District Manager proposed provisions for each applicable 30 CFR part 48 training plan specifying the procedures to be used to conduct the weekly functional test, as well as initial and refresher training (including addressing any necessary conditions specified in the proposed decision and order granting approval).

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2013–011–M.

Petitioner: Ruby Gold, Inc., P.O. Box 1241, Grass Valley, California 95945.

Mine: Ruby Mine, MSHA I.D. No. 04–03108, located in Nevada County, California.

Regulation Affected: 30 CFR 57.11052(d) (Refuge areas).

Modification Request: The petitioner requests a modification of the existing standard to permit 12 gallons of bottled water to be stored inside the refuge chamber of the Ruby Mine for use in an emergency. The petitioner states that:

(1) The mention of waterlines in the standard implies that there must be a steady flow of drinking water from an outside source. The house and fire protection water for the Ruby Mine currently taps a spring located above the portal. This water and conveyance pipeline has not yet been tested for potability.

(2) The refuge chamber is approximately 3,000 feet from the nearest exit at the Ruby portal, running a dedicated potable water line to the refuge chamber will incur considerable expense.

(3) There is no mention of 30 CFR 57.11052 in the Program Policy Manual to provide further guidance to the standard. Procedures pertaining to drinking water are mentioned in 30 CFR 71.602(a) and (b).

(4) Bottled water would be just as safe if not safer than a waterline, because there is a chance that the water can become polluted from some external event such as a fire or some other situation that causes the source of a waterline to become undrinkable or unavailable for any number of possible reasons.

(5) No more than five miners are anticipated to seek refuge in the chamber during a mine emergency. The duration of any mine emergency is not expected to exceed one or two days. Each miner would require up to 64 ounces of water per day, so that over a 2-day period five miners would require an aggregate of five gallons of water.

(6) The refuge chamber at the Ruby Mine is expected to be only a temporary facility since a primary project of the current operation is the restoration of a safe and usable second exit for the mine.

(7) The current operations at the mine are extremely low risk for the occurrence of any incident which could require the need to use the refuge chamber for the following reasons:

(a) There are no electrical power lines underground;

(b) No internal combustion equipment is in use underground; and

(c) The tunnel is being rehabilitated. All activities are being conducted in, as well as immediately adjacent to, the sections of the tunnel that have been recently retimbered to provide new and reinforced ground support.

(8) While it appears that the standard in 30 CFR 71.602 provides an acceptable alternative to the use of a dedicated waterline in a refuge chamber, we are respectively requesting a variance of 30 CFR 57.11052(d) so that bottled water may be stored for use in the refuge chamber at the Ruby Mine.

(9) Application of the standard will reduce the safety of the miners affected, as a dedicated waterline extending from the portal to the refuge chamber is subject to interruption and is inherently less safe than sanitary bottled water stored inside the refuge chamber.

(10) An external water supply could be interrupted from any number of conditions within or outside the mine.

(11) The nature of any emergency itself could cause an external water supply to be polluted, choked, or cutoff entirely if the pipeline were to be compromised. If the external supply of water is interrupted for any reason the miners will be at extreme risk with no other sources of drinking water available.

The petitioner further states that:

(1) As an alternative method, a sufficient supply of bottled water stored in the refuge chamber for use in an emergency represents 100 percent certainty that the miners will have sanitary drinking water available to them regardless of the nature of any emergency that might require the use of the refuge chamber.

(2) Bottled water is sanitary and cannot be compromised by any emergency situation outside of the refuge chamber.

(3) By having bottled water stored inside the chamber there is virtually no opportunity for the water supply to be compromised from normal mining operations (e.g., blasting, scaling, etc.) such as what could potentially occur with an external water line, and thus stored bottled water represents a significant safety improvement.

(4) We understand that the intent of the standard is to provide a supply of drinking water in the event of an emergency that may last for an extended period of time beyond a few days, but as stated, in the event an external water line is compromised then water will be unavailable from the very outset of an emergency let alone whatever may develop over the course of time.

(5) Stored bottled water provides miners with the absolute certainty that water will be available immediately whenever needed, and in the very first hours of an emergency that are often the most critical.

(6) The Ruby Mine is not a shaft that extends vertically to depth. It is a drift mine that extends by way of flat tunnel into the earth laterally to follow the course of ancient river channels. In the event of an emergency requiring the use of the refuge chamber, we believe a rescue can be effected within a relatively short period of time such that any emergency would not have a long duration.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: November 13, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–27546 Filed 11–15–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

STATUS: Open.

TIME AND DATE: 10:00 a.m., Thursday, November 21, 2013.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

MATTERS TO BE CONSIDERED:

1. Quarterly Report on Corporate Stabilization Fund.
2. Board Briefing, Estimated Range of Premiums for the NCUSIF and Assessment for the Corporate Stabilization Fund.
3. NCUA's Rules and Regulations, Credit Union Service Organizations.
4. 2014 Operating Budget.

5. 2014 Overhead Transfer Rate.
6. 2014 Operating Fee Scale.

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2013–27659 Filed 11–14–13; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing Communication Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Site Visit, Proposal Panel Review for Science and Technology Centers—Integrative Partnerships (#1192).

Date/Time: December 3, 2013, 6:30 p.m.–8:30 p.m.; December 4, 2013, 8:00 a.m.–8:00 p.m.; December 5, 2013, 8:30 a.m.–3:00 p.m.

Place: Purdue University, West Lafayette, IN.

Type of Meeting: Partial Closed.

Contact Person: John Cozzens, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230. Telephone: (703) 292–8910.

Purpose of Meeting: To assess the progress of the STC Award, ''Emerging Frontiers of Science of Information'', and to provide advise and recommendations concerning further NSF support for the Center.

Agenda

Monday, December 3, 2012

6:30 p.m. to 8:30 p.m.: Closed. Site Team and NSF Staff meets to discuss Site Visit materials, review process and charge.

Tuesday, December 4, 2012

8:00 a.m. to 1:00 p.m.: Open. Presentations by Awardee Institution, faculty staff and students, to Site Team and NSF Staff. Discussions and question and answer sessions.

1:00 p.m.–8:00 p.m.: Closed. Draft report on education and research activities.

Thursday, December 5, 2012

8:30 a.m.–noon: Open. Response presentations by Site Team and NSF Staff Awardee Institution faculty staff to. Discussions and question and answer sessions.

Noon to 3:00 p.m.: Closed. Complete written site visit report with preliminary recommendations.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 13, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–27545 Filed 11–15–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, 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 of the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: November 21, 2013 from 7:00 a.m. to 4:15 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Rooms 1235, Arlington, VA 22230. 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 meeting and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

Public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/131121/http://www.tvworldwide.com/events/nsf/130509/* and follow the instructions. Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

STATUS: Portions open; portions closed.

OPEN SESSIONS:

9:00–9:05 a.m. (Chairman's introduction)
9:05–9:45 a.m. (CPP)
3:30–4:15 p.m. (Plenary)

CLOSED SESSIONS:

7:00–745 a.m. (Plenary)
10:00–11:45 a.m. (CPP)
12:45–2:45 p.m. (Plenary executive closed)
2:45 –3:15 p.m. (Plenary closed)

MATTERS TO BE DISCUSSED:

Plenary Board Meeting

Executive Closed Session: 7:00–7:45 a.m. (Reconvening November 15 Meeting)

- Discussion of legislative matters

Committee on Programs and Plans (CPP)

Open Session: 8:05–9:45 a.m.

- Approval of open CPP minutes for August 2013
- Committee Chairman's remarks—including update on schedule of action and information items for NSB review
- Report on Antarctic site visit
- NSB Information Item: Next Generation National Nanotechnology Infrastructure Network (NG NNIN)

Committee on Programs and Plans (CPP)

Closed Session: 10:00–11:45 a.m.

- Committee Chairman's remarks
- Approval of closed CPP minutes for August 2013
- NSB Action Item: Operations and Maintenance of the *JOIDES Resolution*
- NSB Action Item: Operations of the High Energy Synchrotron Source

Plenary Board Meeting

Executive Closed Session: 12:45–2:45 p.m.

- Approval of Executive closed session minutes, August and September 2013 meetings
- Approval of honorary award recommendations
- Board member proposal
- Candidate site for 2014 Board retreat and meeting
- Discussion of risks to NSF
- Chairman's remarks

Plenary Board Meeting

Closed Session: 2:45–3:15 p.m.

- Approval of closed session minutes, August 2013 meeting
- Awards and Agreements/Resolutions from CPP

- DIRECTORATE FOR GEOSCIENCES (GEO), Division of Ocean Sciences (OCE): Operation and Maintenance of the *JOIDES Resolution* for the International Ocean Discovery Program (IODP)
- DIRECTORATE FOR MATHEMATICAL AND PHYSICAL SCIENCES (MPS), Division of Materials Research (DMR): Operation of the High Energy Synchrotron Source

- Director's report
- Chairman's remarks

Plenary Board Meeting

Open Session: 3:30–4:15 p.m.

- Approval of open session minutes, August and September 2013 meetings
- Chairman's report
- Director's report
- Open committee report
- Chairman's remarks

MEETING ADJOURNS: 4:15 p.m.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–27684 Filed 11–14–13; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board, 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 meeting of the National Science Board.

DATE AND TIME: Friday, November 15, 2013 from noon to 1:00 p.m. EST.

SUBJECT MATTER: Discussion of legislative matters.

STATUS: Closed.

PLACE: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Peter Arzberger, contact at 703/292–8000 or *parzberg@nsf.gov.*

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2013–27704 Filed 11–14–13; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0225]

Physical Security—Design Certification and Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—draft section revision; extension of comment period.

SUMMARY: On September 30, 2013, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on draft revision of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' LWR Edition: Section 13.6.2, ''Physical Security—Design Certification and Operating Reactors.'' The public comment period was originally scheduled to close on October 30, 2013. The Nuclear Energy Institute (NEI) submitted a letter on October 9, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13291A261), requesting an extension of the public comment period on this section until November 29, 2013. The NRC has decided to extend the public comment period on this document to allow more time for members of the public to assemble and submit their comments.

DATES: The comment period has been extended and now closes on November 29, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Wesley Held, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1583 or email: *Wesley.Held@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0225 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0225.
- *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 and also in the table included in this notice.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include the respective Docket ID NRC–2013–0225 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly

disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

Dated at Rockville, Maryland, this 30th day of October, 2013.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Branch Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013–27544 Filed 11–15–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0250]

CSMI, LLC; Request for Action

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated August 10, 2013, George Walther-Meade (the petitioner) has requested that the NRC take action with regard to CSMI. The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2013–0250 when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0250. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- 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.
- 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.

SUPPLEMENTARY INFORMATION: On August 10, 2013 (ADAMS Accession No. ML13226A020), the petitioner requested that the NRC take action with regard to CSMI. The petitioner requested immediate enforcement action by issuing an order to revoke CSMI's License No. 20–35022–01.

As the basis for this request, the petitioner states that the Licensee has committed willful violations involving falsification of information that are of particular concern because the NRC's regulatory program is based on licensees acting with integrity and communicating with candor.

The request is being treated pursuant to section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations. The request has been referred to the Director of the Office of Federal and State Materials and Environmental Management Programs. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. The petitioner met with the Petition Review Board (PRB) on September 10, 2013, to discuss the petition; the transcript of that meeting is an additional supplement to the petition (ADAMS Accession No. ML13263A388). The results of that discussion were considered in the board's determination regarding the petitioner's request for immediate action and in establishing the schedule for the review of the petition. By letter dated November 4, 2013, the Director denied petitioner's request for immediate action to revoke CSMI's License No. 20–35022–01.

Dated at Rockville, Maryland, this 4th day of November, 2013.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Director, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. 2013–27542 Filed 11–15–13; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collections for OMB Review; Comment Request; Payment of Premiums; Termination Premium

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information for the termination premium under its regulation on Payment of Premiums (29 CFR Part 4007) (OMB control number 1212–0064; expires December 31, 2013), with minor changes. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 18, 2013.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

The currently approved collection of information (Form T and instructions) and PBGC's premium payment regulation may be found on PBGC's Web site at *http://www.pbgc.gov/prac/prem/termination-premiums.html.* Copies of the proposed collection of information and PBGC's request are posted at *http://www.pbgc.gov/res/laws-and-regulations/information-collections-under-omb-review.html.* They may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Deputy Assistant

General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 or *Murphy.Deborah@pbgc.gov.* (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4006(a)(7) of ERISA provides for a ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3) and (8) of ERISA) that is payable for three years following certain distress and involuntary plan terminations. PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the termination premium. Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premium information and payments with PBGC. PBGC has promulgated Form T and instructions for paying the termination premium.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. The amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to $1,250 times the number of participants. However, the rate is increased from $1,250 to $2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

The termination premium and related information must be filed by a person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

OMB has approved the termination premium collection of information (Form T and instructions) under control number 1212–0064 through December 31, 2013. PBGC is requesting that OMB extend approval of this collection of information for three years, with minor changes. PBGC is eliminating from Form T and instructions the requirement to report the method of payment and making minor editorial changes to the form and instructions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will each year receive an average of about 25 filings for the first year a termination premium is due, 20 filings for the second year a termination premium is due, and 15 filings for the third year a termination premium is due, from a total of about 60 respondents. PBGC estimates that the total annual burden of the collection of information will be about ten hours and $8,800.

Issued in Washington, DC, this 13th day of November, 2013.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–27535 Filed 11–15–13; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, December 11, 2013, at 11 a.m.

PLACE: Commission Hearing Room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open session will be audiocast. The audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.* A period for public comment will be offered following consideration of the last numbered item in the open session.

MATTERS TO BE CONSIDERED: The agenda for the Commission's December 11, 2013 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report from the Office of Public Affairs and Government Relations on legislative activities and the handling of rate and service inquiries from the public.
2. Report from the Office of General Counsel on the status of Commission dockets.
3. Report from the Office of Accountability and Compliance.
4. Report from the Office of the Secretary and Administration.
5. Selection of Vice Chairman.
6. Update for the Commissioners on the Work of the Military Postal Service Agency by Mr. David Ernst, Deputy Director, Military Postal Service Agency.

PORTION CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, changes in date or time of the meeting, access for handicapped or disabled persons, the audiocast, or similar matters). The Commission's Web site may also provide information on changes in the date or time of the meeting.

By direction of the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–27610 Filed 11–14–13; 11:15 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

2014 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2013, is $204,247,991.98;
2. The September 30, 2013, balance of any new loans to the RUI Account, including accrued interest, is zero;
3. The system compensation base is $4,002,416,128.99 as of June 30, 2013;
4. The cumulative system unallocated charge balance is ($363,515,181.06) as of June 30, 2013;
5. The pooled credit ratio for calendar year 2014 is zero;
6. The pooled charged ratio for calendar year 2014 is zero;
7. The surcharge rate for calendar year 2014 is zero;
8. The monthly compensation base under section 1(i) of the Act is $1,440 for months in calendar year 2014;
9. The amount described in sections 1(k) and 3 of the Act as ''2.5 times the monthly compensation base'' is $3,600.00 for base year (calendar year) 2014;
10. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $3,600.00 with respect to disqualifications ending in calendar year 2014;
11. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,860 for months in calendar year 2014;
12. The maximum daily benefit rate under section 2(a)(3) of the Act is $70 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2014.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2013. The balance in notice (2) is based on data as of September 30, 2013. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2014. The determinations made in notices (8) through (11) are effective January 1, 2014. The determination made in notice (12) is effective for registration periods beginning after June 30, 2014.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2013, the computation of the calendar year 2014 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2014, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2014.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The ratio of the June 30, 2013 system compensation base of $4,002,416,128.99 to the June 30, 1991 system compensation base of $2,763,287,237.04 is 1.44842566. Multiplying 1.44842566 by $100 million yields $144,842,566. Multiplying $50 million by 1.44842566 produces $72,421,283. The Account balance on June 30, 2013, was $204,247,991.98. Accordingly, the surcharge rate for calendar year 2014 is zero.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2014 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2014 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

Using the calendar year 2014 tier 1 tax base of $117,000 for A above produces the amount of $1,438.10, which must then be rounded to $1,440. Accordingly, the monthly compensation base is determined to be $1,440 for months in calendar year 2014.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a–2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2014 monthly compensation base of $1,440 produces $3,600.00. Accordingly, the amount determined under sections 1(k), 3 and 4(a–2)(i)(A) is $3,600.00 for calendar year 2014.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an

employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2014 monthly compensation base is $1,440. The ratio of $1,440 to $600 is 2.40000000. Multiplying 2.40000000 by $775 produces $1,860. Accordingly, the amount determined under section 2(c) is $1,860 for months in calendar year 2014.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2014, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2013 monthly compensation base is $1,405. Multiplying $1,405 by 0.05 yields $70.25, which must then be rounded down to $70. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2014, is determined to be $70.

Dated: November 7, 2013.

By Authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2013–27509 Filed 11–15–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30780; File No. 812–14151–04]

Guggenheim Equal Weight Enhanced Equity Income Fund and Guggenheim Funds Investment Advisers, LLC; Notice of Application

November 12, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered closed-end investment company to make periodic distributions of long-term capital gains with respect to its outstanding common shares as frequently as monthly in any one taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred shares that such investment company may issue.

APPLICANTS: Guggenheim Equal Weight Enhanced Equity Income Fund (the ''Initial Fund'') and Guggenheim Funds Investment Advisers, LLC (the ''Adviser'').

FILING DATES: The application was filed on April 22, 2013, and amended on September 25, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 6, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Michael K. Hoffman, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a closed-end management investment company registered under the Act and is organized as a Delaware statutory trust.[1] The investment objective of the Initial Fund is to provide a high level of risk adjusted total return with an emphasis on current income by investing primarily in common stocks and utilizing a call option writing strategy. The Initial Fund's common shares are currently listed on the New York Stock Exchange, a national securities exchange as defined in section 2(a)(26) of the Act. The Initial Fund and any Future Fund may issue preferred shares. Applicants believe that closed-end fund investors may prefer an investment vehicle that provides regular current income through fixed distribution policies.

2. The Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as the investment adviser to the Initial Fund. A Fund's portfolio may be managed by one or more investment sub-advisers (each a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered as an investment adviser under the Advisers Act or not subject to registration.

3. Applicants state that, prior to a Fund's implementing a distribution

[1] Applicants request that any order issued granting the relief requested in the application also apply to each existing of future registered closed-end investment company advised by the Adviser (including any successor in interest) or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser that decides in the future to rely on the requested relief (''Future Fund'' and together with the Initial Fund, the ''Funds''). The Initial Fund and the Adviser are referred to collectively as ''Applicants''. Any Future Fund that may rely on the order will satisfy each of the representations in the application. All existing registered closed-end investment companies currently intending to rely on the order have been named as Applicants. A successor in interest is limited solely to the entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

policy (''Distribution Policy'') in reliance on the order, the board of trustees (the ''Board'') of the Fund, including a majority of the trustees who are not ''interested persons,'' of such Fund as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), will request, and the Adviser will provide, such information as is reasonably necessary to make an informed determination of whether the Board should adopt a proposed Distribution Policy. In particular, the Board and the Independent Trustees will review information regarding the purpose and terms of a proposed Distribution Policy; the likely effects of such policy on such Fund's long-term total return (in relation to market price and its net asset value (''NAV'') per common share); the expected relationship between such Fund's distribution rate on its common shares under the policy and the Fund's total return (in relation to NAV per share); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV per share; and any foreseeable material effects of such policy on such Fund's long-term total return (in relation to market price and NAV per share). The Independent Trustees will also consider what conflicts of interest the Adviser and the affiliated persons of the Adviser and each such Fund might have with respect to the adoption or implementation of the proposed Distribution Policy. Applicants state that, only after considering such information will the Board of a Fund, including the Independent Trustees, approve a Distribution Policy and in connection with such approval will determine that the Distribution Policy is consistent with a Fund's investment objectives and in the best interests of the Fund's common shareholders.

4. Applicants state that the purpose of a Distribution Policy, generally, would be to permit a Fund to distribute over the course of each year, through periodic distributions in relatively equal amounts (plus any required special distributions), an amount closely approximating the total taxable income of such Fund during such year and, if so determined by its Board, all or a portion of returns of capital paid by portfolio companies to such Fund during the year. Under the Distribution Policy of a Fund, such Fund would distribute to its respective common shareholders a fixed monthly percentage of the market price of such Fund's common shares at a particular point in time or a fixed monthly percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. It is anticipated that under a Distribution Policy, the minimum annual distribution rate with respect to such Fund's common shares would be independent of a Fund's performance during any particular period but would be expected to correlate with a Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable a Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code (''Code'') for the calendar year, each distribution on the Fund's common shares would be at the stated rate then in effect.

5. Applicants state that prior to implementing a Distribution Policy in reliance on the order, the Board of a Fund will adopt policies and procedures pursuant to rule 38a–1 under the Act (''Section 19 Compliance Policies'') that: (a) are reasonably designed to ensure that all notices required to be sent to a Fund's shareholders pursuant to section 19(a) of the Act, rule 19a–1 thereunder and condition 4 below (each a ''19(a) Notice'') include the disclosure required by rule 19a–1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Distribution Policy include the disclosure required by condition 3(a) below; and (b) require the Fund to keep records that demonstrate its compliance with all of the conditions of the order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code (''distributions''), that a fund may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person, security, or transaction from any provision of the Act or any rule under the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that the one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to shareholders and on the Internal Revenue Service Form 1099–DIV (''Form 1099–DIV''), which is sent to each common and preferred shareholder who received distributions during a particular year (including shareholders who have sold shares during the year).

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them will adopt the Section 19 Compliance Policies to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants state that by providing the information required by section 19(a) and rule 19a–1, the Distribution Policy, the Section 19 Compliance Policies, and the conditions listed below will help ensure that each Fund's shareholders are provided sufficient information to understand that their periodic distributions are not tied to the Fund's net investment income (which for this purpose is the Fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b–1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) of the Act and rule 19b–1 were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis

of an upcoming capital gains dividend (''selling the dividend''), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants submit that the ''selling the dividend'' concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gain dividend, adoption of a periodic distribution plan may help minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that the common shares of closed-end funds often trade in the marketplace at a discount to their NAV. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gains.

7. Applicants assert that the application of rule 19b–1 to a Distribution Policy actually could have an inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the adoption of a periodic distribution plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b–1 and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and, accordingly, would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of capital gain dividends that a Fund may make with respect to any one year, rule 19b–1 may prevent the normal and efficient operation of a periodic distribution plan whenever that Fund's realized net long-term capital gains in any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. Applicants also assert that rule 19b–1 may force the fixed regular periodic distributions under a periodic distribution plan to be funded with returns of capital [2] (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. To distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, a Fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants assert that the requested order would minimize these anomalous effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that Revenue Ruling 89–81 under the Code requires that a fund that seeks to qualify as a regulated investment company under the Code and that has both common shares and preferred shares outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89–81, whenever a fund has realized a long term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred share dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred shares to comply with Revenue Ruling 89–81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred shares issued by a closed-end fund. Applicants assert that such distributions are either fixed or are determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89–81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the ''selling the dividend'' concern is not applicable to preferred shares, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b–1 thereunder to permit each Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares.

Applicants' Conditions

Applicants agree that, with respect to each Fund that adopts a Distribution Policy in reliance upon the order, the order will be subject to the following conditions:

1. *Compliance Review and Reporting.* The Fund's chief compliance officer will (a) report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether (i) the Fund and its Adviser have complied with the conditions of the order and (ii) a material compliance matter (as defined in rule 38a–1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

2. *Disclosures to Fund Shareholders.*

(a) Each 19(a) Notice disseminated to the Fund's common shareholders, in addition to the information required by section 19(a) and rule 19a–1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(2) the fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) the average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date. Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) will include the following disclosure:

(1) ''You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Distribution Policy,''

(2) ''The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'';[3] and

(3) ''The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes;'' Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to shareholders under rule 30e–1 under the Act, the Fund will:

(i) describe the terms of the Distribution Policy (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) include the disclosure required by condition 2(a)(ii)(1) above;

(iii) state, if applicable, that the Distribution Policy provides that the Board may amend or terminate the Distribution Policy at any time without prior notice to Fund shareholders; and

(iv) describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Distribution Policy and any reasonably foreseeable consequences of such termination.

(c) Each report provided to shareholders under rule 30e–1 under the Act, and each prospectus filed with the Commission on Form N–2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return

3. *Disclosure to Shareholders, Prospective Shareholders and Third Parties.*

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Distribution Policy or distributions under the Distribution Policy by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund shareholder, prospective shareholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, as an exhibit to its next filed Form N–CSR; and

(c) The Fund will post prominently a statement on its (or the Adviser's) Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and maintain such information on such Web site for at least 24 months.

4. *Delivery of 19(a) Notices to Beneficial Owners.* If a broker, dealer, bank or other person (''financial intermediary'') holds common shares issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund:

(a) will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary;

(b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and

(c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. *Additional Board Determinations for Funds Whose Common Shares Trade at a Premium.*

If:

(a) The Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Trustees:

(1) will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Distribution Policy should be continued or continued after amendment;

(2) will determine whether continuation, or continuation after amendment, of the Distribution Policy is

[3] The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

consistent with the Fund's investment objective(s) and policies and is in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) whether the Distribution Policy is accomplishing its purpose(s);

(B) the reasonably foreseeable material effects of the Distribution Policy on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) the Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Distribution Policy; and

(ii) The Board will record the information considered by it including its consideration of the factors listed in condition 5(b)(i)(2) above and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Distribution Policy in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. *Public Offerings.* A Fund will not make a public offering of the Fund's common shares other than:

(a) a rights offering below NAV to the Fund's common shareholders;

(b) an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) an offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) the Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,[4] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date; [5] and

(ii) the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares as such Fund may issue.

7. *Amendments to Rule 19b–1.*

The requested order will expire on the effective date of any amendment to rule 19b–1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27478 Filed 11–15–13; 8:45 am]

BILLING CODE 8011–01–P

[4] If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

[5] If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30778; File No. 812–14131]

Ranger Alternative Management, L.P. and Ranger Funds Investment Trust; Notice of Application

November 12, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) certain open-end management investment companies or series thereof to issue shares (''Shares'') that are redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Ranger Funds Investment Trust (the ''Trust'') and Ranger Alternative Management, L.P. (the ''Initial Adviser'').

FILING DATES: The application was filed on March 8, 2013, and amended on June 4, 2013, and November 1, 2013. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 2828 N. Harwood Street, Suite 1600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at (202) 551–6882, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust and is registered under the Act as

an open-end management investment company. The Trust initially will offer one Fund (defined below) identified in the application (''Initial Fund''). Each Fund will seek to provide investment returns that correspond, before fees and expenses, generally to the performance of a specified securities index (''Underlying Index'').

2. Applicants request that the order apply to the Initial Fund and any additional series of the Trust [1] that may be created in the future (''Future Funds'') and that tracks an Underlying Index.[2] Any Future Fund will be (a) advised by the Initial Adviser, or an entity controlling, controlled by, or common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Fund and any Future Funds together are the ''Funds.''

3. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by domestic issuers or non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indexes''). Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Indexes''). Funds which track Domestic Indexes are referred to as ''Domestic Funds'' and Funds which track Foreign Indexes are referred to as ''Foreign Funds.'' Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.'' Funds based on Long/Short Indexes are ''Long/Short Funds.'' Underlying Indexes that use a 130/30 investment strategy are referred to as ''130/30 Indexes.'' Funds based on 130/30 Indexes are ''130/30 Funds.''

4. An Adviser registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as a sub-adviser to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Trust will enter into a distribution agreement with one or more distributors, each registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''), which will act as the principal underwriter and distributor for the Funds.[3] The Distributor of a Fund may be an affiliated person, or an affiliated person of an affiliated person, of that Fund's Adviser and/or Sub-Advisers.

5. Each Fund will hold certain securities and other instruments (''Portfolio Securities'') selected to correspond to the performance of its Underlying Index.[4] Except with respect to Affiliated Index Funds (defined below), no entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-adviser, or promoter of a Fund, or of the Distributor.

6. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

7. Each Fund will issue, on a continuous basis, Creation Units, which will typically consist of at least 25,000 Shares and have an initial price per Share of $15 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (a) a ''Participating Party,'' (*i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing house registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor.

8. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[5] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[6] except: (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary

[1] As used herein, ''Trust'' shall also include any other open-end series management investment company registered with the Commission and advised by an Adviser.

[2] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[3] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[4] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets (the ''20% Asset Basket'') in a broad variety of other instruments, including securities not included in its Underlying Index, which the Adviser believes will help the Fund track its Underlying Index.

[5] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[6] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

to eliminate fractional shares or lots that are not tradeable round lots;[7] (c) ''to be announced'' transactions (''TBA Transactions''),[8] short positions, derivatives and other positions that cannot be transferred in kind[9] will be excluded from the Deposit Instruments and the Redemption Instruments;[10] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[11] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

9. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) to the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[12] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

10. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-day changes to the lists except to correct errors in the published lists.

11. For each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's Web site (''Web site'') by making available the identities and quantities of the portfolio holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. The information provided on the Web site will be formatted to be reader-friendly. Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund representing the sum of (a) the estimated Balancing Amount and (b) the current value of the Deposit Instruments and any short positions, on a per individual Share basis (such intra-day indicative value, the ''IIV''). With respect to the Long/Short Funds and 130/30 Funds, the investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

12. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (''Market Maker'') and maintain a market in Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[14] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

14. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

15. An investor purchasing or redeeming a Creation Unit from a Fund

[7] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[8] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[9] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[10] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (defined below).

[11] A Fund may only use sampling for this purpose if the sample: (a) is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (b) consists entirely of instruments that are already included in the Fund's portfolio; and (c) is the same for all Authorized Participants on a given Business Day.

[12] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's or Sub-adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[14] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[15]

16. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange traded fund (''ETF''). All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units. The same approach will be followed in the shareholder reports issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

17. Applicants also request that the order allow them to offer Funds for which an affiliated person of the Adviser will serve as the Index Provider (''Affiliated Index Fund''). The Index Provider to an Affiliated Index Fund (''Affiliated Index Provider'') will create a proprietary, rules based methodology (''Rules-Based Process'') to create Underlying Indexes for use by the Affiliated Index Funds and other investors (an ''Affiliated Index'').[16] The Affiliated Index Provider, as owner of the Underlying Indexes and all related intellectual property related thereto, will license the use of the Affiliated Indexes, their names and other related intellectual property to the Adviser for use in connection with the Affiliated Index Funds. The licenses for the Affiliated Index Funds will state that the Adviser must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Affiliated Index Funds.

18. Applicants contend that the potential conflicts of interest arising from the fact that the Affiliated Index Provider will be an ''affiliated person'' of the Adviser will not have any impact on the operation of the Affiliated Index Funds because the Affiliated Indexes will maintain transparency, the Affiliated Index Funds' portfolios will be transparent, and the Affiliated Index Provider, the Adviser, any Sub-Adviser and the Affiliated Index Funds each will adopt policies and procedures to address any potential conflicts of interest (''Policies and Procedures''). The Affiliated Index Provider will publish in the public domain, including on its Web site and/or the Affiliated Index Funds' Web site, all of the rules that govern the construction and maintenance of each of its Affiliated Indexes. Applicants believe that this public disclosure will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Affiliated Index Provider, the owner of the Affiliated Indexes. Applicants note that the identity and weightings of the securities of any Affiliated Index will be readily ascertainable by any third party because the Rules-Based Process will be publicly available.

19. Like other index providers, the Affiliated Index Provider may modify the Rules-Based Process in the future. The Rules-Based Process could be modified, for example, to reflect changes in the underlying market tracked by an Affiliated Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the Index Personnel (defined below) has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Affiliated Indexes may have reconstitution dates and rebalance dates that occur on a periodic basis more frequently than once yearly, but no more frequently than monthly.

20. As owner of the Affiliated Indexes, the Affiliated Index Provider will hire a calculation agent (''Calculation Agent''). The Calculation Agent will determine the number, type, and weight of securities that will comprise each Affiliated Index, will perform all other calculations necessary to determine the proper make-up of the Affiliated Index, including the reconstitutions for such Affiliated Index, and will be solely responsible for all such Affiliated Index maintenance, calculation, dissemination and reconstitution activities. The Calculation Agent will not be an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Funds, the Adviser, any Sub-Adviser, any promoter of a Fund or the Distributor.

21. The Adviser and the Affiliated Index Provider will adopt and implement Policies and Procedures to address any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication between employees of the Affiliated Index Provider and its affiliates who have responsibility for the Affiliated Indexes and the Rules Based Process, as well as those employees of the Affiliated Index Provider and its affiliates appointed to assist such employees in the performance of his/her duties (''Index Personnel'') and other employees of the Affiliated Index Provider. The Index Personnel (a) will not have any responsibility for the management of the Affiliated Index Funds or the Accounts, (b) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, that have responsibility for the management of the Affiliated Index Funds or any Affiliated Account until such information is publicly announced, and (c) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser will adopt and implement, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. Also, the Adviser has adopted a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act (''Code of Ethics''). Any Sub-Adviser will be required to adopt a Code of Ethics and provide the Trust with the certification required by rule 17j–1 under the Act. In conclusion, Applicants submit that the Affiliated Index Funds will operate in a manner very similar to the other index-based ETFs which are currently traded.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and

[15] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

[16] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act and other pooled investment vehicles for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts, privately offered funds and other pooled investment vehicles for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively, ''Accounts''), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve Trust assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions for the Foreign Funds will be contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles in local markets for the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[17] Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[18] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 15 calendar days. Applicants are only seeking relief from section 22(e) to the extent that the Foreign Funds effect creations and redemptions of Creation Units in-kind.

[17] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

[18] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Fund of Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit the Funds, the Distributor, and any broker-dealer that is registered under the Exchange Act to sell Shares to Fund of Funds in excess of the limits of section 12(d)(1)(B).

11. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any Fund of Funds Adviser or Fund of Funds Sub-Adviser will be registered or not subject to registration under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Fund of Funds nor any Fund of Funds Affiliate would be able to exert undue influence over the Funds or any Fund Affiliates.[19] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Fund Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants do not believe that the proposed arrangement involves excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Acquiring Management Company may invest. In addition, under condition B.5, a Fund of Funds Adviser or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges or service fees on shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[20]

15. Applicants submit that the requested 12(d)(1) Relief addresses concerns over overly complex structures. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Fund must enter into an agreement with the respective Fund (''FOF Participation Agreement''). The FOF Participation

[19] A ''Fund of Funds Affiliate'' is the Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of those entities.

[20] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

Agreement will include an acknowledgment from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

17. Applicants also note that a Fund may choose to reject a direct purchase of Shares by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines control as the power to exercise a controlling influence over the management of policies of a company. It also provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an ''Affiliated Fund'').

19. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (a) holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

20. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. Except as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating in-kind redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

21. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[21] Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[22] Further, as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively and will correspond pro rata to the Fund's Portfolio Securities, except as describe above. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested ETF Relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the order, the Shares of such Fund will be listed on an Exchange.

3. No Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

B. Section 12(d)(1) Relief

Applicants agree that any order of the Commission granting the requested 12(d)(1) Relief will be subject to the following conditions:

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote

[21] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. The requested relief also is intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of a Fund of Funds because the Adviser provides investment advisory services to the Fund of Funds.

[22] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the board of directors (''Board'') of the Fund, including a majority of the non-interested directors or trustees, will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under Rule 12b-l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, Trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in Section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the non-interested directors or trustees, will find that the advisory fees charged under such contract are based on services

provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27476 Filed 11–15–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30779; 812–14130]

Altegris Advisors, L.L.C., et al.; Notice of Application

November 12, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: The requested order would (a) permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management investment companies and unit investment trusts (''UITs'') that are within and outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Altegris Advisors, L.L.C. (the ''Adviser'') and Northern Lights Fund Trust (the ''Trust''), on behalf of Altegris Multi-Strategy Alternative Fund (the ''Multi-Strategy Alternative Fund'').

FILING DATES: The application was filed on March 7, 2013, and amended on October 3, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 6, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: c/o Richard Horowitz, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust currently is comprised of multiple series, including the Multi-Strategy Alternative Fund, each of which has its own investment objective, policies, and restrictions.[1]

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Multi-Strategy Alternative Fund, certain other Funds of the Trust, and may serve as investment adviser to future Funds.

3. Applicants request an order to permit (a) a Fund that operates as a ''fund of funds'' (each a ''Fund of Funds'')[2] to acquire shares of (i) registered open-end management investment companies that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (''Unaffiliated Investment Companies'') and UITs that are not part of the same group of investment companies as the Fund of Funds (''Unaffiliated Trusts,'' together with the Unaffiliated Investment Companies, ''Unaffiliated Funds'')[3] or (ii) registered open-end management companies or UITs that are part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G) (ii) of the Act, as the Fund of Funds (collectively, ''Affiliated Funds,'' together with the Unaffiliated Funds, ''Underlying Funds'') and (b) each Underlying Fund, any principal underwriter for the Underlying Fund, and any broker or dealer (''Broker'') registered under the Securities Exchange Act 1934 (''Exchange Act'') to sell shares of the Underlying Fund to the Fund of Funds.[4] Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

4. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any

[1] Applicants request that the order apply to each existing and future series of the Trust and to each existing and future registered open-end management investment company or series thereof (each, a ''Fund'' and collectively, including the Multi-Strategy Alternative Fund, the ''Funds'') that is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser (included in the term ''Adviser'') and is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act), as the Trust.

[2] Any Fund of Funds relying on the requested relief will be advised by the Adviser.

[3] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs'').

[4] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

existing or future Fund of Funds that relies on section 12(d)(1)(G) of the Act (''Same Group Fund of Funds'') and that otherwise complies with rule 12d1–2 to also invest, to the extent consistent with its investment objective, policies, strategies, and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

Applicants' Legal Analysis

Investments in Underlying Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's total outstanding voting stock, or if the sale will cause more than 10% of the acquired company's total outstanding voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit a Fund of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to a Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants submit that the proposed arrangement will not result in the exercise of undue influence by the Fund of Funds or a Fund of Funds Affiliate (as defined below) over the Unaffiliated Funds.[5] To limit the control that the Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser, any person controlling, controlled by, or under common control with the Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Adviser or any person controlling, controlled by, or under common control with the Adviser (the ''Advisory Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (''Sub-adviser''), any person controlling, controlled by, or under common control with the Sub-adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-adviser or any person controlling, controlled by, or under common control with the Sub-adviser (the ''Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting'').[6]

5. To further ensure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their respective board of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[7]

6. Applicants state that they do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''), will find that the advisory fees charged under any investment advisory or management contract(s) are based on services provided that will be in addition to, rather than duplicative of, the services provided under such advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any sales charges and/or service fees, as defined in rule 2830 of the Conduct Rules of the NASD (''NASD Conduct

[5] A ''Fund of Funds Affiliate'' is the Adviser, any Sub-adviser (as defined below), promoter, or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser(s), sponsor, promoter, or principal underwriter of an Unaffiliated Fund, as well as any person controlling, controlled by, or under common control with any of those entities.

[6] An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, Sub-adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-adviser, member of an advisory board, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

[7] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

Rule 2830''),[8] charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and the Affiliated Funds might be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Unaffiliated Funds might be deemed to be affiliated persons of one another if the Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[9] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[10] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act.

Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (a) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (b) securities (other than securities issued by an investment company); and (c) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that a Same Group Fund of Funds may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

4. Applicants represent that, consistent with its fiduciary obligations under the Act, the Board of each Same Group Fund of Funds will review the advisory fees charged by the Same Group Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Conditions

Investments by Funds of Funds in Underlying Funds

Applicants agree that the relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the

[8] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[9] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by a Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[10] To the extent purchases and sales of shares of an ETF occur in the secondary market (and not through principal transactions directly between a Fund of Funds and an ETF), relief from section 17(a) of the Act would not be necessary. The requested relief is intended to cover, however, transactions directly between ETFs and a Fund of Funds. Applicants are not seeking relief from section 17(a) of the Act for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the investment adviser to the ETF also is an investment adviser to the Fund of Funds.

aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Sub-adviser or a person controlling, controlled by, or under common control with the Sub-adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that its Adviser and any Sub-adviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(l)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s) or any person controlling, controlled by or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(l)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(l)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired; (b) identity of the underwriting syndicate's members; (c) terms of the purchase, and; (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(l)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(l)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, services

provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding and the basis upon which the finding was made will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-adviser will waive fees otherwise payable to the Sub-adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-adviser, or an affiliated person of the Sub-adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-adviser. In the event that the Sub-adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(l) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(l) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to fund of funds set forth in NASD Conduct Rule 2830.

Other Investments by Same Group Funds of Funds

Applicants agree that the relief to permit Same Group Funds of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27477 Filed 11–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70844; File No. SR–CBOE–2013–103]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Obvious Error

November 12, 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 October 28, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 Rule 6.25 (Nullification and Adjustment of Options Transactions). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.25 (Nullification and Adjustment of Options Transactions) governs the nullification and adjustment of options transactions. The Exchange is proposing to amend Rule 6.25(a)(1) to modify how the Exchange will nullify or adjust an obvious error. The Exchange believes this proposal will also harmonize its rules to more closely align with other options exchanges.[3]

Under the current rule 6.25(a)(1)(i), the Exchange will adjust the price of an erroneous transaction to the Theoretical Price when the transaction is between two market-makers unless such parties agree to adjust the transaction to a different price or bust the trade within fifteen minutes of being notified by Exchange Trading Officials of the error. Pursuant to current Exchange Rule 6.25(a)(1)(iv), transactions involving at least one non-CBOE market-maker will be adjusted to the Theoretical Price provided that the adjustment does not violate the non-CBOE market-maker's limit price unless both parties agree to adjust the transaction to a different price or agree to bust the trade within thirty minutes of being notified by Trading Officials of the error.

The Exchange is now proposing to amend Rule 6.25(a)(1) to modify the Exchange obvious error procedures by nullifying trades for transactions involving at least one non-broker-dealer customer and adjusting all other trades between groups that do not fall into that category including for example, a market maker or a broker-dealer.[4] The Exchange believes that the proposal will eliminate some uncertainty in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* International Securities Exchange, LLC (''ISE'') Rule 720(b)(2).

[4] The Exchange is also proposing to add text to Exchange Rule 1.1(fff) (Voluntary Professional) and Rule 1.1(ggg) (Professional) to include a reference to Rule 6.25. These designations are done on the Exchange on an order by order basis. Thus, through reference, professional orders will be treated as broker-dealer orders. In addition certain non-broker-dealer customers may have their orders treated as broker-dealer orders rather than as public customer orders for purposes of Rule 6.25.

current rule along with protect investors by eliminating confusion.

More specifically, the Exchange is first proposing to include all transactions in which neither party is a non-broker-dealer customer in the current Rule 6.25(a)(1)(i) instead of only including transactions between CBOE market-makers. In addition, the Exchange is proposing to limit the time in which these parties have to decide to adjust to a price other than the Theoretical Price or nullify the trade to ten minutes instead of the fifteen minutes that is currently allowed.[5] Next, the Exchange is proposing to add a provision to nullify all erroneous transactions where at least one party is a non-broker-dealer customer unless both parties agree to an adjusted price within thirty minutes. Finally, the Exchange is proposing to make cosmetic changes to Rule 6.25 by renumbering current provisions in 6.25(a)(1)(ii) and 6.25(a)(1)(iii) to 6.25(a)(1)(iii) and 6.25(1)(iv), respectively, and to make conforming changes to the references to these provisions in current Rules 6.25(b)(1) and 6.25.05.

The Exchange believes that the proposal will limit obvious error trade nullification only to transactions involving non-broker-dealer customers. The Exchange believes that this approach will limit the number of nullifications while assuring that non-broker-dealer customers will not have their erroneous trades adjusted through their limit price forcing such customer to spend (receive) more (less) money on erroneous transactions. In addition, the proposed changes to the rule will allow any non-professional customer orders to be subject to professional standards if that customer decides to designate an order as such.[6]

Non-broker-dealer customers are typically far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, given the potential for drastic market swings, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving at least one non-broker-dealer customer, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they originated from a professional.[7]

The proposed rule change is a fair way to address the issue of a trade executing through a non-broker-dealer customer's limit order price while balancing the competing interest of certainty that trades stand versus dealing with the true errors. The proposed rule change would continue to entail specific and objective procedures. Furthermore, the proposed rule change more fairly balances the potential windfall to one market participant against the potential reconsidering of a trading decision under the guise of an error. The Exchange also believes it is fair and reasonable to treat all professional market participants equally, e.g., market-makers, broker-dealers, etc.

As stated above, the Exchange believes that non-broker-dealer customers are far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving non-broker-dealer customers, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they were from professionals.[8]

Finally, the Exchange believes that the proposal to change the time to ten minutes, instead of fifteen minutes, for professional parties to agree to a different price or nullify the transaction under Exchange Rule 6.25(a)(1)(i) not only gives ample time for review by the parties to the trades, but it more closely aligns the Exchange's rule to other options exchanges.[9] The Exchange also believes that the administrative re-numbering of the provisions in Rule 6.25 eliminate further confusion in the current rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to nullify all erroneous transactions in which at least one non-broker-dealer customer is a party to the transaction and adjusting all other trades will help market participants to better hedge risk associated with these potentially erroneous transactions. By nullifying erroneous transactions which involve a non-broker-dealer customer, the Exchange is assuring that these non-professional customers will not receive a trade at a higher (lower) price than a limit price placed upon the transaction. In addition, the proposal is requiring trades in most circumstances to be honored. The proposal also allows for all parties to nullify any erroneous transaction as long as the two parties come to an agreement within ten minutes. The Exchange believes that the shorten time will require the agreement to be made more quickly, and thus a nullification or adjustment to a different price create less of a disruption to the overall market.

The Exchange believes that adjusting all transactions that do not involve a non-broker-dealer customer is just and equitable because professional customers are more sophisticated and familiar with the day to day trading swings. Though, as proposed, a professional that is not a market-maker may be adjusted through its limit price, the Exchange believes these professionals have adequate resources in place to manage this adjustment and would prefer the certainty of the proposed changes and to adjust these transactions (rather than nullify) to continue to hedge their risk. In addition, the Exchange believes that market-makers and other professionals are similarly situated, and, thus, it is

[5] Please note that that limiting the time frame to ten minutes would also align the Exchange with C2 Options Exchange, Incorporated (''C2'') Rule 6.15(b)(2).

[6] *See* note 4 *supra.*

[7] *Id.*

[8] *Id.*

[9] *See* note 3 *supra. See also* note 5 *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

consistent to treat these groups in the same manner. Moreover, the market benefits from the least amount of nullifications because parties have more certainty about their executions. The Exchange also believes that assessing an adjustment penalty will encourage professionals to adjust and nullify a lesser amount of transactions which will benefit the market as a whole. Thus, the Exchange believes that the treatment of all professional orders in the same manner is consistent with the Act as it will allow the market to suffer fewer disruptions, in the form of adjustments or nullifications of trades after the fact, and treats similarly situated groups, namely market-makers and other professionals, in the same manner. The Exchange also notes that aligning the Exchange with other options exchanges will ensure less disruption to market participants as they will be treated consistently across the markets.[13]

Though the proposal will treat groups of market participants differently, the Exchange believes that the proposal is not unfairly discriminating because it treats similarly situated groups in the same manner. More specifically, all professionals will be treated in a similar manner while non-professional customers will also be left with the choice to designate an order as professional, under Exchange Rule 1.1(fff) and thus have the ability to be treated in the same manner as a professional. With this choice, all groups may be treated in the same manner. In addition, the proposal creates a safeguard for a non-professional customer that may not be as familiar with the specifics of every day trading (and does not choose to be treated as a professional) by nullifying all erroneous transactions in which they are a party.

The Exchange acknowledges that the proposal may allow for some uncertainty to regarding whether a trade will be adjusted or nullified depending upon the nature of the parties to the transaction. More specifically, the contra party will not know the category of the other party. Nonetheless, the Exchange believes the proposal continues to promote just and equitable principles of trade and protect investors and the public interest because it eliminates a more serious uncertainty of price uncertainty which is inherent in the current Exchange rule because the current rule takes the non-broker-dealer customer's limit price into consideration while this proposal does not as it will be nullified unless agreed upon by the two parties. The Exchange also notes that this rule is substantially similar to another option exchange.[14] Thus, market participants will receive similar treatment in the [sic] across the markets which eliminates confusion and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal is meant to eliminate market participant confusion along with help market participants to better hedge the risk associated with erroneous options trades. CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition because it creates less uncertainty about the treatment of erroneous trades which may encourage market participants to trade on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b 4(f)(6)[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–113 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–CBOE–2013–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–103 and should be submitted on or before December 9, 2013.

[13] *See* note 7 *supra.*

[14] *See* note 31 *supra.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27470 Filed 11–15–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70846; File No. SR–C2–2013–038]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Obvious Error

November 12, 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 October 28, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 Rule 6.15 (Obvious Error and Catastrophic Errors). The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 6.15 (Obvious Error and Catastrophic Errors) governs the nullification and adjustment of options transactions. The Exchange is proposing to amend Rule 6.15(b)(2) to modify how the Exchange will nullify or adjust an obvious error. The Exchange believes this proposal will also harmonize its rules to more closely align with other options exchanges.[3]

Under the current rule 6.15(b)(2)(A), the Exchange will adjust the price of an erroneous transaction to the Theoretical Price when the transaction is between two market-makers unless such parties agree to adjust the transaction to a different price or bust the trade within ten minutes of being notified by the Help Desk of the error. Pursuant to current Exchange Rule 6.15(b)(2)(B), transactions involving at least one non-C2 market-maker will be nullified unless both parties agree to adjust the transaction within thirty minutes of being notified by the Help Desk of the error.

The Exchange is now proposing to amend Rule 6.15(b)(2) to modify the Exchange obvious error procedures by nullifying trades for transactions involving at least one non-broker-dealer customer and adjusting all other trades between groups that do not fall into this category including for example, a market maker or a broker-dealer.[4] The Exchange believes that the proposal will protect investors by eliminating some uncertainty in the current rule.

More specifically, the Exchange is first proposing to include all transactions in which neither party is a non-broker-dealer customer in the current Rule 6.15(b)(2)(A) instead of only including transactions between C2 market-makers. Next, the Exchange is proposing to add a provision to nullify all erroneous transactions between non-broker-dealer customers unless both parties agree to an adjusted price within thirty minutes.

The Exchange believes that the proposal will limit obvious error trade nullification only to transactions involving non-broker-dealer customers. The Exchange believes that this approach will limit the number of nullifications while assuring that non-broker-dealer customers will not have their erroneous trades adjusted through their limit price forcing such customer to spend (receive) more (less) money on erroneous transactions. In addition, the proposed changes to the rule will allow any non-professional customer orders to be subject to professional standards if that customer decides to designate an order as such.[5]

Non-broker-dealer customers are typically far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, given the potential for drastic market swings, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving at least one non-broker-dealer customer, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they originated from a professional.[6]

The proposed rule change is a fair way to address the issue of a trade executing through a non-broker-dealer customer's limit order price while balancing the competing interest of certainty that trades stand versus dealing with the true errors. The proposed rule change would continue to entail specific and objective procedures. Furthermore, the proposed rule change more fairly balances the potential windfall to one market participant against the potential reconsidering of a trading decision under the guise of an error. The Exchange also believes it is fair and reasonable to treat all professional market participants equally, e.g. market-makers, broker-dealers, etc.

As stated above, the Exchange believes that non-broker-dealer customers are far less familiar with the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. Therefore, the Exchange believes that it is fair and reasonable and consistent with statutory standards to change the procedure for obvious errors involving non-broker-

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* International Securities Exchange, LLC (''ISE'') Rule 720(b)(2).

[4] The Exchange is also proposing to add text to Exchange Rule 1.1(fff) [sic] (Voluntary Professional) and Rule 1.1(ggg) [sic] (Professional) to include a reference to Rule 6.15. These designations are done on the Exchange on an order by order basis. Thus, through reference, professional orders will be treated as broker-dealer orders. In addition certain non-broker-dealer customers may have their orders treated as broker-dealer orders rather than as public customer orders for purposes of Rule 6.15.

[5] *See* note 4 *supra.*

[6] *Id.*

dealer customers, and not for other market participants so as not to expose these customers to any additional risk. In addition, as stated above, these customers have the option of indicating they would like the treatment of their orders as if they were from professionals.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal to nullify all erroneous transactions in which at least one non-broker-dealer customer is a party to the transaction and adjusting all other trades will help market participants to better hedge risk associated with these potentially erroneous transactions. By nullifying erroneous transactions which involve a non-broker-dealer customer, the Exchange is assuring that these non-professional customers will not receive a trade at a higher (lower) price than a limit price placed upon the transaction. In addition, the proposal is requiring trades in most circumstances to be honored. The proposal also allows for all parties to nullify any erroneous transaction as long as the two parties come to an agreement.

The Exchange believes that adjusting all transactions that do not involve a non-broker-dealer customer is just and equitable because professional customers are more sophisticated and familiar with the day to day trading swings. Though, as proposed, a professional that is not a market-maker may be adjusted through its limit price, the Exchange believes these professionals have adequate resources in place to manage this adjustment and would prefer the certainty of the proposed changes and to adjust these transactions (rather than nullify) to continue to hedge their risk. In addition, the Exchange believes that market-makers and other professionals are similarly situated, and, thus, it is consistent to treat these groups in the same manner. Moreover, the market benefits from the least amount of nullifications because parties have more certainty about their executions. The Exchange also believes that assessing an adjustment penalty will encourage professionals to adjust and nullify a lesser amount of transactions which will benefit the market as a whole. Thus, the Exchange believes that the treatment of all professional orders in the same manner is consistent with the Act as it will allow the market to suffer fewer disruptions, in the form of adjustments or nullifications of trades after the fact, and treats similarly situated groups, namely market-makers and other professionals, in the same manner. The Exchange also notes that aligning the Exchange with other options exchanges will ensure less disruption to market participants as they will be treated consistently across the markets.[11]

Though the proposal will treat different groups of market participants differently, the Exchange believes that the proposal is not unfairly discriminating because it treats similarly situated groups in the same manner. More specifically, all professionals will be treated in a similar manner while non-professional customers will also be left with the choice to designate an order as professional, under Exchange Rule 1.1 and thus have the ability to be treated in the same manner as a professional. With this choice, all groups may be treated in the same manner. In addition, the proposal creates a safeguard for a non-professional customer that may not be as familiar with the specifics of every day trading (and does not choose to be treated as a professional) by nullifying all erroneous transactions in which they are a party.

The Exchange acknowledges that the proposal may allow for some uncertainty to regarding whether a trade will be adjusted or nullified depending upon the nature of the parties to the transaction. More specifically, the contra party will not know the category of the other party. Nonetheless, the Exchange believes the proposal continues to promote just and equitable principles of trade and protect investors and the public interest because it eliminates a more serious uncertainty of price uncertainty which is inherent in the current Exchange rule because the current rule takes the non-broker-dealer customer's limit price into consideration while this proposal does not as it will be nullified unless agreed upon by the two parties. The Exchange also notes that this rule is substantially similar to another option exchange.[12] Thus, market participants will receive similar treatment in the [sic] across the markets which eliminates confusion and promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 proposal is meant to eliminate market participant confusion along with help market participants to better hedge the risk associated with erroneous options trades. C2 believes that the proposed rule change will relieve any burden on, or otherwise promote, competition because it creates less uncertainty about the treatment of erroneous trades which may encourage market participants to trade on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder. At any time within 60 days

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* note 3 *supra.*

[12] *See* note 3 *supra.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–038 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–C2–2013–038. 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–C2–2013–038 and should be submitted on or before December 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27472 Filed 11–15–13; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70850; File No. SR–Phlx–2013–109]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Box Spread Strategies

November 12, 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 October 30, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to adopt a strategy fee cap applicable to box spreads.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on November 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the strategy fee caps which are currently located in Section II, entitled ''Multiply Listed Options.''[3] Today, the Exchange caps fees on certain dividend, merger, short stock interest, reversal and conversion and jelly roll strategy floor option transactions. The Exchange is proposing to also cap fees on box spread strategy transactions.

A box spread strategy synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. The Exchange proposes to include this definition in Section II of the Pricing Schedule in the section entitled ''Strategies Defined.''

The Exchange proposes to offer a strategy cap for box spreads. Today, Specialist,[4] Market Maker,[5] Professional,[6] Firm[7] and Broker-Dealer[8]

[3] This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ''market maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[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). *See* Rule 1000(b)(14).

[7] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[8] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

floor option transaction charges in Multiply Listed Options are capped at $1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts, and option transaction charges in Multiply Listed Options are capped at $700 for reversal and conversion and jelly roll strategies executed on the same trading day in the same options class. Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest, reversal and conversion and jelly roll strategies combined are further capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''). Reversal and conversion and jelly roll strategy executions are not included in the Monthly Strategy Cap for a Firm. Further, to qualify for a strategy fee cap, the buy and sell side of a transaction must originate from the Exchange floor.

The Exchange proposes to cap Specialist, Market Maker, Professional, Firm and Broker-Dealer floor option transaction charges in Multiply Listed Options at $700 for box spread strategies executed on the same trading day in the same options class. Further, the Exchange will include box spreads in the Monthly Strategy Cap so that floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategies combined will continue to be capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts for purposes of the Monthly Strategy Cap, except for a Firm. Similar to reversal and conversion and jelly roll strategy executions, box spreads will not be included in the Monthly Strategy Cap for a Firm. The Exchange proposes to note for purposes of clarity in the Pricing Schedule that, as is the case today for reversal and conversion and jell roll strategy executions, box spreads are included in the Monthly Firm Fee Cap.[9] The Exchange proposes to amend the text of the Pricing Schedule describing the applicability of the Monthly Market Maker Cap [10] and the Monthly Firm Fee Cap to clarify how box spread strategies will be included or excluded from these caps as defined herein. For purposes of clarity, the Exchange proposes to note in the Pricing Schedule that all strategy executions are excluded from the Monthly Market Maker Cap.

In order to receive the applicable strategy caps today, members are required to designate on the trade ticket whether the trade involves a dividend, merger, short stock interest, reversal and conversion or jelly roll strategy by entering the proper code on the trading ticket [11] and into the system, or directly into the Floor Broker Management System [12] (''FBMS'').[13] In the alternative, members may request Exchange staff on the trading floor to input the code into the system.[14] The Exchange will require members to enter a ''Z3'' on the trading ticket in order to receive the strategy cap for a box spread strategy. The Exchange will note the required designation in a memorandum to floor members when it announces the availability of the strategy cap for box spread strategies.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adopting a strategy cap for box spreads is reasonable because it should encourage members and member organizations to transact a greater number of box spread strategies on the Exchange's trading floor in order that they may benefit from the fee cap. The Exchange also believes that it is reasonable to permit box spread strategy executions to count toward the Monthly Strategy Cap when members are trading in their own proprietary account to receive the benefit of the combined executions, which will include the ability to achieve the Monthly Strategy Cap by transacting box spreads as well as dividend, merger, short stock interest, reversal and conversion and jelly roll strategies. In addition, other options exchanges offer fee caps for box spreads, namely NYSE Arca, Inc. (''NYSE Arca'') [17] and NYSE MKT LLC (''NYSE MKT''),[18] for strategies.

The Exchange believes that adopting a strategy cap for box spreads is

[9] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[10] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) electronic and floor Option Transaction Charges; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest and reversal and conversion strategy executions (as defined in this Section II) are excluded from the Monthly Market Maker Cap.

[11] The Exchange has designated ''Z1'' for dividend strategies, ''Z2'' for short stock interest and merger strategies, ''Z3'' for box spread strategies and ''Z4'' for reversal and conversion and jelly roll strategies.

[12] FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[13] *See* Securities Exchange Act Release No. 65228 (August 30, 2011), 76 FR 55453 (September 7, 2011) (SR–Phlx–2012–73) (notice of filing and immediate effectiveness of proposed rule change relating to reversal and conversion strategies).

[14] The system refers to PHLX XL®, the Exchange's automated trading system. The Exchange believes that providing members the ability to request Exchange staff to mark a Strategy Trade on the day the strategy is executed would provide members with a means to ensure the Strategy Trade is properly marked for purposes of pricing in the event that a floor broker inadvertently forgot to mark a trade. Therefore, the Exchange requires that members executing Strategy Trades either: (1) enter a code on the trading ticket and into the system; (2) enter a code directly into FBMS; or (3) request that the information be input into the system by Exchange staff on the trading floor, on the day the order was executed, to take advantage of certain pricing caps for which they may qualify.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4), (5).

[17] NYSE Arca offers a $750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to each Strategy Execution executed in standard option contracts on the same trading day in the same option class. *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[18] NYSE MKT offers a $750 cap on transaction fees for Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls. The cap applies to all Strategy Executions executed in standard option contracts on the same trading day in the same option class. *See* NYSE Amex Options Fee Schedule.

equitable and not unfairly discriminatory because all market participants that are assessed transaction fees will have an opportunity to cap floor option transaction charges in Multiply Listed Options with respect to box spreads. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to require that all fee cap strategies, including box spreads, which combine executions for purposes of the Monthly Strategy Cap, must be traded in a member's own proprietary account. The Exchange is not amending the calculation of the Monthly Strategy Cap which will continue to impose the same requirements on members for all strategies to qualify for the Monthly Strategy Caps.

The Exchange's proposal to exclude Firm floor options transaction charges related to reversal and conversion strategies, jelly rolls, and now box spreads, from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies, jelly rolls and now box spreads from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to $75,000 per month with the Monthly Firm Fee Cap. The Exchange would include floor option transaction charges related to box spread strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, box spreads would be excluded from the Monthly Market Maker Cap, as all other strategy transactions are excluded from this cap.[19] For the reasons described above, the Exchange believes including box spread strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.[20]

The Exchange believes that its proposal to apply box spread fee caps to orders originating from the Exchange floor is reasonable because members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions defrays brokerage costs associated with executing strategy transactions and continues to incentivize members to utilize the floor for certain executions.[21] The Exchange believes that its proposal to apply box spread strategy fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today all other strategy fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The [sic] 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 because the proposed changes apply uniformly to all members that incur transaction charges for box spreads.[22] Further, other options exchanges today offer fee caps [23] on box spread strategies; therefore, the Exchange believes the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, floor members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps on box spreads to members executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee cap defrays brokerage costs associated with executing box spread strategy transactions, similar to other strategies today. Also, requiring that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fee caps that are proposed by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees caps at other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.[24] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[19] The reversal and conversion strategy and jelly roll executions are excluded from the Monthly Market Maker Cap. *See* Section II of the Pricing Schedule.

[20] Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). *See* Section II of the Pricing Schedule.

[21] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* proposed rule text in Section II of the Pricing Schedule.

[22] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[23] *Supra* notes 17 and 18.

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–109. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–109, and should be submitted on or before December 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70849; File No. SR–ICC–2013–07]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Provide for the Clearance of Standard Emerging European and Middle Eastern Sovereign Single Names

November 12, 2013.

I. Introduction

On September 17, 2013, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2013–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on October 1, 2013.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

ICC proposes to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts. Specifically, ICC is proposing to amend Section 26D of its Rules to provide for the clearance of additional Standard Emerging Sovereign Single Name constituents of the CDX Emerging Markets Index (''SES Contracts''). Currently, ICC clears four Standard Latin America Sovereign Single Name constituents of the CDX Emerging Markets Index. The proposed changes to the ICC Rules would provide for the clearance of Standard Emerging European and Middle Eastern Sovereign Single Name constituents of the CDX Emerging Markets Index, specifically the Republic of Turkey and the Russian Federation (the ''SEEME Contracts''). ICC believes the addition of the SEEME Contracts will allow market participants an increased ability to manage risk.

SEEME Contracts have similar terms to the Standard Latin America Sovereign Single Name constituents of the CDX Emerging Markets Index currently cleared by ICC and governed by Section 26D of the ICC rules. Accordingly, the proposed changes to Section 26D of the ICC rules include the addition of ''Standard Emerging European and Middle Eastern Sovereign'' as a Transaction Type for SES Contracts and the addition of the European Region as the CDS Region for SEEME Contracts.

Rule 26D–102 would be modified to indicate the specific Eligible SES Reference Entities to be cleared by ICC, namely the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela, the Argentine Republic, the Republic of Turkey and the Russian Federation. Rules 26D–303 (SES Contract Adjustments) and 26D–315 (Terms of the Cleared SES Contract) would be modified to incorporate SEEME Contracts as a Transaction Type for SES Contracts. Rule 26D–309 would be modified to state specifically that ICC will not accept a trade for clearance and settlement if at the time of submission or acceptance of the trade or at the time of novation the CDS Participant submitting the trade is domiciled in the country of the Eligible SES Reference Entity for such SES Contract. Rule 26D–315(b) also would be modified to indicate that for purposes of the CDS Committee Rules, for SEEME Contracts the CDS Region is the European Region.

ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, Section 17(A)(b)(3)(F) of the Act,[4] because ICC believes that the clearance of SEEME Contracts will facilitate the prompt and accurate settlement of securities, specifically security-based swaps, and contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. After careful review, the Commission finds that the proposed rule change is consistent with these requirements because the clearance of SEEME Contracts pursuant to ICC's proposal will promote the prompt and accurate clearance and settlement of securities transactions, and ICC's proposal, in combination with its existing rules, policies, and procedures for clearing SES Contracts, is designed to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 34–70496 (Sep. 25, 2013), 78 FR 60357 (Oct. 1, 2013) (SR–ICC–2013–07).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ICC–2013–07) be, and hereby is, approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27474 Filed 11–15–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70848; File No. SR–NSCC–2013–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Decommission Its Trade Risk Pro Service

November 12, 2013.

I. Introduction

On September 16, 2013, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–NSCC–2013–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on October 3, 2013.[3] The Commission did not receive comments on the proposed rule change. This order approves the proposed rule change.

II. Description

The proposed rule change consists of amendments to the Rules and Procedures (''Rules'') of NSCC to decommission the DTCC Trade Risk Pro service (''Trade Risk Pro''), as more fully described below. Trade Risk Pro was designed to allow NSCC Members to monitor intraday trading activity of their organizations and/or their correspondent firms through review of post-trade data.[4] While several firms participated in a pilot of Trade Risk Pro, no Members are currently enrolled in Trade Risk Pro and NSCC believes it is not currently cost-effective to maintain the service. As a result, NSCC is revising its Rules by deleting the current Rule 54 (Trade Risk Pro) and Procedure XVII (Trade Risk Pro). The effective date of the proposed rule change will be announced via an NSCC Important Notice.

III. Discussion

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [6] requires that rules of a clearing agency to be designed to, among other things, ''promote the prompt and accurate clearance and settlement of securities transactions and . . . to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.'' [7] The Commission finds that NSCC's proposed rule change is consistent with these requirements by discontinuing an underutilized service, which will enable NSCC to allocate its resources among other core clearing agency functions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–2013–10) be, and it hereby is, *approved.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27473 Filed 11–15–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–70544 (Sept. 27, 2013), 78 FR 61424 (Oct. 3, 2013) (SR–NSCC–2013–10).

[4] *See* Securities Exchange Act Release No. 66068 (Dec. 29, 2011), 77 FR 528 (Jan. 5, 2012) (File No. SR–DTC–2011–10).

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 12 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 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).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70845; File No. SR–CBOE–2013–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the Customized Option Pricing Service

November 12, 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 October 29, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to amend the fee schedule for the Customized Option Pricing Service (''COPS'') to add a fee for historical COPS data. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fee schedule for the COPS data product.[3]

Background

COPS provides subscribers with an ''end-of-day'' file[4] of valuations for Flexible Exchange (''FLEX'')[5] options and certain over-the-counter (''OTC'') options (''COPS Data''). COPS Data consists of indicative[6] values for three categories of ''customized'' options. The first category of options is all open series of FLEX options listed on any exchange that offers FLEX options for trading.[7] The second category is OTC options that have the same degree of customization as FLEX options. The third category includes options with strike prices expressed in percentage terms. Values for such options are expressed in percentage terms and are theoretical values.[8] Market Data Express, LLC (''MDX''), an affiliate of CBOE, offers COPS Data for sale to all market participants.

The fees that MDX charges for COPS Data are set forth on the Price List on the MDX Web site (*www.marketdataexpress.com*). MDX currently charges a fee per option per day for COPS Data. The amount of the fee is reduced based on the number of options purchased. A subscriber pays $1.25 per option per day for each option purchased up to 50 options, $1.00 per option per day for each option purchased from 51 to 100 options, $0.75 per option per day for each option purchased from 101 to 500 options, and $0.50 per option per day for each option purchased over 500 options.

The Exchange has submitted a separate proposed rule change to make historical COPS data (''Historical COPS Data'') available through MDX.[9] Historical COPS Data consists of COPS Data that is over one month old (i.e., copies of the ''end-of-day'' COPS file that are over one month old). Pursuant to that proposed rule change, the Exchange will make COPS Data and COPS Historical Data (collectively, the ''Data'') available to ''Subscribers'' for internal use and internal distribution[10] and to ''Customers'' who, pursuant to a written vendor agreement between MDX and the Customer, may distribute the data externally (i.e., act as a vendor) and/or use and distribute the Data internally. Customers will not be charged any fees initially for external distribution of the Data.

Fee for Historical COPS Data

The Exchange proposes to establish a fee of $75 per day for Historical COPS Data. For example, a Subscriber would pay a total of $750 for 10 days of Historical COPS Data. Market participants would be able to purchase Historical COPS Data through the MDX Web site. The proposed fee would apply equally to all market participants and be effective on November 4, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[11] in general, and, in particular, with Section 6(b)(4) of the Act[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among users and recipients of the Data, and with Section 6(b)(5)[13] of the Act in that it is not designed to permit unfair discrimination between them. The Exchange believes the proposed fee for Historical COPS Data is equitable and not unfairly discriminatory because it would apply equally to all market participants. In addition, the Exchange believes the proposed fee is equitable because COPS is purely optional. Only those customers that deem the product to be of sufficient overall value and usefulness would purchase it. The Exchange believes the proposed fee is reasonable because potential COPS customers have indicated to the Exchange that the proposed fee compares favorably to fees that competing market data vendors charge for similar data. A small number of market data vendors produce option value data that is similar to the Data.[14] The Options Clearing Corporation (''OCC'') also produces FLEX option value data that is similar to the FLEX option value data that is included in COPS.[15]

For the reasons cited above, the Exchange believes the proposed rule change is equitable, reasonable and not unfairly discriminatory. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed fee fails to meet the requirements of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary data products is constrained by (1) the existence of actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The Exchange believes competition provides an effective constraint on the market data fees that the Exchange, through MDX, has the ability and the incentive to charge. CBOE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on CBOE to act reasonably in setting its fees for market data, particularly given that the market participants that will pay such fees often will be the same

[3] The Exchange submitted proposed rule changes in 2012 to establish COPS and COPS fees. *See* Securities Exchange Act Release No. 67813 (September 10, 2012), 77 FR 56903 (September 14, 2012) and Securities Exchange Act Release No. 67928 (September 26, 2012), 77 FR 60161 (October 2, 2012). The service was originally entitled ''Customized Option Valuation Service'' but is now referred to as the ''Customized Option Pricing Service''.

[4] An end of day file refers to data that is distributed prior to the opening of the next trading day.

[5] FLEX options are exchange traded options that provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[6] ''Indicative'' values are indications of potential market prices only and as such are neither firm nor the basis for a transaction.

[7] Current FLEX options open interest spans over 2,000 series on over 300 different underlying securities.

[8] These values are theoretical in that they are indications of potential market prices for options that have not traded (i.e. do not yet exist). Market participants sometimes express option values in percentage terms rather than in dollar terms because they find it is easier to assess the change, or lack of change, in the marketplace from one day to the next when values are expressed in percentage terms.

[9] *See* Securities Exchange Act Release No. 70705 (October 17, 2013), 78 FR 63265 (October 23, 2013) (SR–CBOE–2013–097).

[10] Pursuant to a written agreement between MDX and a Subscriber, a Subscriber may not act as a vendor and distribute the Data externally.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] These vendors include SuperDerivatives, Markit, Prism, and Bloomberg's BVAL service.

[15] The OCC makes this data available on its Web site at *http://www.theocc.com/webapps/flex-reports*.

[16] 15 U.S.C. 78f(b)(8).

market participants from whom CBOE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. CBOE currently competes with eleven options exchanges (including CBOE's affiliate, C2 Options Exchange) for order flow.[17]

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, Customers will not offer COPS data unless this product will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer COPS data to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request COPS data from Customers unless they can use the data for profit-generating purposes in their businesses. 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. 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.

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 options 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.

The Existence of Alternatives. CBOE is constrained in pricing COPS data by the availability to market participants of alternatives to purchasing COPS data. CBOE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. Other market data vendors can and have produced their own option valuation products, and thus are sources of potential competition for MDX. As noted above, SuperDerivatives, Markit, Prism, and Bloomberg are some of the market data vendors that offer market data products that compete with COPS. Also, OCC makes similar data available at no cost, thus constraining CBOE's ability to price the Data. The vendor proprietary data and the OCC data are significant alternatives to COPS data. 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.

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.

COPS is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective Customers that are not required to use it. The Exchange believes COPS data offered by MDX will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

[17] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See* e.g., Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market data offering).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–104 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–CBOE–2013–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–104 and should be submitted on or before December 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–27471 Filed 11–15–13; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8523]

60-Day Notice of Proposed Information Collection: Department of State Mentor Protégé Program Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 17, 2014.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: burleynb@state.gov.*
- *Mail:* A/SDBU, Nikki Burley, SA–6, Room L–500, Washington DC 20522–0602.
- *Fax:* 703–875–6825.
- *Hand Delivery or Courier:* 1701 North Ft. Myer Drive, Arlington, Virginia 22209.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Nikki Burley, A/SDBU, SA–6, Room L–500, Washington DC 20522–0602 who may be reached on 703–875–6824 or at *burleynb@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Department of State Mentor Protégé Program Application.
- *OMB Control Number:* 1405–0161.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of Small and Disadvantaged Business Utilization—A/SDBU.
- *Form Number:* DS–4053.
- *Respondents:* Small and large businesses planning to team together in an official mentor-protégé capacity to enhance the capabilities of the protégé firms to perform as prime contractors and subcontractors on Department of State procurements.
- *Estimated Number of Respondents:* 15.
- *Estimated Number of Responses:* 15.
- *Average Time per Response:* 12 hours.
- *Total Estimated Burden Time:* 180 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This information collection facilitates a mentor-protégé program per Department of State Acquisition Regulations (DOSAR) 619.202–70 that encourages business agreements between small and large for-profit companies, for the purpose of forming a mentor-protégé relationship that will provide developmental assistance and to enhance the capabilities of the protégé firms to perform as prime contractors and subcontractors on Department of State procurements.

Methodology: Respondents may submit the information by email using the DS–4053, or by letter using fax or postal mail.

Shapleigh C. Drisko,

Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of State.

[FR Doc. 2013–27563 Filed 11–15–13; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 8525]

Defense Trade Advisory Group; Notice of Cancellation of Open Meeting

AGENCY: Department of State.

ACTION: Notice of Cancellation of meeting.

SUMMARY: The notice references Public Notice 8515 published in the November 12, 2013 **Federal Register**, announcing the public meeting for Defense Trade Advisory Group (DTAG) on November 22, 2013 to discuss current defense trade issues and topics for further study has been cancelled. It will be rescheduled at a later date.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or email *aguirrelv@state.gov.*

Dated: November 12, 2013.

Kenneth B. Handelman,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2013–27551 Filed 11–15–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 8524]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a Working Paper prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The public meeting will take place on Monday, December 2, 2013 from 1 p.m. until 3 p.m. EST. This is not a meeting of the full Advisory Committee.

In response to a request from UNCITRAL's Working Group IV (electronic commerce), the UNCITRAL Secretariat has prepared draft provisions on electronic transferable records, which are presented for in the form of a model law to facilitate Working Group discussion. The Working Paper, which is numbered WP.124 and includes WP.124/Add.1, is available online at *http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.* This Working Paper will be discussed December 9–13, 2013, at the 48th Session of Working Group IV.

The purpose of the public meeting is to obtain the views of concerned stakeholders on the topics addressed in the Working Paper in advance of the meeting of Working Group IV. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at *coffeems@state.gov.*

Time and Place: The meeting will take place from 1 p.m. until 3 p.m. EST in Room 240, South Building, State Department Annex 4, Washington, DC 20037. Participants should plan to arrive at the Navy Hill gate on the west side of 23rd Street NW., at the intersection of 23rd Street NW. and D Street NW. by 12:30 p.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than November 25, 2013. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: November 12, 2013.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2013–27549 Filed 11–15–13; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0125]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PURSE PRINCESS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 18, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0125. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PURSE PRINCESS is: *Intended Commercial Use of Vessel:* ''2–3 hour day sails in NY Harbor, Sightseeing.''

Geographic Region: ''New York harbor, New Jersey coastal waters'' The complete application is given in DOT docket MARAD–2013–0125 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 12, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27519 Filed 11–15–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2013–0131]

Request for Comments of a Previously Approved Information Collection

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on Tuesday, August 6, 2013 (FR 47826, Vol. 78, No. 151). No comments were received.

DATES: Comments must be submitted on or before December 18, 2013.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, Office of Workforce Development, Maritime Administration, 1200 New Jersey Avenue SE., W23–457, Washington, DC 20590. Telephone: 202–366–2647; or EMAIL: *Rodney.McFadden@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

OMB Control Number: 2133–0526.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: This collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary Maritime Administration certification for re-employment rights and other benefits.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Annual Estimated Total Annual Burden Hours: 10.

Frequency of Collection: Annually.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: November 12, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–27528 Filed 11–15–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

University Transportation Centers Program

AGENCY: Research and Innovative Technology Administration, DOT.

ACTION: Notice of Funding Availability.

SUMMARY: The United States Department of Transportation is publishing this notice to give eligible nonprofit institutions of higher education located in Federal Regions 3 and 10 advance notice that they will have an opportunity to submit applications for a grant as a Regional Center in the University Transportation Centers (UTCs) program. Funds for this grant program are authorized beginning on October 1, 2012. In the near future, the Department, via the Research and Innovative Technology Administration (RITA), will release a grant solicitation through *Grants.gov* and on the UTC Program's Web site, *http://utc.dot.gov,*

describing the competition and deadlines for applications. Proposals will be evaluated through a competitive process on the basis of demonstrated ability, research, technology and education resources, leadership, multi-modal research capability, and commitment to transportation workforce development programs, technology transfer capability, the use of peer review, and effective partnerships to advance diversity.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Womack, Associate Administrator for Research, Development and Technology, mail code RDT–10, Research and Innovative Technology Administration (RITA), 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number (202) 366–5306 or Email *Kevin.Womack@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Eligibility
III. Qualification Requirements
IV. Application Process
V. Program Funding and Award
VI. Use of Grant Funds

I. Background

The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141, Sec. 51001(a)(5)) authorizes $72.5 million for each of the fiscal years 2013 (FY 2013) and 2014 (FY 2014) for up to 35 competitive grants for UTCs. The FY 2013 and FY 2014 funds are subject to an annual obligation limitation. The amount of budget authority available in a given year may be less than the amount authorized for that fiscal year.

MAP–21 authorizes the Secretary of Transportation to make grants to eligible nonprofit institutions of higher education to establish and operate UTCs. RITA will administer the program (49 CFR 1.99(e)). The Department will solicit competitive grant applications for two regional university transportation centers, one each in Federal Regions 3 and 10. Previously, the Department solicited grant applications for these two regions (see 77 FR 60012); however, the Department did not select any of the submitted applications. UTCs will be selected by the Secretary, in consultation as appropriate with the Administrators of the Federal Highway Administration, and the Federal Transit Administration. (49 U.S.C. 5505(b)(4)(B) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)).

The Department plans to competitively select two regional UTCs, one each in Federal Regions 3 and 10, with an award of $2,592,500 each.

The role of each university transportation center is to advance transportation expertise and technology in the varied disciplines that comprise the field of transportation through education, research, and technology transfer activities; to provide for a critical transportation knowledge base outside of the Department of Transportation; and to address critical workforce needs and educate the next generation of transportation leaders.

II. Eligibility

A UTC must be located in the United States or its territories. A UTC may be a single nonprofit institution of higher education, or a consortium of two or more nonprofit institutions of higher education. A regional UTC must be located in the region for which the grant is sought. (49 U.S.C. 5505(c)(3)(A) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)). If a regional UTC is a consortium of two or more nonprofit institutions of higher education, then each institution in the consortium must be located in the region for which the grant is sought.

For Region 3, the eligible states are: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. For Region 10, the eligible states are: Alaska, Idaho, Oregon, and Washington.

Institutions may collaborate with state DOTs, the private sector, and community, junior, or technical colleges; however, these organizations or others that are not U.S. nonprofit institutions of higher education may not be considered members of a consortium. The grantee institution (lead institution in the case of a consortium of institutions) will be the direct and primary recipient of UTC program funds, and must perform a substantive role in carrying out UTC activities, and not serve merely as a conduit for awards to other parties.

MAP–21 limits the circumstances in which an institution may receive more than one grant. (49 U.S.C. 5505(b)(2) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)). These restrictions include:

A lead institution of a consortium that receives a grant for a National Center is not eligible to receive an additional grant as a lead institution or a member of a consortium for a Regional Center.

A member of a consortium that receives a grant for a National Center is not eligible to receive a grant as a sole institution for a Regional Center or as a lead institution for a Regional Center.

III. Matching Requirements

Each UTC is required to obtain matching funds from non-federal sources. The amount of matching funds required for a regional UTC is 100%. The matching amounts may include the amounts made available to a grant recipient under 23 U.S.C. 504(b) or 505. (49 U.S.C. 5505(c)(3)(D)(ii) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)).

IV. Application Process

Full and open competition. US DOT will conduct the UTC program selection based on principles of full and open competition. Two regional centers, one each in Federal Regions 3 and 10, will be selected from the pool of applicants.

Subject Matter Focus. The two Regional UTCs (one each in Federal Regions 3 and 10 receiving $2,592,500/year each) are required to focus on highway and/or public transportation research and education (49 U.S.C. 5505(c)(3)(B)(iii) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)). Regional UTCs must be able to conduct research in an area of focus from among ''nonexclusive candidate topic areas established by the Secretary that address the research priorities identified in section 503 of title 23'' (49 U.S.C. 5505(b)(4)(A) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)). An applicant for a regional UTC must designate the region in which it is applying.

The Department seeks a balanced portfolio of UTCs that supports the Secretary of Transportation's Strategic Goals, contains different types and/or sizes of universities, and focuses on improving overall system performance using multiple transportation resources.

Selection criteria. The Department will evaluate and select UTC applicants based on the nine MAP–21 selection criteria:

''(i) the demonstrated ability of the recipient to address each specific topic area described in the research and strategic plans of the recipient;

''(ii) the demonstrated research, technology transfer, and education resources available to the recipient to carry out this section;

''(iii) the ability of the recipient to provide leadership in solving immediate and long-range national and regional transportation problems;

''(iv) the ability of the recipient to carry out research, Education, and technology transfer activities that are multimodal and multidisciplinary in scope;

''(v) the demonstrated commitment of the recipient to carry out transportation workforce development programs through—

''(I) degree-granting programs; and

''(II) outreach activities to attract new entrants into the transportation field;

''(vi) the demonstrated ability of the recipient to disseminate results and spur the implementation of transportation research and education programs through national or statewide continuing education programs;

''(vii) the demonstrated commitment of the recipient to the use of peer review principles and other research best practices in the selection, management, and dissemination of research projects;

''(viii) the strategic plan submitted by the recipient describing the proposed research to be carried out by the recipient and the performance metrics to be used in assessing the performance of the recipient in meeting the stated research, technology transfer, education, and outreach goals; and

''(ix) the ability of the recipient to implement the proposed program in a cost-efficient manner, such as through cost sharing and overall reduced overhead, facilities, and administrative costs.''

(49 U.S.C. 5505(b)(4)(B) as amended by Pub. L. 112–141 Sec. 52009 (effective Oct. 1, 2012)).

Additional selection criteria applying to regional UTCs are:

The institution (or lead institution in the case of a consortium) must have a well-established, nationally recognized program in research and education, as shown by:

(i) recent expenditures by the institution in highway or public transportation research;

(ii) a historical track record of awarding graduate degrees in professional fields closely related to highways and public transportation; and

(iii) an experienced faculty who specialize in professional fields closely related to highways and public transportation (49 U.S.C. 5505(c)(3)(B) as amended by Pub. L. 112–141 Sec. 52009 (effective Oct. 1, 2012)).

External Stakeholders. The Department will consult with external stakeholders (including the Transportation Research Board of the National Academy of Sciences, among others), to the maximum extent practicable, to evaluate and competitively review all proposals (49 U.S.C. 5505(b)(6) as amended by Pub. L. 112–141, Sec. 52009 (effective Oct. 1, 2012)).

V. Program Funding and Award

UTCs will be selected by the Secretary, in consultation as appropriate with the Administrators of the Federal Highway Administration and the Federal Transit Administration.

VI. Use of Grant Funds

According to the terms of the grant agreement, grantees will have until September 30, 2017 to expend FY 2013 funds and, assuming availability, FY 2014 funds.

Issued in Washington, DC, on November 12, 2013.

Gregory D. Winfree,

Administrator, Research and Innovative Technology Administration.

[FR Doc. 2013–27421 Filed 11–15–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Proposed Information Collection (Financial Statement); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine Veteran-obligors' and prospective assumers' creditworthiness.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0047'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6807 is primarily completed by purchasers assuming a Veteran's home loan in release of liability cases authorized by 38 U.S.C. 3714 and by Veteran-purchasers seeking substitution of entitlement by 38 U.S.C. 3702(b)(2). Data obtained permits credit underwriting determinations for action in such cases.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,250 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 3,000.

Dated: November 13, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–27507 Filed 11–15–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0567]

Proposed Information Collection Activity: (The Presidential Management Certificate) Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), 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 revision 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 provide additional certificates requested by respondent.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 17, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (43D1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *mechelle.powell@va.gov*. Please refer to ''OMB Control No. 2900–0567'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or Fax (202) 273–6695.

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, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA'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: Presidential Management Certificate.

OMB Control Number: 2900–0567.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 40–0247 is used to provide additional certificates requested by respondent. A respondent is an eligible recipient that includes the next-of-kin, other relatives or friends that request additional certificates and/or replacement certificates.

Affected Public: Individuals or Households.

Estimated Annual Burden: 6,115.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 183,453.

Dated: November 13, 2013.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–27480 Filed 11–15–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on December 3–4, 2013, in room 230 at 810 Vermont Avenue NW., Washington, DC. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on December 3 and at 12 noon on December 4. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On December 3, the Committee will receive briefings on Health Care Eligibility, Ophthalmology and Optometry, Polytrauma System of Care, Physical Medicine and Rehabilitation Services, Spinal Cord Injury and Disorders, Orthotic and Prosthetic Program, Clothing Benefits, and Integrated Disability Evaluation System.

On December 4, the Committee will receive a briefing on Rehabilitation Research and Development.

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Mr. Larry N. Long, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4RR), VA, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *lonlar@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 15 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Mr. Long at (202) 461–7354.

William F. Russo,

Deputy Director, Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2013–27540 Filed 11–15–13; 8:45 am]

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Part II

Commodity Futures Trading Commission

17 CFR Parts 15, 17, 18, et al.

Ownership and Control Reports, Forms 102/102S, 40/40S, and 71; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 17, 18, and 20

RIN 3038–AD31

Ownership and Control Reports, Forms 102/102S, 40/40S, and 71

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting new rules and related forms to enhance its identification of futures and swap market participants. These final rules will leverage the Commission's current position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on amended Forms 102 and 40, and on new Form 71. The new and amended forms require the reporting of certain trading accounts active on reporting markets that are designated contract markets or swap execution facilities. Among other information, the forms collect ownership and control information with respect to both position-based special accounts and trading accounts that meet specified volume-based reporting levels.

DATES: *Effective date:* February 18, 2014.

Compliance date: The compliance date will be delayed by an additional 180 days, with the result that the compliance date of these final rules will be August 15, 2014.

FOR FURTHER INFORMATION CONTACT: Sebastian Pujol Schott, Associate Director, Division of Market Oversight (''DMO''), at 202–418–5641 or *sps@cftc.gov*; Mark Schlegel, Special Counsel, DMO, at 202–418–5055 or *mschlegel@cftc.gov*; Brian Robinson, Attorney Advisor, DMO, at 202–418–5385 or *brobinson@cftc.gov*; or James Outen, Industry Economist, DMO, at 202–418–5710 or *jouten@cftc.gov*; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Overview of Final Rules
B. Benefits Derived From Final Rule
II. Statutory Framework for Position Reporting and Trader and Account Identification
III. Current Trader and Account Identification Programs
A. Futures Large Trader Reporting—Current Forms 102 and 40
i. Identification of Special Accounts—Current Form 102
ii. Statement of Reporting Trader—Current Form 40
B. Large Trader Reporting for Physical Commodity Swaps—102S and 40S Filings
IV. Summary of 2010 and 2012 NPRMs
V. Summary of New and Amended Forms Adopted in These Final Rules
A. Position-Triggered Form 102A (Special Accounts)
i. Special Accounts and Reportable Positions
ii. 102A Form Requirements
iii. Timing of 102A Reporting
iv. Timing of 102A Change Updates and Refresh Updates
B. Volume-Triggered Form 102B (Volume Threshold Accounts)
i. Volume Threshold Accounts and Reportable Trading Volume Level
ii. 102B Form Requirements
iii. Timing of 102B Reporting
iv. Timing of 102B Change Updates and Refresh Updates
C. Position-Triggered Form 102S (Consolidated Accounts)
i. 102S Form Requirements
ii. Timing of 102S Reporting, Change Updates and Refresh Updates
D. Form 71 (Omnibus Accounts and Sub-Accounts)
E. New Form 40 (Reporting Traders)
VI. Data Submission Standards and Procedures
A. Overview
B. Schedule of Effective Date and Compliance Date
VII. Review of NPRM and Summary of Final Rules
A. Part 15
i. § 15.00(q)—Reporting Market
ii. § 15.00(t)—Control
iii. § 15.00(u)—Reportable Trading Volume
iv. § 15.00(v)—Direct Market Access
v. § 15.00(v)—Omnibus Account
vi. § 15.00(w)—Omnibus Account Originator
vii. § 15.00(x)—Volume Threshold Account
viii. § 15.00(y)—Omnibus Volume Threshold Account
ix. § 15.00(z)—Omnibus Reportable Sub-Account
x. § 15.00(aa)—Reportable Sub-Account
xi. § 15.00(bb)—Trading Account Controller; § 15.00(cc)—Volume Threshold Account Controller; § 15.00(dd)—Reportable Sub-Account Controller
xii. § 15.01(c)—Persons Required To Report
xiii. § 15.02—Reporting Forms
xiv. § 15.04—Reportable Trading Volume Level
B. Part 17
i. § 17.01(a)—Identification of Special Accounts (via 102A)
ii. § 17.01(b)—Identification of Volume Threshold Accounts (via 102B)
iii. § 17.01(c)—Identification of Omnibus Accounts and Sub-Accounts (via 71)
iv. § 17.01(d)—Exclusively Self-Cleared Contracts
v. § 17.01(e)—Identification of Omnibus Accounts and Sub-Accounts
vi. § 17.02(b)—Section 17.01(a) Reports (via 102A)
vii. § 17.02(c)—Section 17.01(b) Reports (via 102B)
viii. § 17.03(a)–(g)—Delegation of Authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight
C. Part 18
i. § 18.04—Statement of Reporting Trader
ii. § 18.05—Maintenance of Books and Records
D. Part 20
i. § 20.5—Series S Filings
VIII. Related Matters
A. Paperwork Reduction Act
i. Overview
ii. Information To Be Provided
iii. Total Reporting and Recordkeeping Costs; Methodology Used To Estimate Costs
iv. Reporting Burdens—New and Revised Forms
v. Recordkeeping Burdens—Revised § 18.05
B. Consideration of Costs and Benefits
i. Background
ii. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions
iii. Commission Request for Comments Regarding Cost and Benefit Estimates
iv. Methodology Used To Estimate Costs
v. Costs and Benefits of Individual Reporting Forms and Reporting and Recordkeeping Requirements
vi. Comments Regarding Costs and Benefits
vii. Consideration of Alternatives
viii. Reporting on Form 102S
ix. Consolidation Form Proposed by FIA
x. Section 15(a) Factors
C. Regulatory Flexibility Act

I. Background

A. Overview of Final Rules

The CFTC's large trader reporting rules (also referred to herein as the ''reporting rules'') are contained in parts 15 through 21 of the Commission's regulations.[1] The reporting rules are currently structured to collect information with respect to positions in ''open contracts,''[2] including: (1) Information necessary to identify persons who hold or control ''reportable positions''[3] in open contracts (via current Form 40); and (2) information necessary to identify ''special accounts''[4] (via current Form 102). These final rules modify the current

[1] 17 CFR parts 15 through 21. These final rules generally relate to parts 15, 17, 18 and 20 of the Commission's regulations.

[2] ''Open contract'' means any commodity or commodity option position held by any person on or subject to the rules of a board of trade which have not expired, been exercised, or offset. *See* §§ 1.3(t) and 15.00(n).

[3] A ''reportable position'' is defined in § 15.00(p) as any open contract position that at the close of the market on any business day equals or exceeds the Commission's reporting levels specified in § 15.03.

[4] A ''special account'' is defined in § 15.00(r) as any commodity futures or option account in which there is a reportable position.

reporting rules and forms as they pertain to positions in open contracts. Specifically, the Commission is expanding the reporting rules and forms so that they may also be used to identify ''volume threshold accounts,'' defined as individual trading accounts that trigger volume-based reporting thresholds on a reporting market [5] that is a registered entity under sections 1a(40)(A) or 1a(40)(D) of the Commodity Exchange Act (''CEA'' or ''Act'') (*i.e.,* a designated contract market (''DCM'') or a swap execution facility (''SEF'')), regardless of whether such activity results in reportable positions.[6] Volume threshold accounts associated with DCMs and SEFs will be required to be reported by clearing members, as discussed in sections V(B) and VII below. The Commission notes that volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other products traded on or subject to the rules of a DCM or SEF.

The amendments to the reporting rules and forms will achieve three primary purposes. First, they will expand and subdivide current Form 102 into a new Form 102 (''New Form 102''), partitioned into three sections: Section 102A for the identification of position-based special accounts (''102A,'' ''Form 102A,'' or ''New Form 102A''); section 102B for the collection of ownership and control information from clearing members on volume threshold accounts associated with DCMs or SEFs (''102B,'' ''Form 102B,'' or ''New Form 102B''); and section 102S for the submission of 102S filings for swap counterparty and customer consolidated accounts with reportable positions (''102S,'' ''Form 102S,'' or ''102S filings''). Second, the amendments will enhance the Commission's surveillance and large trader reporting programs for futures, options on futures, and swaps through a variety of enhancements, including: Requiring the reporting on Form 102A of the trading accounts that comprise each special account; requiring the reporting of certain omnibus account information on Form 71 (''Form 71'' or ''New Form 71'') upon special call by the Commission; [7] updating Form 40 (''New Form 40''); and integrating the submission of 102S and 40S filings into the general Form 102 and Form 40 reporting program. Finally, these rules will provide for the electronic submission of Forms 102, 40, and 71 through either a web portal or secure FTP transmission.

B. Benefits Derived From Final Rules

The benefits of reporting through a dedicated ownership and control report (''OCR'') were discussed in proposed rulemakings that preceded these final rules—specifically, the Advanced Notice of Proposed Rulemaking published in July 2009 [8] (the ''2009 Advanced NPRM''), the Notice of Proposed Rulemaking published in July 2010 [9] (the ''2010 OCR NPRM'') and the subsequent Notice of Proposed Rulemaking published in July 2012 [10] (the ''NPRM''). Section IV below discusses the history of certain previous OCR rulemakings in more detail. As discussed in the NPRM, the final rules will enhance the Commission's current trade practice and market surveillance programs for futures and options on futures, and facilitate surveillance programs for swaps, by expanding the information presently collected on current Forms 102 and 40, and introducing a new information collection for omnibus volume threshold accounts in New Form 71.[11] The rules will also help implement the 102S and 40S filing requirements adopted in connection with the Commission's part 20 rules addressing large trader reporting for physical commodity swaps (discussed below).[12] Ultimately, the final rules will significantly enhance the Commission's ability to identify participants in the derivatives markets and to understand relationships between trading accounts, special accounts, reportable positions, and market activity. This will enable the Commission to better deter and prevent market manipulation; deter and detect abusive or disruptive practices (such as marking the close, ''wash trading,'' or money passing); and better perform risk-based monitoring and surveillance between related accounts.

As discussed in the NPRM, the final rules respond, in part, to the increased dispersion and complexity of trading in U.S. futures markets following their transition from localized, open-outcry venues to global electronic platforms.[13] Although electronic trading has conferred important informational benefits upon regulators, the resulting increases in trading volumes, products offered, and trader dispersion have created equally important regulatory challenges. Effective surveillance now requires automated analysis and pattern and anomaly detection involving millions of daily trade records [14] and hundreds of thousands of position records [15] present in the surveillance data sets received daily by the Commission.[16] Although the final rules are partly driven by these developments in the U.S. futures markets, as discussed above, the rules will also facilitate the creation of a robust surveillance program for swaps that adequately captures information with respect to swap market participants.

In order to perform effective surveillance, the Commission must receive data sets that contain a sufficient number of reference points for the Commission to uncover relationships between related accounts, and analyze information based on surveillance criteria that are frequently evolving in response to market events. The collection of additional information regarding trading accounts and traders will enable the Commission to perform more efficient and effective surveillance. In particular, the OCR data collection will enable the Commission to link transaction-level data that it receives (which includes trading account numbers, but not traders'

[5] ''Reporting market'' is defined in current § 15.00(q) as a designated contract market, registered entity under section 1a(29) of the Act, and unless determined otherwise by the Commission, a derivatives transaction execution facility. By way of these final rules, the Commission is revising § 15.00(q) to define reporting market as a designated contract market or a registered entity under section 1a(40) of the Act. This revision is technical in nature, and serves to conform § 15.00(q) with recent amendments to the Act. *See infra* sections VII and IX.

[6] *See infra* section VII and IX for a discussion of the definition of volume threshold account.

[7] As explained below, information regarding the owners and controllers of volume threshold accounts reported on Form 102B and that are identified as omnibus accounts (''omnibus volume threshold accounts'') will be collected by the Commission directly from originating firms, via Form 71.

[8] *See* Commission, Advanced Notice of Proposed Rulemaking: Ownership and Control Report, 74 FR 31642 (July 2, 2009).

[9] *See* Commission, Notice of Proposed Rulemaking: Ownership and Control Report, 75 FR 41775 (July 19, 2010).

[10] *See* Commission, Notice of Proposed Rulemaking: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 77 FR 43968 (July 26, 2012).

[11] *See id.* at 43970. *See infra* section V for a discussion of New Form 71 and omnibus volume threshold accounts.

[12] *See infra* section V for a discussion of the 102S and 40S filing requirements. *See also* 17 CFR 20.5(a) and (b). Final part 20 was published in the **Federal Register** on July 22, 2011. *See* Commission, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851 (July 22, 2011) (''Large Trader Reporting for Physical Commodity Swaps'').

[13] *See* NPRM *supra* note 10 at 43970.

[14] For example, in November 2011, the Commission received an average of 7.4 million trade records per day from electronic trading on DCMs.

[15] For example, in November 2011, the Commission received an average of 617,000 position records per day from reporting firms and exchanges.

[16] Daily trade and position records are provided to the Commission pursuant to §§ 16.02 and 17.00, respectively. For further discussion of the Commission's large trader reporting program, see sections III(A) and (B), below.

names) to position-based data (which includes large traders' names, but not their trading account numbers), as explained below.

As noted in the NPRM, ''Commission staff utilizes two distinct data platforms to conduct market surveillance: The Trade Surveillance System ('TSS') and the Integrated Surveillance System ('ISS'). Broadly speaking, TSS captures transaction-level details of trade data, while ISS facilitates the storage, analysis, and mining of large trader data from a position perspective. One important component of TSS is the Trade Capture Report ('TCR'). Trade Capture Reports contain trade and related order data for every matched trade facilitated by an exchange, whether executed via open-outcry, electronically, or non-competitively. Among the data included in the TCR are trade date, product, contract month, trade time, price, quantity, trade type (*e.g.,* open outcry outright future, electronic outright option, give-up, spread, block, etc.), executing broker, clearing member, opposite broker and clearing member, customer type indicator, trading account numbers, and numerous other data points.'' [17] The OCR data collection will address a gap in the current system by providing common reference points between TSS and ISS data. New Form 102A, for example, is structured to collect special account numbers,[18] trading account numbers that comprise the special account, and the names of owners and controllers of both special accounts and such trading accounts, thereby linking TSS data to ISS data.[19]

The data collection will also help the Commission to better identify and categorize individual trading accounts and market participants that trigger position or newly-created volume-based reporting thresholds. For example, New Form 102A will require reporting firms to identify the constituent trading accounts of each reported special account. In this manner, New Form 102A will ensure a new level of interoperability between the Commission's TSS trade data and ISS large trader data, and will permit Commission staff to quickly reconstruct trading for any special account. In addition to linking the two databases, New Form 102A will identify both the owners and controllers of such constituent trading accounts, thereby providing the Commission with a new lens through which to identify and surveil market activity that might otherwise appear unrelated to the Commission's surveillance programs.

New Form 102B will, for the first time, require identification of trading accounts based solely on their total trading volume during a single trading day. This new information collection will enhance the Commission's trade practice surveillance program by revealing connections of ownership or control between trading accounts that otherwise appear unrelated in the TCR. More generally, it will facilitate Commission efforts to detect and deter attempted market disruptions that may occur even in the absence of large open positions that are reportable on New Form 102A. Finally, the automated collection of OCR information via electronic forms, rather than through ad-hoc, manual processes, will permit both the Commission and market participants to administer the reporting programs more efficiently and effectively. Additional information on the forms addressed by these final rules is provided in section V below.

II. Statutory Framework for Position Reporting and Trader and Account Identification

The Commission's current reporting rules, and those adopted herein, are primarily implemented by the Commission pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Act.[20] Section 4a of the Act, as amended by the Dodd-Frank Act, requires the Commission to set and enforce speculative position limits with respect to both futures and swaps.[21] Section 4c(b) gives the Commission plenary authority to regulate transactions that involve commodity options.[22] Section 4g(a) of the Act requires, among other things, each futures commission merchant (''FCM''), introducing broker, floor broker, and floor trader to file such reports as the Commission may require on proprietary and customer transactions and positions in commodities for future delivery on any board of trade in the United States or elsewhere.[23] In addition, section 4g(b) requires registered entities to maintain daily trading records as required by the Commission, and section 4g(c) requires floor brokers, introducing brokers, and FCMs to maintain their own daily trading records for each customer in such manner and form as to be identifiable with the daily trading records maintained by registered entities. Section 4g(d) permits the Commission to require that such daily trading records be made available to the Commission.[24] Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions taken or obtained on designated contract markets equal or exceed Commission-set levels.[25] Collectively, these CEA provisions warrant the maintenance of an effective and rigorous system of market and financial surveillance.

As further discussed in the NPRM, in addition to the CEA sections described above, on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[26] Title VII of the Dodd-Frank Act [27] amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-

[17] *See* NPRM *supra* note 10 at 43970.

[18] As discussed in section III(A) below, a special account is a commodity futures or option account that has a reportable position, based on reporting levels set by the Commission. A special account number is a unique account identifier assigned by an FCM, clearing member, or foreign broker to a special account. *See* 17 CFR 17.00(g)(2)(iii) and 17 CFR 17.01(a). Special account numbers are included in ISS data. The special account number does not correspond to the trading account number reported on the Trade Capture Report. Accordingly, the special account number is not sufficient to link TSS data to ISS data.

[19] The final rules do not amend the current reporting requirements with respect to ownership information, in connection with both position reporting pursuant to § 17.00 and Form 102 reporting pursuant to § 17.01. For a complete discussion of the reporting requirements with respect to ownership information, see section V(A)(i) below.

[20] 7 U.S.C. 1 *et seq.* In addition, CEA section 8a(5) authorizes the Commission to promulgate such regulations as, in its judgment, are reasonably necessary to effectuate any provision of the Act or to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). These final rules are also consistent with the purposes enumerated in CEA section 3(b), which states that the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b).

[21] 7 U.S.C. 6a. *See* NPRM *supra* note 10 at 43970. *See infra* note 26 for a discussion of the Dodd-Frank Act.

[22] 7 U.S.C. 6c(b).

[23] 7 U.S.C. 6g(a).

[24] *See supra* section I(B) for a discussion of the trade data transmitted daily to the Commission by registered entities.

[25] 7 U.S.C. 6i.

[26] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./Law Regulation/OTCDERIVATIVES/index.htm. See* NPRM *supra* note 10 at 43971.

[27] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authority with respect to, among other parties, all registered entities and intermediaries subject to the Commission's oversight.

As part of the Commission's rulemaking program implementing the Dodd-Frank Act,[28] the rule changes adopted herein also include swaps-related considerations in connection with the Commission's large trader reporting rules for swaps, enacted in 2011.[29] New CEA section 4t acknowledges the Commission's authority to establish a large trader reporting system for swaps that the Commission has determined perform a significant price discovery function; accordingly, the swaps-related considerations in the rules adopted herein also rely in part on the Commission's authority in CEA section 4t. Similarly, new CEA section 4s(f) requires swap dealers and major swap participants to make such reports as required by the Commission by rule or regulation regarding the transactions and positions of the registered swap dealer or major swap participant.[30] In addition, new CEA section 5h(f)(10) requires SEFs to report to the Commission, in a form and manner acceptable to the Commission, information that the Commission determines to be necessary or appropriate for the Commission to perform its duties under the CEA.[31]

III. Current Trader and Account Identification Programs

Section III below summarizes the current trader and account identification program under Forms 102 and 40, which is also discussed in detail in Section III of the NPRM.[32]

A. Futures Large Trader Reporting—Current Forms 102 and 40

Current § 17.00, in part 17 of the Commission's regulations, forms the basis of the Commission's large trader reporting program.[33] It requires each FCM, clearing member, and foreign broker to submit a daily report to the Commission for each ''special account'' it carries—*i.e.,* a commodity futures or option account that has a reportable position. Such ''§ 17.00 position reports'' show the futures and option positions of traders with positions at or above specific reporting levels set by the Commission. Current reporting position trigger levels are located in § 15.03(b).[34] The daily report is sent to the Commission as a single data file from each reporting party pursuant to technical specifications identified in § 17.00(g).[35] The Commission's surveillance staff uses this report to, among other things: Assess individual traders' activities and potential market power; enforce speculative position limits; monitor for disruptions to market integrity; and calculate statistics that the Commission publishes to enhance market transparency (*e.g.,* in the Commitments of Traders reports).

i. Identification of Special Accounts—Current Form 102

For each special account identified by an FCM, clearing member, or foreign broker and reported to the Commission in a § 17.00 position report, current § 17.01[36] requires the reporting party to separately identify the special account to the Commission on Form 102.[37] Pursuant to current § 17.02(b)(2),[38] Form 102 must be submitted by such parties within three days of an account becoming a special account. A Form 102 submission may also be required by the Commission or its designee via a special call. The text of current § 17.01[39] states the requirement to submit Form 102, and enumerates the specific data fields that are required to be completed on Form 102. Currently, Form 102 requires the filing of a separate ''paper'' form for each special account, which is generally transmitted to the Commission via email, facsimile, or regular mail. As explained below, these final rules will replace current Form 102, and require respondents to electronically submit New Form 102; the Commission will no longer accept submissions by email, facsimile, or regular mail.

As noted above, Form 102 identifies and provides information with respect to special accounts carried by FCMs, clearing members, and foreign brokers. The current form, which will be updated and replaced by these final rules, provides the Commission with contact information for the trader(s) who owns and/or controls trading in each special account included in the daily § 17.00 position reports. The Form 102 questions, as currently detailed in § 17.01(a)–(f),[40] require the reporting firm to provide the following: A special account number; the name, address, and other identification information for the controller, owner (if also the controller), or originator (if an omnibus account) of the account; an indication whether trades and positions in the special account are usually associated with commercial activity of the account owner in a related cash commodity or activity; information regarding an FCM's relationship to the account; and name and address information for the party submitting the Form 102.[41]

Based on the Commission's experience in receiving and reviewing Form 102 submissions, and as discussed below in the context of the final rules, the Commission has determined to update Form 102 in order to accommodate more detailed ownership and control information regarding identified special accounts, and to identify underlying trading accounts. In addition, the Commission is implementing an automated transmission process for Form 102 reporting, through either a web portal or secure FTP transmission, so that both the Commission and market participants may benefit from the efficiencies of automation.[42]

[28] *See generally, http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[29] As noted *supra* in note 12, 17 CFR 20.5(a) and (b) contain the 102S and 40S filing requirements, discussed in greater detail below. Final part 20 was published in the **Federal Register** on July 22, 2011.

[30] 7 U.S.C. 6s(f).

[31] 7 U.S.C. 7b–3(f)(10).

[32] *See* NPRM *supra* note 10 at 43971.

[33] 17 CFR 17.00.

[34] 17 CFR 15.03(b).

[35] 17 CFR 17.00(g).

[36] 17 CFR 17.01.

[37] Current Form 102 is titled ''Identification of Special Accounts.'' 17 CFR 15.02.

[38] 17 CFR 17.02(b)(2).

[39] 17 CFR 17.01.

[40] 17 CFR 17.01(a)–(f).

[41] Form 102 requires the reporting party to provide the legal entity identifier (''LEI'') (if any) of the reporting party and of various other parties reportable on the form, such as account owners, controllers, and originators. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on New Form 102 that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such Optional Fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. The Commission is addressing such otherwise duplicative reporting in order to leverage information regarding reporting parties that is available from another source. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the fields marked on the forms as ''Supplemental Fields,'' then the reporting party will not be required to report any of the Supplemental Fields in the relevant question, provided that such Supplemental Fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. ''Optional Fields'' are currently captured by the CICI Utility, while ''Supplemental Fields'' are not currently captured by the CICI Utility. Reporting parties that take advantage of such relief from duplicative reporting on the forms should indicate in their submission that the omitted information has been reported to an LEI provider.

[42] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

ii. Statement of Reporting Trader—Current Form 40

Current § 18.04, in part 18 of the Commission's regulations, requires that, after a special call of the Commission, each trader holding or controlling a reportable position file with the Commission a ''Statement of Reporting Trader'' on current Form 40, at such time and place as directed in the call.[43] Current Form 40 is most commonly submitted to the Commission via email, facsimile, or regular mail, but this submission scheme will be changed by these final rules. Specifically, as discussed below, current Form 40 will be replaced by New Form 40, which must be electronically submitted in response to a special call through either a web-based portal or a secure FTP transmission. When submitted in a timely and accurate manner, Form 40 submissions provide the Commission with basic identifying information regarding reportable traders active in its markets.

Similar to current § 17.01, current § 18.04 specifically enumerates the data fields required in a Form 40 filing. Section 18.04 and Form 40 require a reporting trader receiving a special call to provide the following principal data points: Name and address; principal business and occupation; type of trader; registration status with the Commission; name and address of other persons whose trading the trader controls; name, address, and phone number for each controller of the reporting trader's trading; name and location of other reporting firms through which the reporting trader has accounts; name and locations of persons guaranteeing the trading accounts of the reporting trader or persons having a 10 percent or greater financial interest in the reporting trader or its accounts; other identification information regarding accounts which the reporting trader guarantees or in which the reporting trader has a financial interest of 10 percent or more; and whether the reporting trader has certain relationships with owners that are foreign governments.

Natural persons completing current Form 40 must also provide the following information, as applicable: A business telephone number; employer and job title; description of trading activity related to physical activity in or commercial use of a commodity; name and address of any organization of which the reporting trader participates in the management, if such organization holds a trading account; the name and address of a partner and/or joint tenant on the account; and the name and address of the partner and/or joint tenant that places orders.

Corporations and other non-natural persons completing current Form 40 must also provide the following information, as applicable: The jurisdiction where the reporting party is organized; names and locations of parent firms and their respective U.S. entity indication; names and locations of all subsidiary firms that trade in commodity futures and options on futures and their respective U.S. entity indication; name and address of person(s) controlling trading, by commodity and transaction type; contact information for a contact person regarding trading; and description of trading activity related to physical activity in, or the commercial use of, a commodity.

As with Form 102, and based on the Commission's experience in calling for and reviewing Form 40 submissions, the Commission has determined to update Form 40 in order to request more detailed information regarding the ownership, control and business activities of reporting traders. In addition, the Commission is implementing an automated transmission process for Form 40 reporting, through either a web portal or secure FTP transmission, so that both the Commission and market participants may benefit from the efficiencies of automation.

B. Large Trader Reporting for Physical Commodity Swaps—102S and 40S Filings

As noted above, and discussed in detail in Section III of the NPRM,[44] the Commission adopted rules in 2011 pertaining to swaps large trader reporting as new part 20 of the Commission's regulations.[45] In addition to establishing a position-based reporting scheme for swaps,[46] the rules also require the reporting of counterparty consolidated accounts with reportable positions (via Form 102S) and the filing of a Form 40S in response to a special call by the Commission. In general, the 102S and 40S filings serve an analogous function for swap counterparties with reportable positions to that served by the current Form 102 and Form 40 filings for futures and options on futures traders with reportable positions. These final rules will update Forms 102S and 40S, in part by requiring more detailed ownership and control information, and integrate the forms into the automated submission process.

Pursuant to § 20.5(a), in part 20 of the Commission's regulations, current 102S filings must be filed by a part 20 reporting party (a swap dealer or clearing firm) for each reportable counterparty consolidated account and ''shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.''[47] In addition, pursuant to § 20.5(b), and in conjunction with § 20.6, all clearing organizations, swap dealers, clearing members, and counterparties with reportable positions must, after a special call of the Commission, complete a Form 40 ''as if any references to futures or options contracts were references to paired swaps or swaptions as defined in § 20.1'' and submit the same to the Commission as a 40S filing.[48]

These final rules update and replace the reporting framework established by part 20. The information requested in new Form 102S also reflects considerations developed in the Swaps Large Trader Guidebook for compliance with part 20.[49] For example, new Form 102S requires information on both swap counterparty and customer consolidated accounts with a reportable position.[50] New Form 102S also requests ownership and control information regarding each non-omnibus consolidated account identified on the form. Building on the approach of modernizing Form 102 and Form 40 submissions, these final rules also provide for the electronic submission of both Form 102S and Form 40S.

IV. Summary of 2010 and 2012 NPRMs

On July 19, 2010, the Commission published for public comment a Notice of Proposed Rulemaking that proposed to collect certain account ownership and control information for all trading accounts active on U.S. futures

[43] 17 CFR 18.04.

[44] *See* NPRM *supra* note 10 at 43972.

[45] *See supra* note 12.

[46] *See generally:* Large Trader Reporting for Physical Commodity Swaps: Division of Market Oversight Guidebook for part 20 Reports, available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ltrguidebook053112.pdf* (hereafter, ''Swaps Large Trader Guidebook'').

[47] 17 CFR 20.5(a).

[48] 17 CFR 20.5(b) and 20.6.

[49] *See supra* note 46.

[50] As explained in the Swaps Large Trader Guidebook, acceptable part 20 data records include ''customer,'' ''principal,'' ''counterparty'' and ''agent'' records. Customer consolidated accounts, principal consolidated accounts, and counterparty consolidated accounts must be reported on new Form 102S, but agent data records do not need to be reported on Form 102S. Customer consolidated accounts are treated as customer accounts for purposes of Form 102S reporting, while principal consolidated accounts and counterparty consolidated accounts are treated as counterparty accounts for purposes of Form 102S reporting.

exchanges and other reporting parties (the ''2010 OCR NPRM'').[51] The 2010 OCR NPRM proposed to collect this information through a dedicated ownership and control report (''OCR''). In an effort to accommodate comments received in response to the 2010 OCR NPRM, the Commission withdrew the 2010 OCR NPRM, and instead pursued the collection of account ownership and control information through a separate Notice of Proposed Rulemaking, published on July 26, 2012 (the ''NPRM'').[52]

The NPRM proposed new rules and related forms to enhance the Commission's identification of futures and swap market participants, by collecting ownership and control information for certain trading accounts active on reporting markets that are DCMs or SEFs. The rules proposed to leverage the Commission's current position and transaction reporting programs by requiring the electronic submission of trader identification and market participant data on revised Forms 102 and 40, and on New Form 71. The NPRM contained a detailed discussion of the current futures large trader program under Forms 102 and 40,[53] and the anticipated benefits of the revised and newly introduced forms,[54] topics which are also summarized in these final rules.

The Commission invited all interested parties to submit comments on the NPRM, including comments with respect to costs and benefits, within a designated comment window. The Commission received a total of eight comment letters from thirteen interested parties, which are listed below.[55]

The following parties submitted written comments:

1. CME Group Inc. (''CME'') [56]
2. Futures Industry Association (''FIA'')
3. ICE Futures U.S., Inc. (''ICE'')
4. North American Derivatives Exchange, Inc. (''Nadex'')
5. The National Rural Electric Cooperative Association, the Large Public Power Council, and the Electric Power Supply Association (collectively, ''Joint Electric Association'')
6. John Hazelwood Estate (''Hazelwood'') [57]
7. Sheila Bailey-Waddell (''Waddell'')
8. Ron Troncatty (''Troncatty'') [58]

The written comments received are summarized in section VII below. In response to the comments received, the Commission has revised and/or eliminated several regulations that were proposed in the NPRM. The Commission also received a number of comments pertaining to the costs and/or benefits of certain proposed regulations. Pursuant to section 15(a) of the CEA, the Commission has considered the costs and benefits of the regulations being adopted in this release, as discussed in more detail in section VIII(B) below. For purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission.

V. Summary of New and Amended Forms Adopted in These Final Rules

As noted above, this rulemaking addresses three forms—New Form 102, New Form 71, and New Form 40. New Form 102 is designed as a multi-function form, since the requirement to submit New Form 102 can arise from one of three separate triggers: A special account, volume threshold account, or consolidated account becomes reportable. The data required to be submitted on a New Form 102 is determined by the underlying triggering mechanism. A discussion follows of the three New Form 102 triggering mechanisms, the related sections of the form, and the information required to be provided in each section. The Commission will send New Form 71 via a special call to collect additional information about certain volume threshold accounts identified as omnibus accounts on New Form 102B. New Form 40 will continue to serve its traditional purpose as a tool to be used, at the Commission's discretion, to collect additional information about traders and market participants identified on New Form 102, as well as on New Form 71. New Form 71 and New Form 40 are also described in detail below. In addition, section VII below discusses in detail the version of the forms proposed in the NPRM, the comments received on the forms, and the changes that are being made to the forms in these final rules in response to comments.

As part of its implementation plan related to this rulemaking, and described in more detail below, the Commission has developed both a web-based portal and a secure FTP transmission through which market participates will submit and update their reporting forms. Market participants may provide required information through either submission method. This automated process is intended to cure much of the inefficiency and potential error associated with the current submission process via email, facsimile, or regular mail.

A. Position-Triggered Form 102A (Special Accounts)

i. Special Accounts and Reportable Positions

New Form 102A is the section of New Form 102 that will serve a function most analogous to current Form 102. New Form 102A requires an FCM, clearing member, or foreign broker to identify and report its special accounts. As discussed above, a special account is defined in current § 15.00(r), and means any commodity futures or option account in which there is a reportable position.[59] For the purposes of part 17, reportable position is defined in current § 15.00(p)(1), and generally includes any open contract position that at the close of the market on any given business day equals or exceeds the levels in current § 15.03.[60] These final rules do not amend the definition of either special account or reportable position.

The Commission notes that under current regulations (§ 17.00(b), citing § 150.4),[61] reporting firms are required to separately aggregate the positions of common owners and those of common controllers for purposes of reporting special accounts to the Commission, except as otherwise instructed by the Commission or its designee. Special accounts that are so aggregated and reported to the Commission pursuant to § 17.00 must also be identified to the Commission on Form 102 pursuant to current § 17.01. The requirement to separately aggregate the positions of common owners and those of common controllers for purposes of reporting special accounts to the Commission on Form 102 is reflected in the instructions to New Form 102A. As noted in question 2 on New Form 102A, special accounts become reportable on the form based on (i) ownership of a reportable

[51] *See supra* note 9.

[52] *See supra* note 10.

[53] *See* NPRM *supra* note 10 at 43971.

[54] *See* NPRM *supra* note 10 at 43970.

[55] All NPRM comment letters (''CL'') are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247.*

[56] CME Group submitted a single comment letter on behalf of four DCMs, each of which is being counted for purposes of this summary as a separate interested party: The Chicago Mercantile Exchange, Inc.; the Board of Trade of the City of Chicago, Inc.; the New York Mercantile Exchange, Inc.; and the Commodity Exchange, Inc. Its comments are noted here as those of ''CME''.

[57] Hazelwood's comment letter responds to the 2010 OCR NPRM, rather than the NPRM; however, it remains part of the record for this rulemaking.

[58] Mr. Troncatty's comment letter was unresponsive; however, it remains part of the record for this rulemaking.

[59] 17 CFR 15.00(r).

[60] 17 CFR 15.00(p)(1) and 15.03.

[61] 17 CFR 17.00(b) and 150.4.

position, (ii) control of a reportable position, (iii) both ownership and control of a reportable position, or (iv) because the relevant account is an omnibus account with a reportable position.

Following the implementation of these final rules, reporting parties should continue to report special accounts pursuant to § 17.00 on a disaggregated basis if the parties have been so instructed by the Commission or its designee. All reporting parties should continue to provide position reporting based on control of a special account. As an example, if a special account is controlled by one reporting party but owned by another, such account should be reported only by the reporting party that controls the special account.

Consistent with this guidance, and notwithstanding the requirement on New Form 102A to also report based solely on ownership of a reportable position, the Commission will not require reporting based on this trigger via New Form 102A following the implementation of these final rules. The Commission is retaining the reporting trigger based on ownership of a reportable position in New Form 102A as a placeholder, in the event that the Commission requires 102A reporting based solely on this trigger on a future date.

ii. 102A Form Requirements

As compared to current Form 102, the data fields in 102A will include new ownership and control information fields (or, in the case of special accounts that are omnibus accounts, omnibus account originator information fields) for position-based special accounts. Form 102A will also require reporting firms that are clearing members to identify the trading accounts that comprise a position-based special account, and to provide TCR trading account numbers for those trading accounts.[62] To clarify, trading accounts that comprise a position-based special account include all of those trading accounts that: (1) Are used to execute trades cleared by the clearing member submitting the 102A; (2) are owned or controlled by the entity identified as owning or controlling the special account reported on a 102A; and (3) execute transactions in the same commodity or commodities in which the special account has a reportable position. Notwithstanding the fact that the Commission will not require reporting of special accounts based solely on ownership (as discussed above), when completing New Form 102A, reporting parties must identify both the owners and controllers of trading accounts that comprise a position-based special account identified on the form. The Commission's objective, in requiring 102A reporting parties to identify the trading accounts that comprise a special account, is to facilitate trade-level monitoring of the means by which special account owners or controllers establish and unwind their reportable positions.

Based on comments received in response to the 2010 OCR NPRM, it is the Commission's understanding that non-clearing FCMs, foreign brokers, and omnibus account originators (collectively, ''non-clearing entities'') will generally not have the ability to match/identify a trading account number for their customers or sub-accounts (hereafter, ''sub-accounts'') on the TCR.[63] As a result, the Commission notes that the requirement in 102A to identify a trading account number for trading accounts that comprise a special account will only be a relevant/applicable data field for clearing members identifying trading accounts that comprise a special account.

Notwithstanding these limitations regarding the reporting of trading accounts that comprise a special account, non-clearing entities must continue to report special accounts on Form 102 with respect to their customers/sub-accounts, in the event that such accounts, if carried directly with a clearing member, would be required to be reported as a position-based special account. Current Form 102 requires non-clearing entities to report such special accounts, and New Form 102A does not change that requirement.

New Form 102A will also require reporting firms to indicate whether a special account reported based on ownership or control of a reportable position is a house or customer account of the reporting firm. This indicator will allow the Commission to perform certain financial risk surveillance functions in a more automated and efficient manner, by quickly identifying house positions that potentially create risk for the reporting firm. Finally, 102A requires any reporting firm that indicates on 102A that it is a foreign broker to identify its U.S. FCM.

New Form 102A also includes a question regarding the controllers of trading accounts.[64] Respondents should report all individuals meeting the definition of ''trading account controller'' set forth in § 15.00(bb) when responding to this question.[65] The Commission notes however that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A, reporting parties should identify each person that satisfies the definition of ''trading account controller,'' as defined in § 15.00(bb). Once respondents have identified all individuals meeting the definition of trading account controller in a Form 102A submission, they will not be required to submit change updates to the 102A if one previously identified controller takes the place of another previously identified controller. These instructions regarding the reporting of trading account controllers on New Form 102A are also applicable to the reporting of volume threshold account controllers on New Form 102B.[66]

iii. Timing of 102A Reporting[67]

This rulemaking imposes a bifurcated deadline for submitting certain information on New Form 102A. Reporting parties are required to submit a completed Form 102A to the Commission no later than 9 a.m.[68] on the business day following the date on which the special account becomes

[62] *See supra* section I(B) for a discussion of the TCR.

[63] *See supra* section I(B) for a discussion of the TCR.

[64] *See* question 10(iii) on Form 102A.

[65] Pursuant to § 15.00(bb), trading account controllers are natural persons ''who by power of attorney or otherwise actually direc[t] the trading of a trading account''. In the event that a respondent's trading in a reportable trading account is conducted in whole or in part through an automated trading system (''ATS''), when submitting New Form 102A the respondent should consider whether any operator, supervisor, or other individual involved in the administration of such ATS meets the definition of trading account controller with respect to the trading account. The Commission recognizes that, for some respondents, the individuals involved in the administration of an ATS may not qualify as trading account controllers. The Commission further recognizes that the administration of ATSs may vary from one respondent to another, and that such variance may impact which natural persons a respondent identifies as trading account controllers for accounts whose trading is conducted in whole or in part through an ATS.

[66] *See* question 6 on Form 102B.

[67] *See infra* the discussion of § 17.02(b) in section VII, which provides additional information regarding changes to the timing of New Form 102A reporting made in response to comments on the NPRM.

[68] Unless otherwise specified by the Commission or its designee, the stated time in the final rules is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets, in accordance with § 17.02(a).

reportable. This form must include all required information, including the names of the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on the form. However, the reporting party may provide certain supplemental information regarding such owner(s) and controller(s) on a later date. No later than 9 a.m. on the third business day following the date on which the special account becomes reportable, the reporting party may update its Form 102 submission to provide information with respect to such owner(s) and controller(s) other than their names (*e.g.,* their address and other contact information).[69] The final rules also include an ''on-call'' provision, which requires a 102A to be submitted on such other date as directed by special call of the Commission.

iv. Timing of 102A Change Updates and Refresh Updates

The final rules also require reporting parties to submit an updated Form 102A in the event that a change occurs that causes the information submitted on the form to no longer be accurate (''change updates''). Change updates must be submitted according to the bifurcated schedule described in the preceding paragraph. The final rules also include an ''on-call'' provision, which requires 102A change updates to be submitted on such other date as directed by special call of the Commission.

In addition to change updates, § 17.02(b) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each FCM, clearing member, or foreign broker resubmit every 102A that it has submitted to the Commission or its designee for each of its special accounts (''refresh updates''). The goal of the refresh update provision for 102A is to establish discrete points in time where all 102A data is considered accurate and reliable, thereby avoiding the data drift that is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 17.02(b) include a sunset provision. An FCM, clearing member, or foreign broker may stop providing change updates or refresh updates for a Form 102A that it has submitted to the Commission for any special account upon notifying the Commission or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months. If a reporting party so notifies the Commission, and the special account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102A.

B. Volume-Triggered Form 102B (Volume Threshold Accounts)

i. Volume Threshold Accounts and Reportable Trading Volume Level

New Form 102B of New Form 102 introduces a new volume-based reporting structure not found in current Form 102. While current Form 102 reporting requirements arise when an account (or collection of related accounts) has a reportable position, 102B reporting is triggered when an individual trading account meets a specified trading volume level in an individual product and, as a result, becomes a ''volume threshold account.'' Volume threshold account, as defined below in final § 15.00(x), means any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a DCM or SEF.[70] The reportable trading volume level (''RTVL'') is defined in final § 15.04 as trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a DCM or SEF, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).[71] As noted above, volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other product traded on or subject to the rules of a DCM or SEF.

ii. 102B Form Requirements

As a threshold question, 102B requires that clearing members provide, in response to question 2, the trading account number of any trading account that meets the criteria for a volume threshold account; any related short code(s) for such account; and the name of the reporting market (*i.e.* the DCM or SEF) at which the volume threshold account had reportable trading volume. These data points are necessary to report and identify volume threshold accounts in TCRs received from DCMs, or similar transaction-based reports that may be received from SEFs, and to link the volume threshold account to other Commission's surveillance databases.[72] The data points will also assist the Commission in identifying traders whose end-of-day open interest does not reach reportable levels on Form 102A, but whose intra-day trading reaches the volume threshold, thus enabling the Commission to monitor trading that could potentially impact markets during concentrated periods of intra-day trading.

Second, 102B requires that clearing members provide, in response to question 3, the volume threshold account's associated special account number, if applicable. This information will permit the Commission to more effectively and efficiently connect position data received via the large trader reporting system and trade data received via the TCR.

Third, 102B requires that clearing members indicate, in response to question 4, whether the volume threshold account is an omnibus account, or used to execute trades for an omnibus account. If the account is an omnibus account or used to execute trades for an omnibus account, question 4 requires clearing members to indicate whether the account is a house or customer omnibus account, and to provide information sufficient to uniquely identify and contact the originator of the account (*e.g.,* the originator's name, address and phone

[69] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information.

[70] *See supra* section I(A) for an explanation of the reporting markets relevant to 102B filings, and *infra* sections VII and IX for amendments to the definition of ''reporting market.'' *See also infra* the discussion of § 15.00(x) in section VII, which provides additional information regarding changes to the definition of volume threshold account made in response to comments on the NPRM.

[71] The RTVL is based on the Commission's analysis of DCM trade data received through the TCR from a sample of DCMs during a recent six month period. It is calibrated to yield information with respect to those trading accounts that are responsible for a substantial percentage of trading volume, while minimizing the adopted regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the adopted reporting and identification regime. Based on the sample data set used in the Commission's analysis, the RTVL would result in the reporting and identification of approximately one-third of the trading accounts reported in the sample data set. However, due to the concentration of trading activity among a minority of accounts and some accounts' tendency to be active in more than one product, the RTVL, as adopted, would nonetheless result in the identification of at least 85% of the trading volume in approximately 90% of the products in the sample data set, as measured at the conclusion of the six-month period sampled by the Commission. *See* the discussion of § 15.04 in section VII below for additional information regarding the application of the RTVL to products traded on or subject to the rules of a SEF.

[72] *See supra* section I(B) for a discussion of the TCR.

number, among other information).[73] More detailed information regarding ownership and control with respect to a volume threshold account that is a customer omnibus account will be collected separately at the Commission's request, from the omnibus account's originating firm (via a New Form 71), also adopted herein and described below.

Fourth, 102B requires clearing members to provide information, in response to question 5, sufficient to uniquely identify and contact each owner of a volume threshold account that is not an omnibus account (*e.g.,* the owner's name, address and phone number, among other information). For each account owner that is not a natural person, question 5 also requests, among other identifying information, a contact name, contact job title, and the relationship of the contact to the account owner. Finally, the Commission requests that clearing members provide information, in response to question 6, sufficient to uniquely identify and contact each volume threshold account controller of an account that is not an omnibus account. Pursuant to final § 15.00(cc), a volume threshold account controller must be a natural person. The requested information includes the name of the account controller(s), address, phone number and job title, together with the name of the controller's employer and other identifying information.[74]

iii. Timing of 102B Reporting [75]

This rulemaking imposes a bifurcated deadline for submitting certain information on New Form 102B. Reporting parties are required to submit a completed Form 102B to the Commission no later than 9 a.m. on the business day following the date on which the volume threshold account becomes reportable. This form must include all required information, including the names of the owner(s) and controller(s) of each volume threshold account reported on the form that is not an omnibus account. However, the reporting party may provide certain supplemental information regarding such owner(s) and controller(s) on a later date. No later than 9 a.m. on the third business day following the date on which the volume threshold account becomes reportable, the reporting party may update its Form 102 submission to provide information with respect to such owner(s) and controller(s) other than their names (*e.g.,* their address and other contact information).[76] The final rules also include an ''on-call'' provision, which requires a 102B to be submitted on such other date as directed by special call of the Commission.

iv. Timing of 102B Change Updates and Refresh Updates

The final rules also require reporting parties to submit an updated Form 102B in the event that a change occurs that causes the information submitted on the form to no longer be accurate (''change updates''). Change updates must be submitted according to the bifurcated schedule described in the preceding paragraph. The final rules also include an ''on-call'' provision, which requires 102B change updates to be submitted on such other date as directed by special call of the Commission.

In addition to change updates, § 17.02(c) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member resubmit every 102B that it has submitted to the Commission for each of its volume threshold accounts (''refresh updates''). The goal of the refresh update provision for 102B is to establish discrete points in time where all 102B data is considered accurate and reliable, thereby avoiding the data drift that is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 17.02(c) include a sunset provision. A clearing member may stop providing change updates or refresh updates for a Form 102B that it has submitted to the Commission for any volume threshold account upon notifying the Commission or its designee that the account in question executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level. If a reporting party so notifies the Commission, and the volume threshold account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102B.

C. Position-Triggered Form 102S (Consolidated Accounts)

i. 102S Form Requirements

Section 102S of New Form 102 is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to § 17 CFR 20.5(a)) through a non-automated process. As noted above, pursuant to § 20.5(a), 102S filings must be filed by a part 20 reporting party (a swap dealer or clearing firm) for each reportable counterparty consolidated account when such account first becomes reportable, and ''shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.'' [77] By incorporating 102S in New Form 102, these rules will request more detailed ownership and control information regarding identified consolidated accounts, and require the submission of consolidated account reporting via an automated submission.[78] As explained above, 102S

[73] *See supra* note 41. Form 102B also requires the reporting party to provide the LEI (if any) of any omnibus account originator and volume threshold account owner(s) reported on the form. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on Form 102B that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[74] As with Form 102A, respondents should report *all* individuals meeting the definition of volume threshold account controller on Form 102B. In the event that a respondent's trading in a reportable volume threshold account is conducted in whole or in part through an ATS, when submitting New Form 102B the respondent should consider whether any operator, supervisor, or other individual involved in the administration of such ATS meets the definition of volume threshold account controller with respect to the volume threshold account. The Commission recognizes that, for some respondents, the individuals involved in the administration of an ATS may not qualify as volume threshold account controllers. *See supra* section V(A)(ii).

[75] *See infra* the discussion of § 17.02(c) in section VII, which provides additional information regarding changes to the timing of New Form 102B reporting made in response to comments on the NPRM.

[76] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day (including question 4, with respect to omnibus account information). See New Form 102B in the Appendix to these final rules for more information.

[77] 17 CFR 20.5(a).

[78] *See supra* note 41. Form 102S also requires the reporting party to provide the LEI (if any) of any omnibus account originator and consolidated account owner(s) and controller(s) reported on the form. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on Form 102S that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and

will also incorporate considerations developed in the Swaps Large Trader Guidebook for compliance with part 20. These rules will replace the 102S submission procedure and guidance in the Swaps Large Trader Guidebook.[79]

ii. Timing of 102S Reporting, Change Updates and Refresh Updates

The timing for submitting new 102S filings will continue to be subject to current § 20.5(a)(3).[80]

Section 20.5(a)(4) of the final rules requires that if any change causes the information filed on a 102S for a consolidated account to no longer be accurate, an updated 102S must be filed with the Commission no later than 9:00 a.m. on the business day after such change occurs, or on such other date as directed by special call of the Commission (''change updates'').

In addition to change updates, final § 20.5(a)(5) requires that, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member or swap dealer must resubmit every 102S that it has submitted to the Commission for each of its consolidated accounts (''refresh updates''). As with the 102A and 102B, discussed above, the goal of the refresh update provision is to establish discrete points in time where all 102S data is considered accurate and reliable. The Commission is proposing the refresh update provision in an effort to maintain accurate 102S data, and to avoid the data drift which is often associated with long-term data collection efforts.

Both the change update and refresh update provisions of § 20.5(a) include a sunset provision. A clearing member or swap dealer may stop providing change updates or refresh updates for a Form 102S that it has submitted to the Commission for any consolidated account upon notifying the Commission or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. If a reporting party so notifies the Commission, and the consolidated account becomes reportable again at a subsequent date, then the reporting party would be required to file a new Form 102S.

D. Form 71 (Omnibus Accounts and Sub-Accounts)

New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') will be sent, in the Commission's discretion, in the event that a volume threshold account is identified as a customer omnibus account on Form 102B. The Commission will send New Form 71 via a special call to the originating firm of such an account. The Commission will provide the relevant account number and reporting market reported on the 102B when sending the Form 71. Recipients of a Form 71 will be required to provide information regarding any account to which the customer omnibus account allocated trades that resulted in reportable trading volume for the account receiving such allocations (a ''reportable sub-account'') on a specified trading date.[81] Form 71 is designed to permit originating firms to report the required information directly to the Commission without requiring such firms to disclose information regarding customers to potential competitors. If a reportable sub-account is itself an omnibus account (an ''omnibus reportable sub-account''), then the originating firm will be required to (a) indicate whether the omnibus reportable sub-account is a house or customer omnibus account and (b) identify the originator of the omnibus reportable sub-account. Another Form 71 will be sent, at the discretion of Commission staff, to the originator of a customer omnibus reportable sub-account identified on Form 71. At its discretion, the Commission will continue to reach through layered customer omnibus reportable sub-accounts via successive Form 71s until reaching all reportable sub-accounts, if any, that are not omnibus sub-accounts.

If a reportable sub-account identified on Form 71 is not an omnibus sub-account, then the originating firm will be required to identify the owner(s) and controller(s) of the non-omnibus reportable sub-account. A New Form 40 will be sent, via a special call at the discretion of the Commission, to such owner(s) and controller(s). Form 71 will therefore enable the Commission to collect the same level of information regarding owners and controllers (via a subsequent New Form 40) that the Commission will collect with respect to a non-omnibus volume threshold account identified on 102B. The key data points to be collected in Form 71 are summarized below.

As a threshold question, section A of Form 71 requires the originator of an omnibus volume threshold account or a reportable sub-account to confirm certain identifying information regarding the originator. Such information would have been reported to the Commission by an omnibus account carrying firm on Form 102B or on a preceding Form 71 (*e.g.,* the originator's name, address and phone number), and used to auto-populate the present Form 71. The originator is prompted to update any incorrect information provided in Section A.

Second, section B of Form 71 requires the originator to provide certain information regarding the allocation of trades from a specified account number, and on a specified date and reporting market, to another account (called a ''recipient account''). Specifically, the originator is required to indicate whether: (1) It allocated trades from the specified account number on the specified date and reporting market that resulted in reportable trading volume for a recipient account; (2) it allocated trades from the specified account number on the specified date and reporting market, but the allocations did not sum to reportable trading volume for a recipient account on such date; or (3) it did not allocate any trades from the specified account number on the specified date and reporting market.

If condition (1) is met, the originator is required to indicate in section B whether the reportable sub-account is an omnibus reportable sub-account. If so, the originator is required to indicate whether the omnibus reportable sub-account is a house or customer omnibus account, and to provide information sufficient to identify and contact the originator of the sub-account (*e.g.,* the originator's name, address and phone number, and a contact name, contact job title, and the relationship of the contact to the originator). As noted above, another Form 71 will be sent at the discretion of Commission staff to the originator of a customer omnibus reportable sub-account identified in response to section B of Form 71. Therefore, Form 71 may be sent to a chain of such originators if each originator allocated trades to another customer omnibus reportable sub-account.

If the reportable sub-account is not an omnibus sub-account, the originator is

address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[79] *See* Swaps Large Trader Guidebook at p. 26 and p. 91, Appendix D. *See also supra* note 12.

[80] 17 CFR 20.5(a)(3) provides: ''Reporting entities shall submit a 102S filing within three days following the first day a consolidated account first becomes reportable or at such time as instructed by the Commission upon special call.''

[81] The relevant trading date will be specified by Commission staff on Form 71 at the time the special call is made.

required to provide information sufficient to identify and contact the owner(s) and controller(s) of such non-omnibus reportable sub-account (*e.g.,* the name, address and phone number of the owner(s) and controller(s)). This information will enable the Commission, in its discretion, to send a New Form 40 to such owner(s) and controller(s).

E. New Form 40 (Reporting Traders)

In these final rules, the Commission adopts a revised Form 40 that will be sent, on special call of the Commission, to individuals and other entities identified on any of 102A, 102B, and Form 71. As adopted herein, New Form 40, still referred to as the ''Statement of Reporting Trader,'' will continue to serve the function traditionally met by current Form 40. New Form 40 will provide the Commission with detailed information regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102 program (as updated by these final rules). New Form 40 will also be the vehicle through which market participants subject to 17 CFR 20.5(b) submit their 40S filings, and will be used to collect additional information regarding the owners and controllers of non-omnibus volume threshold accounts identified by Form 71. Those entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40 by periodically updating the information on the New Form 40 web portal or by periodically resubmitting New Form 40 by secure FTP transmission.

Among other data, New Form 40 will request the following regarding the reporting trader: Contact information for the individual(s) responsible for the reporting trader's trading activities, risk management operations, and the information on the New Form 40; if applicable, omnibus account information, foreign government affiliation information, and an indication regarding the reporting trader's status as a domestic or non-domestic entity; information regarding the reporting party's ownership structure in connection with its parents and subsidiaries; information regarding the reporting trader's control relationships with other entities; information regarding other relationships with persons that influence or exercise authority over the trading of the reporting trader; an indication regarding swap dealer status and major swap participant status; an indication of all commodity groups and individual commodities that the reporting trader presently trades, or expects to trade in the near future, in derivatives markets; and other indications regarding the nature of the reporting trader's derivatives trading activity. The form includes definitions of certain terms, including parent, subsidiary, and control, to be used for the purpose of completing New Form 40.

New Form 40 will also require reporting traders who engage in commodity index trading (''CIT''), as defined in the new form, to identify themselves to the Commission.[82] New Form 40 defines CIT as: (a) An investment strategy that consists of investing in an instrument (*e.g.,* a commodity index fund, exchange-traded fund for commodities, or exchange-traded note for commodities) that enters into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities; or (b) an investment strategy that consists of entering into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities. Reporting traders engaged in CIT as defined in (b) are required to indicate whether they are, in the aggregate, pursuing long exposure or short exposure with respect to the relevant commodities or commodity groups listed on the Form.[83]

VI. Data Submission Standards and Procedures

A. Overview

During the comment period of the NPRM, the Commission's data and technology staff worked with potential reporting parties and other market participants to address the information technology standards associated with the rules proposed by the NPRM.[84] Following these discussions, the Commission established two submission methods for the reporting forms required by these final rules: (a) A web-based portal and (b) an XML-based, secure FTP data feed. While the NPRM contemplated that certain forms (Forms 40/S and 71) could be submitted only via the web portal, these final rules provide that reporting parties may submit each of the new or revised forms through either the web-based portal or the FTP data feed, in order to provide additional flexibility to reporting parties. The Commission is offering two filing methods for each form because it anticipates a wide range of technological capabilities among reporting parties (varying based on the relative size and experience of a given reporting party). Reporting parties will be able to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. Those reporting parties electing to submit information through the FTP data feed should contact the Commission, which will provide the necessary technical information to establish the data feed. Following the publication of these final rules, the Commission intends to publish a data compliance guidebook with detailed instructions for the two submission methods.[85]

When a reporting party identifies a new account on New Form 102A, 102B or 102S, the Commission will evaluate the account to determine whether to request a New Form 40/40S or New Form 71 via a special call. If the Commission determines to send a New Form 40/40S or New Form 71 to the applicable reporting trader or account originator, the Commission will contact the reporting party (generally via email, using the email address provided on the New Form 102). The Commission will provide instructions for submitting the applicable form through either the web-based portal or secure FTP data feed. Depending on the information provided in New Form 71, the Commission may require a New Form 40 or New Form 71 from additional persons or entities identified in the New Form 71, using the same process described above.

B. Schedule of Effective Date and Compliance Date

As noted above, these final rules include separate ''effective'' and ''compliance'' dates:

- The effective date of these final rules will be February 18, 2014.
- The compliance date, however, will be delayed by an additional 180 days, with the result that the compliance date of these final rules will be August 15, 2014.

Between the publication of these final rules and the effective date, reporting parties should work with the Commission's data and technology staff

[82] See question 14 in New Form 40.

[83] See question 14ii(a) in New Form 40.

[84] Summaries of these discussions are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1247.*

[85] For a recent example of a similar undertaking, see the Swaps Large Trader Guidebook, linked *supra* at note 46.

to test and implement any information technology standards or systems associated with the final rules. During this testing period, reporting parties should provide all test data or form filings requested by the Commission's data and technology staff, in the form and manner requested by staff.[86] In addition, the Commission will conduct beta testing of each submission method prior to the compliance date. All reporting parties subject to the final rules must be in full compliance by the compliance date, including having submitted complete and accurate filings using one of the two submission methods described above.

VII. Review of NPRM and Summary of Final Rules

A. Part 15

i. § 15.00(q)—Reporting Market

NPRM Proposal

Proposed § 15.00(q) revised the definition of ''reporting market'' in current § 15.00(q) to replace the provision's cross-reference to section 1a(29) of the Act with a cross-reference to § 1a(40). The proposed rule also revised current § 15.00(q) to remove the provision's reference to derivatives transaction execution facilities (''DTEFs'').[87]

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(q) without modification.

ii. § 15.00(t)—Control

NPRM Proposal

Proposed § 15.00(t) added ''control'' to the list of defined terms in § 15.00.[88] The Commission's proposed definition, which applied only to special accounts (New Form 102A) and consolidated accounts (Form 102S), defined control as ''to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.'' The proposed definition specified that special accounts and consolidated accounts may have more than one controller. The Commission notes that the proposed definition of ''control'' applied solely for the purpose of satisfying the reporting obligations under parts 15 through 19 and 21 of the Commission's regulations. The proposed definition did not limit or alter existing law with respect to the meaning of the term control for the purpose of enforcing other requirements under the Act and the Commission's regulations, including those relating to position limits or manipulation. Similarly, existing requirements regarding the aggregation of positions in separate accounts for reporting or other purposes under the Act and Commission regulations (*e.g.,* §§ 17.00(b) and 150.4) were not altered by the definition of ''control'' proposed in § 15.00(t).

Summary of Comments on NPRM Proposal

FIA commented that it would be difficult and/or meaningless to provide the requested control information, because the individuals responsible for trading an account within a special account or a volume threshold account can change often, even within the same trading day.[89] Furthermore, ''in the case of algorithmic trading programs, there likely will not be an identifiable individual who 'actually directs the trading' of the program. For this reason, FCMs do not currently collect this information.'' [90] FIA recommended removing the requirement to identify account controllers on Forms 102A and 102B.[91]

Discussion of Final Rule

The Commission is adopting proposed § 15.00(t) without modification. At the same time, the Commission is modifying the instructions on Form 102 in response to comments that discussed the difficulty of identifying individuals that exercise control on a transient basis, such as individuals operating an automated trading system (''ATS'') during a daily shift. The instructions for Form 102A and Form 102B have been revised to state that respondents should report all individuals who qualify as ''trading account controllers'' or ''volume threshold account controllers,'' as defined in § 15.00(bb) and (cc), respectively.[92] The Commission notes that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A and Form 102B, reporting parties should identify each person that satisfies the definition of ''trading account controller'' or ''volume threshold account controller,'' as defined in § 15.00(bb) and (cc), respectively. Once respondents have identified all individuals meeting the applicable controller definition in a Form 102A or Form 102B submission, they will not be required to submit change updates to the submission if one previously identified controller takes the place of another previously identified controller.

iii. § 15.00(u)—Reportable Trading Volume

NPRM Proposal

Volume threshold accounts, omnibus volume threshold accounts, omnibus reportable sub-accounts, and reportable sub-accounts all reflect accounts that execute (or receive via allocation or give-up) ''reportable trading volume.'' Proposed § 15.00(u) defined reportable trading volume as contract trading volume that meets or exceeds the level specified in proposed § 15.04. Section 15.04, in turn, provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day, on a single

[86] The Commission will protect proprietary information consistent with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act 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.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

[87] 17 CFR 15.00(q) and 15.02. The Dodd-Frank Act modified section 1a of the CEA. As a result, the definition of ''registered entity'' previously found in section 1a(29) of the CEA is now in section 1a(40). In the NPRM, the Commission proposed to revise current § 15.00(q) so that it cites to section 1a(40) for the definition of registered entity. The Commission also proposed to revise current § 15.00(q) by removing the provision's reference to DTEFs, a category of regulated markets that was eliminated by section 734 of the Dodd-Frank Act.

[88] The definition of ''control'' in § 15.00 is based upon the definition of ''controlled account'' in section 1.3(j) of the Commission's regulations.

[89] CL–2012–FIA *supra* note 55 at 5.

[90] CL–2012–FIA *supra* note 55 at 6.

[91] CL–2012–FIA *supra* note 55 at 5. The 2010 OCR NPRM proposed a broader definition of an account controller: ''A natural person, or a group of natural persons, with the legal authority to exercise discretion over trading decisions by a trading account, with the authority to determine the trading strategy of an automated trading system, or responsible for the supervision of any automated system or strategy.'' In a comment letter dated December 23, 2010, FIA commented that ''this definition cuts too broad a swath and would require information on individuals that never actually exercise trading authority over an account but, because of their position with the customer, as an owner or officer, would be deemed to have this authority . . . FIA believes the definition of an account controller should be consistent with the Commission's definition of control as set out in Commission Rule 1.3(j) and generally applied at exchanges.'' The definition of an account controller reflected in § 15.00(t) and (bb)–(dd) of these final rules is based on Commission Rule 1.3(j).

[92] The Commission recognizes that, for some respondents that conduct trading in a reportable trading account or volume threshold account in whole or in part through an ATS, the individuals involved in the administration of such ATS may not qualify as trading account controllers or volume threshold account controllers. *See supra* section V(A)(ii).

reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).

Discussion of Final Rule

See below the discussion of comments received regarding the reportable trading volume level proposed by § 15.04. No comments were received pertaining specifically to proposed § 15.00(u), and the Commission is adopting § 15.00(u) without modification.

iv. § 15.00(v)—Direct Market Access

NPRM Proposal

Proposed § 15.00(v) defined direct market access (''DMA'') as ''a connection method that enables a market participant to transmit orders to a DCM's electronic trade matching system without re-entry by another person or entity, or similar access to the trade execution platform of a SEF.'' Pursuant to the proposed definition, such access could be provided directly by a DCM or SEF, or by a 3rd-party platform. Proposed Forms 102A and 102B required an FCM to indicate whether a trading account or volume threshold account has been granted DMA to the trade matching system or the respective reporting system of the applicable reporting market.

Summary of Comments on NPRM Proposal

FIA, CME and ICE commented that the definition of DMA was overbroad, and FIA predicted that ''virtually all customers for which a Form 102 would be required to be filed will have been granted DMA.'' [93] CME commented that DMA data is not related to account ownership and control, the focus of these final rules, but rather to connectivity.[94]

Discussion of Final Rule

In response to CME's comment regarding the relevance of DMA information, the Commission has concluded that the OCR reporting forms are not the appropriate vehicle for reporting information regarding connectivity. The Commission is therefore not adopting proposed § 15.00(v), and will not include a question regarding DMA in Form 102.

v. § 15.00(v)—Omnibus Account [95]

NPRM Proposal

Proposed § 15.00(w) (re-ordered in the final rules as § 15.00(v)) defined omnibus account as any trading account that one FCM, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(w) (re-ordered in the final rules as § 15.00(v)) without modification.

vi. § 15.00(w)—Omnibus Account Originator

NPRM Proposal

Proposed § 15.00(x) (re-ordered in the final rules as § 15.00(w)) defined omnibus account originator as any FCM, clearing member or foreign broker that executes trades for one or more customers via one or more accounts that are part of an omnibus account carried by another FCM, clearing member or foreign broker.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(x) (re-ordered in the final rules as § 15.00(w)) without modification.

vii. § 15.00(x)—Volume Threshold Account

NPRM Proposal

Proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) defined volume threshold account as any trading account that executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

In the case of a give-up trade, this NPRM definition was intended to require reporting by: (i) The carrying firm of the original executing account; (ii) the carrying firm of any intervening account(s); and (iii) the carrying firm of the account to which the give-up trade was ultimately allocated. Question 10 in Section VII of the NPRM emphasized the broad scope of the definition: ''The Commission intends that the definition of 'volume threshold account' captures all possible categories of accounts with reportable trading volume. . . . The Commission requests public comment regarding whether the proposed definition of 'volume threshold account' achieves this purpose.''

Summary of Comments on NPRM Proposal

In response to this question, CME commented that volume-based accounts should be reported at the carrying broker level, and noted that, ''this is where the account ownership and control information resides, not at executing brokers.'' [96]

Discussion of Final Rule

The Commission is adopting proposed § 15.00(y) (re-ordered in the final rules as § 15.00(x)) with one modification. The definition of volume threshold account is being scaled back in the final rules, to capture a smaller number of volume threshold accounts than under the NPRM proposal. The definition is being modified to: ''any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].'' [97] This change will reduce the number of reportable volume threshold accounts in the case of a give-up trade:

- In a give-up scenario, this definition will require reporting by the carrying firm of the account to which the trade is ultimately allocated. Reporting will not be required, however, by the carrying firm of the original executing account, or by the carrying firm of any intervening account(s) prior to the account to which the trade is ultimately allocated.
- In a non-give-up scenario, there will be no change to the number of reportable volume threshold accounts. Under both the original and revised definition, reporting will be required by the carrying firm of the account in which the trade is both executed and cleared.

The Commission believes that this approach will be more efficient and less

[93] CL–2012–FIA *supra* note 55 at 6. CL–2012–CME *supra* note 55 at 2–3. CL–2012–ICE *supra* note 55 at 2.

[94] CL–2012–CME *supra* note 55 at 2–3.

[95] Note that the following definitions in section § 15.00 have been reordered due to the elimination of the definition of direct market access (proposed in the NPRM as § 15.00(v)).

[96] CL–2012–CME *supra* note 55 at 4.

[97] Based on comment letters received in response to various proposed OCR rulemakings, the Commission understands that, in the case of a give-up trade, the industry regards the account to which a give-up trade is ultimately allocated as the only ''carrying'' account in the give-up process. On this basis, the Commission does not view the original executing account of a give-up trade, or any intervening account(s) prior to the account to which the give-up trade is ultimately allocated, as ''carrying'' accounts in the give-up process.

burdensome for reporting parties, while nonetheless capturing a sufficient number of volume threshold accounts to advance the Commission's surveillance objectives.

viii. § 15.00(y)—Omnibus Volume Threshold Account

NPRM Proposal

Proposed § 15.00(z) (re-ordered in the final rules as § 15.00(y)) defined omnibus volume threshold account as any trading account that, on an omnibus basis, executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

Summary of Comments on NPRM Proposal

See the discussion above regarding CME's comment on the definition of ''volume threshold account.''

Discussion of Final Rule

The Commission is adopting proposed § 15.00(z) (re-ordered in the final rules as § 15.00(y)) with one modification, consistent with the change to the definition of volume threshold account described above. Under the final rules, omnibus volume threshold account means ''any trading account that, on an omnibus basis, carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].''

ix. § 15.00(z)—Omnibus Reportable Sub-Account

NPRM Proposal

Proposed § 15.00(aa) (re-ordered in the final rules as § 15.00(z)) defined omnibus reportable sub-account as any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(aa) (re-ordered in the final rules as § 15.00(z)) without modification.

x. § 15.00(aa)—Reportable Sub-Account

NPRM Proposal

Proposed § 15.00(bb) (re-ordered in the final rules as § 15.00(aa)) defined reportable sub-account as any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.00(bb) (re-ordered in the final rules as § 15.00(aa)) without modification.

xi. § 15.00(bb)—Trading Account Controller; § 15.00(cc)—Volume Threshold Account Controller; § 15.00(dd)—Reportable Sub-Account Controller

NPRM Proposal

The Commission proposed to separately define the concept of control in the context of trading accounts, volume threshold accounts, and reportable sub-accounts. For these accounts, ''control'' may only be exercised by natural persons. Accordingly, proposed § 15.00(cc), (dd), and (ee) (re-ordered in the final rules as § 15.00(bb), (cc), and (dd)) defined trading account controllers, volume threshold account controllers, and reportable sub-account controllers, respectively, as ''a natural person who by power of attorney or otherwise actually directs the trading of a [trading account, volume threshold account, or reportable sub-account].'' Each account type may have more than one controller. The proposed definitions in § 15.00(cc), (dd), and (ee) are relevant to the submission of New Forms 102A (trading accounts), 102B (volume threshold accounts), and 71 (reportable sub-accounts), respectively.

Summary of Comments on NPRM Proposal

See above the discussion of comments received regarding the definition of control proposed by § 15.00(t).

Discussion of Final Rule

The Commission is adopting proposed § 15.00(cc), (dd), and (ee) (re-ordered in the final rules as § 15.00(bb), (cc), and (dd)) without modification. See the discussion of § 15.00(t) above regarding the modifications to the Form 102 instructions that will be made in response to comments received regarding the definition of control.

xii. § 15.01(c)—Persons Required To Report

NPRM Proposal

The introduction of new account and controller types in New Forms 102A, 102B, and 71 will result in a corresponding expansion in the categories of persons required to provide New Form 40 reports. Accordingly, the Commission proposed to amend § 15.01(c), which currently requires Form 40 reports only from persons who hold or control reportable positions.[98] Proposed § 15.01(c) required New Form 40 reports from: Traders who own, hold, or control reportable positions (identified via New Form 102A); volume threshold account controllers (identified via New Form 102B); persons who own volume threshold accounts (identified via New Form 102B); reportable sub-account controllers (identified via New Form 71); and persons who own reportable sub-accounts (identified via New Form 71).

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.01(c) without modification.

xiii. § 15.02—Reporting Forms

NPRM Proposal

Current § 15.02 contains a list of the forms contained in parts 15 through 19, and 21.[99] Proposed § 15.02 was revised to reflect the proposed introduction of new Form 71, the renaming of Form 102, and the new OMB control number created by this rulemaking.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 15.02 without modification.

xiv. § 15.04—Reportable Trading Volume Level

NPRM Proposal

Proposed § 15.04 provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day,

[98] 17 CFR 15.01(c).

[99] 17 CFR 15.00(q) and 15.02. The Dodd-Frank Act modified section 1a of the CEA. As a result, the definition of ''registered entity'' previously found in section 1a(29) of the CEA is now in section 1a(40). In the NPRM, the Commission proposed to revise current § 15.00(q) so that it cites to section 1a(40) for the definition of registered entity. The Commission also proposed to revise current § 15.00(q) by removing the provision's reference to DTEFs, a category of regulated markets that was eliminated by section 734 of the Dodd-Frank Act. These proposals are adopted in the final rules.

on a single reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).

Notably, proposed § 15.04 addressed trading volume, not open positions, and required that purchases and sales by a trading account be summed to determine whether such account has reached the reportable trading volume. Section 15.04 also stipulates that reportable trading volume should encompass all instruments that the reporting market designates with the same product identifier.

Summary of Comments on NPRM Proposal

FIA, CME and ICE commented that the reportable trading volume level (''RTVL''), as proposed, would generate an excessive amount of data that may not be meaningful to the Commission's trade practice and market surveillance programs.[100] More specifically, Nadex commented that the proposed 50-contract reportable trading volume level would capture too many retail customers that are trading contracts with very small notional values.[101]

FIA and ICE both recommended that the Commission phase in a descending RTVL until the optimum level is reached.[102] FIA, for example, recommended that ''the Commission could require that only accounts meeting a volume threshold of 1,000 contracts per day be reported in the first three months; contracts meeting a volume threshold of 750 contracts per day be reported in the second three months after the compliance date; and so on until the optimum volume threshold is reached.'' [103] CME also expressed concern that the RTVL will capture too many accounts, but recommended that the RTVL should be changed to 250 contracts bought or sold during a calendar week.[104]

Nadex recommended that a different RTVL should be applied to contracts with small notional values, as compared to contracts with larger, traditional notional values. ''For any contract with a notional value of $1,000 or less, the RTVL could be increased to 5,000 (*i.e.,* 1,000 times the standard RTVL of 50). This would still result in the Commission capturing information with respect to a relatively insignificant amount of trading activity in terms of notional value, but would be significantly less burdensome for the DCMs that offer these contracts.'' [105] If the Commission determined not to adopt a different RTVL for contracts with small notional values, then Nadex recommended that ''DCMs should have the opportunity to obtain a waiver from the standard RTVL level with an appropriate alternative to be determined after consultation between the relevant market and CFTC staff.'' [106]

Discussion of Final Rule

Although the Commission acknowledges comments received regarding the appropriate RTVL, the Commission is adopting proposed § 15.04 without modification.

As indicated in the NPRM, the RTVL is based on Commission staff's analysis of DCM trade data received through the trade capture report from a sample of DCMs during a recent six-month period. The 50-contract RTVL is calibrated to identify a critical mass of the trading accounts active in Commission-regulated markets, measured not only by the percentage of trading volume for which those accounts are responsible, but also by the absolute number of accounts identified. The 50-contract RTVL identifies approximately 85 percent of trading volume in approximately 90 percent of the products sampled by the Commission over the six-month sample period. The 50-contract RTVL also identifies approximately one-third of the trading accounts in the sample set. As a result, the 50-contract RTVL will capture both: (1) Those accounts responsible for the large majority of trading volume; and (2) a meaningful absolute number of the trading accounts active in Commission-regulated markets. The Commission believes that (1) and (2) are both equally important in improving the Commission's ability to perform robust and comprehensive market and trade practice surveillance. While the 50-contract RTVL achieves the Commission's regulatory objectives, it is nonetheless also calibrated to minimize the regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the reporting regime.

Furthermore, the Commission also reiterates that volume threshold account reporting, through Form 102B, is a transaction-based reporting regime rather than a position-based regime. A fundamental purpose of volume-based reporting on Form 102B is to identify trading accounts based solely on their trading volume, independently of such accounts' contribution to open interest. The Commission's intent in this rulemaking is to achieve a comprehensive identification of the participants in regulated derivatives markets regardless of the trading strategies they may pursue.

For these reasons, the Commission declines to accept proposals that could reduce the trading volume or absolute number of accounts identified, including FIA's proposal that the final rules switch to an RTVL that descends from 1,000 contracts to 750 contracts, or proposals that would change the basis of measurement, including CME's proposal to use an RTVL of 250 contracts bought or sold per week. In addition, the Commission also declines to accept recommendations that would result in an impracticable administrative burden, including Nadex's recommendation that a different RTVL should be applied to contracts with small notional values. The Commission believes it would be inefficient for both the Commission and various reporting parties to create a reporting regime for its regulated markets that is differently scaled across multiple products, in response to the fact that trading volume varies from one product to the next.[107] Accordingly, the final rules will use the same RTVL proposed in the NPRM.

The NPRM proposed to apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs. Because the RTVL is based on the Commission's experience with DCMs, the NPRM asked for comment whether the 50-contract RTVL was also appropriate for the reporting of accounts associated with SEFs—and if not, what changes would be appropriate for reporting with regard to SEFs. The Commission did not receive any comments in response to this question. As a result, the Commission will apply the same RTVL (50 contracts) to volume threshold accounts associated with both DCMs and SEFs in the final rules, as contemplated by the NPRM.

In the event that trading activity in the SEF marketplace is lower than in the futures marketplace, the Commission expects that the 50 contract RTVL will likely identify a smaller percentage of volume threshold accounts associated with SEFs. The 50 contract RTVL for

[100] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3. CL–2012–ICE *supra* note 55 at 6.

[101] CL–2012–Nadex *supra* note 55 at 2–3.

[102] CL–2012–FIA *supra* note 55 at 8. CL–2012–ICE *supra* note 55 at 6.

[103] CL–2012–FIA *supra* note 55 at 8.

[104] CL–2012–CME *supra* note 55 at 3.

[105] CL–2012–Nadex *supra* note 55 at 3.

[106] *Id.*

[107] *See infra* section VIII(B)(vii) for a discussion of the administrative difficulties of implementing such a proposal.

SEFs would, correspondingly, impose a lesser burden on parties reporting volume threshold accounts on SEFs as compared to parties reporting such accounts on DCMs. Once the final rules have been implemented, if the Commission determines that the 50 contract RTVL is identifying an insufficient number of volume threshold accounts, the Commission may adjust the RTVL for SEF reporting via a subsequent rulemaking, to ensure that an equivalent segment of both the DCM and SEF marketplace is identified.

B. Part 17

i. § 17.01(a)—Identification of Special Accounts (via 102A)

NPRM Proposal

Proposed § 17.01(a) required reporting parties to identify special accounts on New Form 102A, and referred reporting parties directly to the new form for the required data points.

Summary of Comments on NPRM Proposal

Efficiency of Forms. FIA and CME both commented that the use of multiple reporting forms (*i.e.,* the 102A, 102B and 102S) to capture similar information is inefficient and unnecessary.[108] FIA stated that ''the proposed amendments appear to be designed to populate three separate data bases to accommodate the Commission's existing systems for conducting trade practice and market surveillance, thereby perpetuating an inefficient system.'' [109] As an example of this inefficiency, FIA noted that ''the proposed amendments would require reporting firms to provide contact information for each of Form 102A, Form 102B and Form 102S.'' [110] FIA stated that ''managing three separate forms for the same customer will create unnecessary work and be more challenging to keep current.'' [111] CME regarded the 102 reporting as duplicative and inefficient because it ''requires a different Form 102 depending on the type of trigger.'' [112]

In order to eliminate redundant requests on the forms for contact information, FIA suggested creating a ''Reporting Contact Reference Database,'' where contact information would be stored once for each special account number.[113] ''This would ensure that contact information is stored and maintained as a single record, eliminate redundancy and improve the quality of information in the ownership and control reporting process.'' [114] More generally, CME recommended that ''the Commission's systems can and should use a common set of reference data so that a previously identified account does not need to be re-reported based upon a different trigger.'' [115]

Discussion of Final Rule

Efficiency of Forms. In response to comments regarding the efficiency of the electronic submission process, the Commission is creating a contact reference database so that respondents will not need to enter contact information each time they manually complete a 102A, 102B or 102S through the web portal. For example, the respondent would enter the account number for the applicable form, and the Web portal page would automatically populate the contact information for that account number which the respondent had most recently provided. The Commission expects that this solution may be particularly helpful to small entities, which are likely to manually complete forms through the web portal. Larger firms, by contrast, are more likely to completely automate the process.[116]

Summary of Comments on NPRM Proposal

Burden of Collecting Information for Certain Fields. CME recommended that the data fields collected on any automated form should be limited to those records that an FCM obtains in its regular onboarding processes.[117] CME commented that if the Commission requires the inclusion of certain data points that are not currently collected, ''FCMs will need to revise their onboarding procedures to obtain that data for every account so that it can be recorded in a system and eventually be extracted for the automated reports, which would be, among other things, incredibly costly.'' [118] FIA recommended that data points that are not currently collected by FCMs be removed from the forms. Specifically, FIA recommended removing the requirement to provide a customer or account controller's NFA identification number, because FCMs generally do not request or record this information.[119] FIA also recommended that certain ownership and control fields be removed, because FCMs do not collect this information. On a related topic, FIA recommended that the requirement to list the customer or account controller's Web site be removed, because Web site addresses are subject to change and FCMs would have no ability to monitor for such changes and update their records.[120]

FIA proposed that the three sections of the proposed 102 be consolidated into a single Form 102, a draft of which is attached to the FIA comment letter (the ''FIA consolidated form'').[121] CME expressed support for the FIA consolidated form.[122] The FIA consolidated form does not include fields that FIA indicated are currently unavailable and would be burdensome to collect and/or maintain, such as the customer or account controller's NFA ID and Web site address.

Discussion of Final Rule

Burden of Collecting Information for Certain Fields. The Commission declines to accept the proposal to create a single, consolidated Form 102 based on the FIA consolidated form. The FIA consolidated form is missing a number of key data fields, the absence of which would undermine the goals of the Commission's data collection effort.[123] For example, the FIA consolidated form does not require respondents to state the reporting trigger. Instead, the directions to the FIA consolidated form state that, ''This form must be completed if an account exceeds the reportable levels on special accounts, volume threshold accounts or consolidated accounts.'' The form does not clarify whether respondents are reporting a special account, volume threshold account, or consolidated account that has reached a

[108] CL–2012–FIA *supra* note 55 at 3–4. CL–2012–CME *supra* note 55 at 2.

[109] CL–2012–FIA *supra* note 55 at 4.

[110] *Id.*

[111] *Id.*

[112] CL–2012–CME *supra* note 55 at 2.

[113] CL–2012–FIA *supra* note 55 at 4.

[114] *Id.*

[115] CL–2012–CME *supra* note 55 at 2.

[116] *See also supra* note 41. New Form 102 requires the reporting party to provide the LEI (if any) of the reporting party and of various other parties reportable on the form, such as account owners, controllers, and originators. As noted in the footnotes to the reporting forms in the Appendix, if a reporting party provides an LEI on New Form 102 that was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked as ''Optional Fields'' in the relevant question (*i.e.,* name and address), provided that such optional fields were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with the relevant LEI. The Commission is addressing such otherwise duplicative reporting in order to leverage information previously submitted by reporting parties. Footnotes to the reporting forms in the Appendix contain instructions regarding other fields that are not required to be reported in certain circumstances.

[117] *Id.*

[118] *Id.*

[119] CL–2012–FIA *supra* note 55 at 6.

[120] CL–2012–FIA *supra* note 55 at 7.

[121] CL–2012–FIA *supra* note 55 at 4 and Exhibit A.

[122] CL–2012–CME *supra* note 55 at 2.

[123] *See infra* section VIII(B)(vi) for a more detailed discussion of the FIA consolidated form.

reportable level. Without knowing the reporting trigger for the form (*e.g.,* whether the reporting party had reached a reportable position or reportable volume level), the Commission would be unable to efficiently and accurately categorize the trading accounts reported on the form, and utilize this account information for surveillance or other related purposes.

However, the Commission is accommodating FIA's comments in a more limited fashion, by clarifying in the instructions to the new forms that the NFA ID and Web site (the two examples of problematic fields cited by FIA) are only required to be reported to the extent the respondent has this information available in its records. There is no affirmative obligation for respondents to poll customers or other parties for the NFA ID and Web site if this information has not been previously collected.

Summary of Comments on NPRM Proposal

Identification of Special Account Owners. FIA noted that the current Form 102 requires that a special account be identified only by account controller (who may also be the account owner).[124] The new Form 102A requires that both the owner and controller of a special account be identified, if the account is reportable due to both ownership and control of a reportable position. FIA commented that ''if an account is identified by owner or controller, the FCM may be required to file two Form 102s for the same account.'' [125] FIA also commented that ownership information may be difficult for FCMs to provide, because FCMs ''currently collect only limited information on certain indirect owners of an account, *e.g.,* fund participants that have a 10 percent or greater ownership interest, when the account is opened. This information is not updated.'' [126] Finally, FIA commented that ''owner'' is not defined for purposes of Form 102.[127] FIA recommended ''removing the proposed requirement that special accounts be identified only by account owner.'' [128]

Discussion of Final Rule

Identification of Special Account Owners. The Commission declines to modify the reporting forms in response to comments regarding the identification of account owners. The Commission notes that FIA's comment that FCMs may be required to file two Form 102s for the same account appears to be based upon a misunderstanding of the New Form 102 filing procedure. Regardless of whether a Form 102A is filed as a result of ownership of a reportable position, control of a reportable position, or both ownership and control of a reportable position,[129] the form would be filed only once in response to each reporting trigger, by means of an electronic submission through a secure FTP data feed or through the Commission's secure Web site portal.

As discussed above, FIA commented on the difficulty of collecting information regarding the direct owners of an account. However, the Commission notes that New Form 102 is identical to current Form 102 in that it requires respondents to determine which party directly owns a special account. The New Form 102 is not more burdensome in this regard. As a result, the Commission is not, pursuant to these final rules, requiring respondents to change their current practices with respect to the manner in which they identify owners for purposes of 102 reporting.

Finally, FIA discussed the difficulty of maintaining accurate information regarding the indirect owners of an account. The Commission notes that the New Form 102 requests information regarding only the direct owners of trading accounts, not the indirect owners.

Summary of Comments on NPRM Proposal

Sharing of Information With Regulatory and Self-Regulatory Authorities. FIA and CME recommended that the information collected via the revised forms should be made available to ''appropriate regulatory and self-regulatory authorities'' (FIA) and ''relevant SROs'' (CME).[130] Furthermore, ICE recommended that the Commission should ''either provide a feed or separate file differentiated by exchange code(s) to each DCM containing information only for those accounts actively trading on the DCM, or permit DCMs to access and download the LTR [large trader reporting] and OCR data specific to the DCM.'' [131]

Discussion of Final Rule

Sharing of Information With Regulatory and Self-Regulatory Authorities. The Commission is not modifying the final rules to provide for the sharing of information collected via the forms with the parties proposed by commenters, such as regulatory and self-regulatory authorities. The Commission believes that it would be costly and overly burdensome for the Commission to distribute the collected information to external parties; furthermore, distribution to external parties would not be consistent with the scope of the Commission's responsibilities. The Commission notes that DCMs and SEFs may also implement rules requiring market participants to submit ownership and control information directly to them, if DCMs and SEFs determine that such reporting would be beneficial.

ii. § 17.01(b)—Identification of Volume Threshold Accounts (via 102B)

NPRM Proposal

Proposed § 17.01(b) subjects volume threshold accounts to an account identification regime comparable to the position-based regime already existing for special accounts. Proposed § 17.01(b) specifically requires clearing firms to identify volume threshold accounts on New Form 102B.

Summary of Comments on NPRM Proposal

See the discussion of § 17.01(a) above, which describes comments received regarding the identification of special accounts and volume threshold accounts on Forms 102A and 102B, respectively.

Discussion of Final Rule

The Commission is adopting proposed § 17.01(b) without modification.

iii. § 17.01(c)—Identification of Omnibus Accounts and Sub-Accounts (via 71)

NPRM Proposal

Proposed § 17.01(c) subjected omnibus accounts to their own volume-based account identification regime.[132] The proposed rule required the originator of an omnibus volume threshold account (or the originator of an omnibus reportable sub-account within such account) to file New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') upon

[124] CL–2012–FIA *supra* note 55 at 5.

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *See supra* section V(A)(i) regarding the requirement on New Form 102A to report special accounts solely on the basis of ownership.

[130] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3.

[131] CL–2012–ICE *supra* note 55 at 6.

[132] *See supra* section V(D) and *infra* section IX.

special call by the Commission or its designee.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(c) without modification.

iv. § 17.01(d)—Exclusively Self-Cleared Contracts

NPRM Proposal

Proposed § 17.01(d) required reporting markets that list exclusively self-cleared contracts to file § 17.01(a) and § 17.01(b) reports as if they were clearing members. Proposed § 17.01(d) reflects the requirements of current § 17.01(h) with respect to special accounts, but also incorporates the new volume threshold accounts added by these final rules.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(d) without modification.

v. § 17.01(e)—Identification of Omnibus Accounts and Sub-Accounts

NPRM Proposal

The Commission proposed to introduce a new § 17.01(e) that would extend the Commission's special call authority—currently applicable to special accounts—to also include volume threshold accounts, omnibus volume threshold accounts and reportable sub-accounts.[133] Responses to special calls would be due within 24 hours.

Discussion of Final Rule

No comments were received pertaining to the proposed rule, and the Commission is adopting proposed § 17.01(e) without modification.

vi. § 17.02(b)—Section 17.01(a) Reports (via 102A)

NPRM Proposal

Section 17.02(b)[134] currently addresses the form, manner, and completion date requirements of current 102 filings. Specifically, § 17.02(b)(1) requires reporting parties to submit current Form 102 upon special call by the Commission; in the absence of a special call, § 17.02(b)(2) requires reporting parties to submit current Form 102 within three business days of the first day that a special account is reported to the Commission. The Commission proposed to replace both provisions as described below.

First, as explained above, the Commission proposed to strike current § 17.02(b)(1) and to shift its special call requirements to proposed § 17.01(e). Second, the Commission proposed to strike current § 17.02(b)(2) and to replace its Form 102 submission requirements with a new § 17.02(b)(1)–(4) to address the form and manner of New Form 102A filings for special accounts. Proposed § 17.02(b)(1) directed reporting parties to the Commission's Web site (*www.cftc.gov*) for detailed instructions on the Form 102A filing process. Proposed § 17.02(b)(2)–(4) addressed the completion date requirements of initial Form 102A submissions, 102A change updates, and 102A refresh updates, respectively.

Summary of Comments on NPRM Proposal

§ 17.02(b)(2)–(3) (new 102A filings and change 102A filings). Proposed § 17.02(b)(2)–(3) required firms to file a new Form 102A by 9:00 a.m. ET the following business day after a special account becomes reportable; similarly, changes to a previously submitted Form 102A were required to be reported by 9:00 a.m. ET the following business day. FIA stated that obtaining all the information required by Form 102A (including, for example, the trading accounts that comprise a special account) can take several days.[135] As a result, FIA recommended that the deadline for filing a complete Form 102A or any change update be modified to five business days from the date the account or change becomes reportable.[136]

§ 17.02(b)(4) (refresh 102A filings). Proposed § 17.02(b)(4) required firms to resubmit the Form 102A every six months for each special account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (*i.e.,* later than six months) specified by the Commission or its designee. FIA commented that this timeframe ''will impose significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[137] CME also recommended that refresh updates be required every two years.[138]

§ 17.02(b)(3)–(4) (when 102A accounts are no longer reportable). Proposed § 17.02(b)(3)–(4) provided that an FCM may stop reporting a change update or refresh update with respect to a special account upon notifying the Commission or its designee that the account in question is no longer reportable. FIA stated that ''the Commission provides no guidance on when an FCM may reasonably conclude that an account is no longer reportable. A customer may fall below and rise above the reportable position level frequently during the course of its relationship with an FCM.''[139] FIA therefore recommended that the Commission revise the proposed rule to provide that an FCM may determine that an account is no longer reportable with respect to a particular product if the account remains below the reporting level for a fixed period of time, such as 180 days/six months.[140] FIA's six-month proposal tracks the sunset provision in the NPRM for the reporting of change and refresh updates on Form 102B.[141]

Discussion of Final Rule

No comments were received pertaining to proposed § 17.02(b)(1), and the Commission is adopting this proposed rule without modification. In light of the comments received, the Commission is making the following modifications to § 17.02(b)(2)–(4) and to new Form 102A:

§ 17.02(b)(2)–(3) (new 102A filings and change 102A filings). New Form 102A requests information regarding both special accounts and the trading accounts that comprise a special account. The Commission is modifying the reporting deadline for new and changed Form 102A filings, specifically with respect to the reporting of non-omnibus trading accounts that comprise a special account. Respondents are required to provide the names of such trading account owners and controllers by 9:00 a.m. the following business day. However, respondents are required to provide the other contact details with respect to such trading account owners and controllers (address, telephone

[133] The Commission's special call authority with respect to special accounts is currently found in § 17.02(b)(1), which the Commission will now strike, as explained below.

[134] 17 CFR 17.02(b).

[135] CL–2012–FIA *supra* note 55 at 7.

[136] *Id.*

[137] *Id.*

[138] CL–2012–CME *supra* note 55 at 3.

[139] CL–2012–FIA *supra* note 55 at 7.

[140] CL–2012–FIA *supra* note 55 at 7–8.

[141] Under the NPRM and these final rules, clearing members may stop providing change and refresh updates on Form 102B for any volume threshold account upon notifying the Commission or its designee that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level. See § 17.01(c)(3) and (4) in section IX, *infra.*

number, etc.) within three business days.[142]

In addition, the final rules will reduce the burden on reporting parties by clarifying that all Form 102 reporting deadlines in the final rules are eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

§ 17.02(b)(4) (refresh 102A filings). Refresh filings for special accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM).[143] In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

§ 17.02(b)(3)–(4) (when 102A special accounts are no longer reportable). In response to FIA's comment, pursuant to these final rules, reporting parties may stop providing Form 102A change updates and refresh updates for a special account if the account is no longer reportable as a special account and has not been reportable as a special account for the past six months. This change is intended to substantively replicate § 17.02(c)(3)–(4), which provide that clearing members may stop providing Form 102B change updates and refresh updates, respectively, upon notifying the Commission or its designee that the relevant volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

Sections 17.02(b)(3) and (4) have also been modified to enable reporting parties to notify the Commission ''or its designee'' that an account is no longer reportable as a special account, based on the criteria described in these sections.

vii. § 17.02(c)—Section 17.01(b) Reports (via 102B)

NPRM Proposal

To address New Form 102B filings for volume threshold accounts, the Commission proposed to codify a new § 17.02(c). Proposed § 17.02(c) followed a structure similar to that of proposed § 17.02(b), with § 17.02(c)(1) directing reporting parties to *www.cftc.gov* for detailed instructions on the Form 102B filing process, and proposed § 17.02(c)(2)–(4) addressing the timing of initial Form 102B filings, 102B change updates, and 102B refresh updates, respectively.

Summary of Comments on NPRM Proposal

§ 17.02(c)(2)–(3) (new 102B filings and change 102B filings). Proposed § 17.02(c)(2)–(3) required firms to file a new Form 102B by 9:00 a.m. ET the following business day after the account becomes a volume threshold account; similarly, changes to a previously submitted Form 102B were required to be reported by 9:00 a.m. ET the following business day. See the discussion above of the comments received regarding Form 102A filings required by § 17.02(b)(2)–(3), which are also relevant to the new 102B and change 102B reporting obligations.

§ 17.02(c)(4) (refresh 102B filings). Proposed § 17.02(c)(4) required firms to resubmit the Form 102B every six months for each volume threshold account, in order to ensure that the information reported is frequently updated. Refresh updates were also required under this proposed rule on such later date (*i.e.,* later than six months) specified by the Commission or its designee. As noted above, FIA commented that this timeframe ''will impose significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[144] CME also recommended that refresh updates be required every two years.[145]

Discussion of Final Rule

No comments were received pertaining to proposed § 17.02(c)(1), and the Commission is adopting this proposed rule without modification. In light of the comments received, the Commission is making the following modifications to § 17.02(c)(2)–(4) and to new Form 102B:

§ 17.02(c)(2)–(3) (new 102B filings and change 102B filings). The Commission is modifying the reporting deadline for new and changed Form 102B filings, specifically with respect to the reporting of non-omnibus volume threshold accounts. Respondents are required to provide the names of non-omnibus volume threshold account owners and controllers reported on 102B by 9:00 a.m. the following business day. Respondents are required to provide the other contact details reported on 102B with respect to such parties (*i.e.,* the address, telephone number, etc. of non-omnibus volume threshold account owners and controllers) within three business days.[146] Notwithstanding this change to the reporting deadline with respect to non-omnibus volume threshold accounts, these final rules do not modify the reporting deadline for omnibus account information (question 4 on New Form 102B). Such omnibus account information must be reported by 9:00 a.m. the following business day.

§ 17.02(c)(4) (refresh 102B filings). Refresh filings for volume threshold accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

Sections 17.02(c)(3) and (4) have also been modified to enable reporting

[142] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information. The Commission is adopting a reporting requirement of three business days as an acceptable intermediate point between one business day (as proposed in the NPRM) and five business days (as requested by FIA, per the preceding summary of comments). The three business day requirement is therefore less burdensome than the one business day requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the three business day requirement, while longer than the one day proposal in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events that occur close to the time of reporting. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a five business day reporting deadline is too long to perform timely market surveillance, and maintain databases that are sufficiently accurate and current to be useful.

[143] The Commission is adopting a refresh reporting requirement of once per year as an acceptable intermediate point between once each six months (as proposed in the NPRM) and once every two years (as requested by FIA and CME, per the preceding summary of comments). The annual refresh requirement is therefore less burdensome than the six month requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the annual refresh requirement, while longer than the six month requirement proposed in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a two year refresh deadline is too long to perform timely market surveillance and maintain databases that are sufficiently accurate and current to be useful.

[144] CL–2012–FIA *supra* note 55 at 7.

[145] CL–2012–CME *supra* note 55 at 3.

[146] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day. See New Form 102B in the Appendix to these final rules for more information.

parties to notify the Commission ''or its designee'' that an account is no longer reportable as a volume threshold account, based on the criteria described in these sections.

viii. § 17.03(a)–(g)—Delegation of Authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight

NPRM Proposal

In the NPRM, the Commission proposed a number of new and revised provisions relating to the delegation of authority to solicit information on the OCR reporting forms. First, the Commission proposed to codify a new § 17.03(e) that provided the Director of ODT with delegated authority to make special calls to solicit information from omnibus volume threshold account originators and omnibus reportable sub-account originators on New Form 71. The Commission also proposed to codify (a) a new § 17.03(f) that provided the Director of DMO with delegated authority to determine the date on which each FCM, clearing member, or foreign broker shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its special accounts and (b) a new § 17.03(g) that provided the Director of DMO with delegated authority to determine the date on which each clearing member shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts.

Second, the Commission proposed to revise current § 17.03(a), which grants the Director of DMO the authority to determine whether FCMs, clearing members and foreign brokers can report certain information on series '01 forms, or can use some other format upon a determination that such person is unable to report the information using the standard transmission format.[147] More specifically, the NPRM revised § 17.03(a) to grant such authority to the Director of ODT, rather than the Director of DMO.

Third, the Commission proposed to revise current § 17.03(b), which grants the Director of DMO the authority to approve the late submission of position reports and Form 102.[148] The NPRM revised § 17.03(b) to grant such authority to the Director of ODT, rather than the Director of DMO. The NPRM further revised § 17.03(b) to: (i) Replace the provision's cross-reference to § 17.01,[149] which the Commission proposed to strike, with cross-references to proposed §§ 17.01(a) and 17.01(b); and (ii) eliminate the provision's cross-reference to current § 17.01(g),[150] which the Commission also proposed to strike.

Fourth, the Commission proposed to revise current § 17.03(c), which grants the Director of DMO the authority to permit reporting parties filing Form 102 to authenticate it through a means other than signing the form.[151] The NPRM revised § 17.03(c) to grant such authority to the Director of ODT, rather than the Director of DMO. The NPRM further revised § 17.03(c) to replace the provision's current cross-reference to § 17.01(f),[152] which the Commission proposed to strike, with a cross-reference to proposed § 17.01, and to address New Form 71.

Finally, the Commission proposed to revise current § 17.03(d), which grants the Director of DMO the authority to approve a format and coding structure other than that set forth in § 17.00(g).[153] The NPRM revised § 17.03(d) to grant such authority to the Director of ODT, rather than the Director of DMO.

Discussion of Final Rule

No comments were received pertaining to the proposed rules, and the Commission is adopting proposed § 17.03(a)–(g) without modification.

C. Part 18

i. § 18.04—Statement of Reporting Trader

NPRM Proposal

Current § 18.04 (the ''Statement of Reporting Trader'') requires every trader who holds or controls a reportable position to file a Form 40 upon special call by the Commission or its designee and to provide on Form 40 information required by current § 18.04(a)–(c).[154] In the NPRM, the Commission proposed to amend § 18.04 by striking all of its current provisions and replacing them as described below.

First, and consistent with its approach to New Form 102, the Commission proposed to transition current § 18.04(a)–(c)'s detailed form content requirements from the regulatory text to New Form 40. Second, the Commission proposed to codify a new § 18.04(a) that, as with current § 18.04, would require every trader who holds or controls a reportable position to file a New Form 40 upon special call by the Commission or its designee. Finally, to accommodate volume threshold accounts and reportable sub-accounts identified on New Forms 102 and 71, the Commission proposed to codify a new § 18.04(b) that would require volume threshold account controllers, persons who own a volume threshold account, reportable sub-account controllers, and persons who own a reportable sub-account to file New Form 40 upon special call by the Commission or its designee.

Summary of Comments on NPRM Proposal

FIA and Joint Electric Association stated that the Form 40 (and the corresponding Form 40S) is overly complicated and extensive without a justified regulatory need.[155] The forms request information regarding the ownership structure of the reporting trader, including all direct and indirect parents and subsidiaries and information regarding their trading activities. FIA commented that ''for some reporting traders, the number of parents and subsidiaries could number in the hundreds. Moreover, the reporting trader may not know, and may not be permitted to know, if the person in which the reporting trader has a 10 percent or greater interest engages in derivatives trading.'' [156] FIA also noted that the Form 40 requires the reporting of persons that have a 10 percent or greater ownership interest in the reporting trader.[157] FIA viewed the 10 percent threshold as inconsistent with the precedent established by Commission Rule 45.6(a), which establishes a control definition based in part upon ''the right to vote 25 percent or more of a class of voting interest.'' [158]

Joint Electric Association expressed concern that its members, which often enter into energy commodity swaps to hedge commercial risks, will not understand the terminology and purpose of the Form 40S.[159] They noted that Association members would, for the most part, be unlikely to have received an old Form 40. Joint Electric Association commented that ''most of the words in the form were not revised to reflect the different market structure whereby swap counterparties transact directly with registered 'swap dealers' . . . rather than through financial intermediaries or market professionals as is the case in the futures industry. As a result, commercial market participants receiving the New Form 40, if they have never seen old Form 40, have no context

[147] 17 CFR 17.03(a).

[148] 17 CFR 17.03(b).

[149] 17 CFR 17.01.

[150] 17 CFR 17.01(g).

[151] 17 CFR 17.03(c).

[152] 17 CFR 17.01(f).

[153] 17 CFR 17.03(d) and 17.00(g).

[154] 17 CFR 18.04(a)–(c).

[155] CL–2012–FIA *supra* note 55 at 8. CL–2012–Joint Electric Association *supra* note 55 at 3–4.

[156] CL–2012–FIA *supra* note 55 at 8.

[157] CL–2012–FIA *supra* note 55 at 5.

[158] *Id.*

[159] CL–2012–Joint Electric Association *supra* note 55 at 3.

within which to understand the new Form or their responsibilities to the Commission.'' [160]

FIA recommended that, instead of requiring identification of indirect owners that have an ownership interest of 10 percent or more, ''Form 40 be revised to require identification of indirect owners that have an ownership interest of 25 percent or more. Setting different indirect ownership levels for related purposes imposes an unnecessary operational burden on firms that must develop systems and procedures to assure compliance with these reporting requirements.'' [161]

Joint Electric Association recommended that various terms in the Form 40S (such as ''reportable position,'' ''swap dealer'' and ''major swap participant'') should be clarified and made more understandable to a commercial end user of energy commodity swaps.[162] Joint Electric Association made several other recommendations to simplify the form and reduce the reporting burden on small entities, including the following: Provide a ''regulatory reporting lite'' version of the form, which would excuse commercial end users from completing the majority of the form; [163] permit small entities to deliver the form by paper, facsimile or email, rather than make electronic filing through a web portal; [164] excuse small entities from any requirement to periodically update the form in response to a subsequent special call by the Commission; [165] and establish procedures to limit the application of the special call authority to small entities.[166]

Discussion of Final Rule

The Commission is adopting proposed § 18.04 without modifications.

The current Form 40 asks whether any person has a financial interest of 10 percent or more in the reporting trader. The Commission believes that it is appropriate to maintain the 10 percent threshold for reporting based on ownership that appears in current Form 40. The 10 percent threshold in current Form 40 allows the Commission to receive reporting on a greater number of ownership relationships than a 25 percent threshold would require, thereby benefiting the Commission's surveillance capabilities. The 10 percent threshold is also consistent with other Commission regulations, such as the aggregation requirements (based on 10 percent or greater ownership or equity interest) in § 150.4(b)–(c). The Commission notes that the 25 percent reporting threshold recommended by FIA reflects the definition of control for purposes of assigning legal entity identifiers (''LEIs'') to swap counterparties, a regulatory objective unrelated to the Form 40's objective of obtaining ownership and control information with regard to reporting traders.

The questions added to New Form 40 will provide the Commission with crucial information regarding reporting traders' ownership and control relationships and business activities. The Commission will utilize this information to perform more comprehensive oversight and surveillance of regulated derivatives markets, including by better understanding relationships that may exist among market participants, and to facilitate analysis of potentially disruptive or manipulative trading activity. The definitions of ''swap dealer'' and ''major swap participant,'' which are the subject of a comment by Joint Electric Association, have now been finalized.[167] In response to Joint Electric Association's other comments, the Commission expects New Form 40 to affect only a small subset of respondents that may be ''small entities'' for purposes of the Regulatory Flexibility Act.[168] This is due, in part, to the fact that the Commission will send New Form 40 on a discretionary basis in response to the reporting of an account that reaches a minimum position or volume threshold. The Commission does not expect that small entities will typically reach such reporting thresholds.[169]

Finally, the Commission declines to accept the proposal by Joint Electric Association that respondents retain the option to file by paper, facsimile or email. The Commission believes that the automation of Form 40, and the use of auto-population on the web-based Form, will result in increased efficiencies for the Commission and the majority of reporting parties. As noted in section VIII(A) below, the Commission expects that the majority of reporting parties will submit Form 40 via the web-based portal, as opposed to via an FTP data feed. The auto-population of certain data fields on the portal will reduce the burden and complexity of the submission process. As a result, the Commission estimates that the time required to update information contained in New Form 40 using the web-based portal will be *de minimis* for most reporting parties.

ii. § 18.05—Maintenance of Books and Records

NPRM Proposal

Current § 18.05 requires traders who hold or control reportable positions to maintain books and records regarding all positions and transactions in the commodity in which they have reportable positions.[170] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission proposed to expand § 18.05 to also impose books and records requirements upon (a) volume threshold account controllers and owners of volume threshold accounts reported on New Form 102B and (b) reportable sub-account controllers and persons who own a reportable sub-account reported on New Form 71.

Discussion of Final Rule

No comments were received pertaining to the proposed rule. As noted above, the Commission proposed to expand § 18.05 to impose books and records requirements on volume threshold account controllers and owners of volume threshold accounts reported on New Form 102B and reportable sub-account controllers and persons who own a reportable sub-account reported on New Form 71. The Commission also notes that the definition of reportable trading volume encompasses trading on both DCMs and SEFs. Accordingly, the Commission is adopting § 18.05 as proposed, with the clarification that the books and records required to be kept by volume threshold

[160] *Id.*

[161] CL–2012–FIA *supra* note 55 at 5.

[162] CL–2012–Joint Electric Association *supra* note 55 at 4–5.

[163] CL–2012–Joint Electric Association *supra* note 55 at 5.

[164] CL–2012–Joint Electric Association *supra* note 55 at 6.

[165] CL–2012–Joint Electric Association *supra* note 55 at 7.

[166] *Id.*

[167] *See* Commission, Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Swap Participant'', 77 FR 30596 (May 23, 2012).

[168] The Regulatory Flexibility Act 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 regarding the impact. *See* NPRM *supra* note 10 at 43990 and section VIII(C) *infra.*

[169] *See supra* the discussion of the RTVL for volume-based reporting in section VII(xiv). As noted above, the RTVL has been calibrated to yield information with respect to those trading accounts that are responsible for a substantial percentage of trading volume, while minimizing the proposed regulations' impact on low-volume accounts whose trading activity does not warrant inclusion in the reporting regime.

[170] 17 CFR 18.05.

account controllers, owners of volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts include books and records with respect to both their futures and swap market activities.

D. Part 20

i. § 20.5—Series S Filings

NPRM Proposal

As with Forms 102 and 40, the Commission proposed to transfer the list of data points required in Form 102S from the relevant regulatory text (*i.e.,* § 20.5) [171] to the form itself. More specifically, the Commission proposed to eliminate the data points specified in § 20.5(a)(1), and to revise § 20.5(a)(1) to provide that when a counterparty consolidated account first becomes reportable, the reporting party shall submit a 102S filing (''initial 102S filing''). The timing for submitting initial 102S filings would continue to be subject to current § 20.5(a)(3).[172] Finally, the Commission proposed to codify new § 20.5(a)(4) and (5) to require change and refresh updates for Form 102S in the same manner as they are required for Form 102A. The Commission also proposed a conforming amendment to § 20.5(a)(2) to eliminate the current instructions with respect to updating 102S filings.

Summary of Comments on NPRM Proposal

FIA commented on the utility of Form 102S, which requires swap dealers and clearing members to identify and report a swap counterparty or customer consolidated account with a reportable position. FIA stated that the information that will be reported to swap data repositories under part 45 would provide the Commission with access to essentially the same information that proposed Form 102S will require.[173] FIA commented that ''requiring FCMs, and the industry generally, to divert critical operational and financial resources from building the systems necessary to implement the part 45 recordkeeping and reporting requirements to implement this interim solution, would impose an unnecessary operational burden and cost without a significant offsetting benefit.'' [174] CME commented that ''requiring swap reporting as part of OCR, to accomplish reporting that is already being done under part 20- and soon to be duplicated under SDR reporting with new unique legal entity identifiers- is unnecessary and imposes additional unjustified costs on the industry.'' [175]

See the discussion of § 17.02(b) above for a summary of the comments received on change and refresh obligations related to the Form 102, which are relevant to Form 102S.

Discussion of Final Rule

The Commission acknowledges the comments of FIA and CME regarding the Form 102S. Contrary to commenters' claims, however, SDRs will not, in all cases, be able to provide the ownership and control information requested on 102S. For example, the Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. This counterparty data may, in some cases, overlap with the owners and controllers of consolidated accounts reported on 102S. However, counterparty data will not, in all cases, overlap with 102S reporting and provide the ownership and control information required by 102S. As a result, the Commission cannot rely on SDR reporting under part 45 as a substitute for 102S. In addition, SDRs would not have a proactive obligation to send swap account information to the Commission; in contrast, 102S places an affirmative obligation on respondents to provide swap counterparty consolidated account information to the Commission.

Such differences notwithstanding, in developing New Form 102, the Commission has endeavored to identify and eliminate any duplicative reporting obligations that may arise from these final rules. For example, New Form 102 requires respondents to provide the legal entity identifiers (LEI) and related information (*i.e.,* names and addresses) of parties reportable on the form. However, if such related information has previously been reported to a CFTC-accepted provider of LEIs (*e.g.,* the CICI Utility), then reporting parties are not required to report it again on New Form 102. This eliminates all duplication between New Form 102 and data currently reported to an LEI provider. Furthermore, in the event the CICI Utility or another CFTC-accepted LEI provider is modified in the future to accept certain supplemental fields required on the forms,[176] then reporting parties will not be required to report these supplemental fields on New Form 102, if the information has previously been reported to such an LEI provider.[177]

More generally, staff is considering recommending that the Commission issue an Advanced Notice of Proposed Rulemaking seeking public input on possible revisions to part 45 that could increase efficiencies in reporting swap data and mitigate the burden on market participants. As markets, market participants, and trading conventions adapt to the swap data recordkeeping and reporting requirements under part 45, staff will review these requirements to ensure that they continue to fulfill their regulatory objectives in light of the evolving swaps marketplace. For the reasons discussed above, the Commission is implementing 102S reporting pursuant to the final rules.

The Commission is adopting proposed § 20.5(a)(1)–(2) without modification. In response to comments received with respect to § 17.02(b), the Commission is making the following modifications to proposed § 20.5(a)(4)–(5) and to Form 102S:

§ 20.5(a)(5) (refresh 102S filings). The discussion of § 17.02(b) above contains a summary of the comments received on change and refresh obligations related to the Form 102, which are relevant to Form 102S. In response to FIA's comments, refresh filings for consolidated accounts will be required once per year, as opposed to once each six months (as proposed in the NPRM). In light of this change, the final rules provide that refresh updates are required on such other date specified by the Commission or its designee that is equal to or greater than six months, which is consistent with the alternative deadline language in proposed §§ 17.02 and 20.5.

§ 20.5(a)(4)–(5) (when 102S consolidated accounts are no longer reportable). Reporting parties may stop providing Form 102S change updates and refresh updates for a consolidated account if the account is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. This change is intended to

[171] 17 CFR 20.5.

[172] 17 CFR 20.5(a)(3).

[173] CL–2012–FIA *supra* note 55 at 2–3.

[174] CL–2012–FIA *supra* note 55 at 3.

[175] CL–2012–CME *supra* note 55 at 3.

[176] The Regulatory Oversight Committee (ROC) of the Global LEI System (GLEIS) is seeking to modify ISO 17442 LEI, the core standard underlying the GLEIS, in order to collect certain additional information from persons registering to receive an LEI.

[177] The supplemental fields required on New Form 102 include the name, phone number and email address of certain contact persons required by the reporting forms, among other fields. See the footnotes to the reporting forms in the Appendix for a detailed list of the information that may be omitted from the forms for the reasons described in this paragraph.

substantively replicate § 17.02(c)(3)–(4), which provide that clearing members may stop providing Form 102B change updates and refresh updates, respectively, upon notifying the Commission or its designee that the relevant volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

Sections 20.5(a)(4) and (5) have also been modified to enable reporting parties to notify the Commission ''or its designee'' that an account is no longer reportable as a consolidated account, based on the criteria described in these sections.

VIII. Related Matters

A. Paperwork Reduction Act

i. Overview

The Paperwork Reduction Act (''PRA'') [178] 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 displays a currently valid control number. This rulemaking will result in new collection of information requirements within the meaning of the PRA. The Commission has therefore submitted this proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Trader and Account Identification Reports'' (OMB control number 3038–0103). Responses to this collection of information will be mandatory. The Commission will protect proprietary information consistent with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act 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.'' [179] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

The rulemaking will create new information collection requirements via §§ 17.01, 18.04, 18.05, and 20.5. Currently, OMB control number 3038–0009 covers, among other things, the collection requirements arising from current §§ 17.01, 18.04, and 18.05.[180] Also, OMB control number 3038–0095 covers, among other things, the collection requirements arising from current § 20.5.[181] Accordingly, the Commission is requesting a new OMB control number for the purpose of consolidating the collections into a common control number. Collection requirements arising from §§ 17.01, 18.04, 18.05, and 20.5 will be covered by 3038–0103. Once the collections covered by control number 3038–0103 become operational, OMB control number 3038–0009 will no longer cover collection requirements arising from §§ 17.01, 18.04, and 18.05. In addition, OMB control number 3038–0095 will no longer cover collection requirements arising from § 20.5. The remaining collection requirements covered by 3038–0009 and 3038–0095 will not be affected.

ii. Information To Be Provided

Section 17.01, as revised by this rulemaking, will result in the collection of information regarding the following types of accounts: (a) Special accounts (as defined in current § 15.00(r)); [182] and (b) volume threshold accounts, omnibus volume threshold accounts, and omnibus reportable sub-accounts (each as defined in § 15.00). Specifically, § 17.01 will provide for the filing of New Form 102A, New Form 102B and New Form 71, as follows:

1. pursuant to § 17.01(a), FCMs, clearing members, and foreign brokers will identify new special accounts to the Commission on New Form 102A; [183]

2. pursuant to § 17.01(b), clearing members will identify volume threshold accounts to the Commission on New Form 102B; [184] and

3. pursuant to § 17.01(c), omnibus volume threshold account originators and omnibus reportable sub-account originators will identify reportable sub-accounts to the Commission on New Form 71 when requested via a special call by the Commission or its designee.[185]

Additional reporting requirements will arise from § 18.04, which will result in the collection of information from and regarding traders who own, hold, or control reportable positions; volume threshold account controllers; persons who own volume threshold accounts; reportable sub-account controllers; and persons who own reportable sub-accounts. Specifically, § 18.04 will provide for the filing of New Form 40, as follows:

1. pursuant to § 18.04(a), a trader who owns, holds, or controls a reportable position will file New Form 40, when requested via a special call by the Commission or its designee; and

2. pursuant to § 18.04(b), a volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account will file New Form 40 when requested via a special call by the Commission or its designee.[186]

Reporting requirements will also arise from § 20.5(a), which will require all reporting entities to submit New Form 102S for swap counterparty or customer consolidated accounts with reportable positions.[187] In addition, current § 20.5(b) requires every person subject to books or records under current § 20.6 to complete a 40S filing after a special call upon such person by the Commission.[188] However, current § 20.5(b) also provides that a 40S filing shall consist of the submission of Form 40. As discussed above, the final rules provide for the creation of New Form 40, which will expand and replace current Form 40. Accordingly, the final rules will require additional information from 40S filers.

[178] 44 U.S.C. 3501 *et seq.*

[179] 7 U.S.C. 12(a)(1).

[180] 17 CFR 17.01, 18.04 and 18.05.

[181] 17 CFR 20.5.

[182] 17 CFR 15.00(r).

[183] *See supra* sections III(A) and V(A) for a description of current Form 102 and a comparison to New Form 102A.

[184] *See supra* section V(B) for a description of New Form 102B.

[185] *See supra* section V(D) for a description of New Form 71.

[186] *See supra* sections III(A) and V(E) for a description of current Form 40 and a comparison to New Form 40.

[187] ''Reporting entity,'' ''counterparty,'' and ''consolidated account'' are each defined in § 20.1 of the Commission's regulations. *See supra* sections III(B) and V(C) for a description of current Form 102S and a comparison to New Form 102S.

[188] 17 CFR 20.5(b) and 20.6. *See supra* sections III(B) and V(E) for a description of current Form 40S and a comparison to New Form 40S.

In addition to the reporting requirements summarized above, § 18.05 will impose recordkeeping requirements upon: (1) Traders who own, hold, or control a reportable futures or options on futures position (who are subject to current § 18.05); (2) volume threshold account controllers; (3) persons who own volume threshold accounts; (4) reportable sub-account controllers; and (5) persons who own reportable sub-accounts. These provisions extend the recordkeeping requirements of current § 18.05, which are applicable to traders who hold or control a reportable futures or options on futures position, to owners and controllers of accounts with reportable trading volume.[189]

iii. Total Reporting and Recordkeeping Costs; Methodology Used To Estimate Costs

(a) Total Costs

Set forth below is the estimated total annual industry cost for affected participants to (i) Complete Forms 102A and 102S and any resulting Form 40s, (ii) complete Forms 102B and 71 for volume threshold accounts associated with DCMs and SEFs and any resulting Form 40s, and (iii) comply with the books and records obligations arising from revised § 18.05:

Regulation	Associated report	Estimated total annual industry cost [190]	Anticipated transmission method
17.01(a)	New Form 102A	$1,931,129	FTP.
17.01(b)	New Form 102B	1,299,799	FTP.
17.01(c)	New Form 71	427,147	Web.
18.04(a)	New Form 40	1,103,603	Web.
18.04(b)	New Form 40	3,977,173	Web.
18.05	Books and Records	18,569	N/A.
20.5(a)	102S Filing	289,669	FTP.
20.5(b)	40S Filing	527,207	Web.
Total		9,574,296	

Total reporting and recordkeeping costs for the final rules reflect the sum of estimated burdens, multiplied by the wage rate provided below, for: (1) New Form 102A; (2) New Form 102B; (3) New Form 71; (4) New Form 40 (pursuant to 18.04(a)); [191] (5) New Form 40 (pursuant to § 18.04(b)); [192] (6) the reporting and recordkeeping requirements of revised § 18.05; (7) New Form 102S; and (8) New Form 40S. The Commission has updated the cost estimates in the NPRM based on the most recent data and statistics available to the Commission.

Methodology Used To Estimate Costs

The Commission estimated the reporting burden associated with each filing obligation below by considering the two distinct filing methods that it will accommodate pursuant to these final rules (via FTP or via the web portal). With two methods of submission, reporting parties will have the flexibility to select the submission method that works best with their existing data and technology infrastructure and the number of filings they expect to make. While the NPRM contemplated that certain forms (Forms 40/S and 71) could be submitted only via the web portal, these final rules provide that all forms may be submitted either via the web portal or via FTP, in order to provide additional flexibility to reporting parties. In general, the Commission believes that FTP submission will be more cost effective for reporting parties with a large number of filings, while submission through the web-based portal will be more cost effective for reporting parties with a small number of filings.

As noted above, the Commission has calculated the total estimated industry cost for submitting each form via FTP or via the web portal. These calculations represent the total industry cost if all reporting parties submit information via one method—as compared to the total industry cost if all parties submit via the other method. For example, the 102A calculations below represent the total estimated industry cost if all reporting parties submit 102A via FTP ($1,931,129), or if all parties submit 102A via the web portal ($5,954,969). The Commission recognizes that, even if it is less expensive for the industry as a whole to submit 102A via FTP, it may be less expensive for certain individual reporting parties to submit 102A via the web portal. This may be due to the limited number of forms these parties expect to submit, their technology infrastructure, or other factors.

To expand on this example, if a new reporting party anticipates that it will submit only two 102A filings per year, it might logically conclude that it would be less expensive to submit its two filings via the web portal than to incur the development costs associated with establishing an FTP link to the Commission. In this instance, the Commission has estimated that the reporting party would incur 20 hours of initial development burden for each of the two records submitted via the web portal, or a total initial development burden of 40 hours. Accordingly, the reporting party may conclude that submitting its 102A filings via the web portal is more cost-effective than submitting the same information via FTP, which the Commission has estimated would require an initial development burden of 264 hours per entity (regardless of the number of forms submitted).[193]

[189] 17 CFR 18.05.

[190] The estimated total annual industry cost includes annual reporting and recordkeeping costs, as well as annualized start-up costs and ongoing operating and maintenance costs. The estimated total costs for each form included in this chart are subject to the limitations described in section VIII(B), below.

[191] 17 CFR 18.04(a).

[192] 17 CFR 18.04(b).

[193] In this example, the Commission expects that reporting parties making a small number of filings would choose to submit via the web-based portal, because web submission would be the most cost-effective submission method for such parties. In doing so, they will incur fewer costs than they would if they submitted via FTP, thereby lowering the total costs to the industry. As a result, the simplifying assumption that all reporting parties will submit New Form 102A (along with certain other forms discussed below) via FTP is a conservative assumption, which will tend to overestimate the total industry cost.

All burden estimates assume that information required by each form is generally available within the reporting party; however, in preparing its estimates, the Commission did make an effort to account for the added burden associated with assembling data distributed among multiple systems and/or databases within a reporting party. Finally, the cost estimates in section VIII(A) and (B) assume that all market participants will start from the same point in developing the systems required to implement OCR reporting. Accordingly, to the extent that current reporting parties leverage their existing reporting systems [194] to implement OCR reporting, the cost estimates are likely to overestimate actual costs to some degree for such parties.

For the following additional reasons, the Commission anticipates that total reporting and recordkeeping costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated herein.

First, the Commission notes that reporting and recordkeeping burdens arising from each regulation and associated form were estimated independently of the requirements of the other regulations and associated forms, and that substantial synergies are likely to exist across the systems and data necessary to meet the reporting requirements. As a result, the total reporting and recordkeeping costs to the industry for the final rules are likely to be substantially lower than estimated. For example, many reporting firms submitting New Form 102A will also submit New Form 102B, and will be able to leverage systems and information necessary for submitting one form to meet the requirements of the other.

Second, the Commission responded to several proposals by commenters to modify the reporting requirements in order to reduce the requirements' burdens and associated costs. Commenters did not quantify the magnitude of the potential cost savings from their alternative proposals. The final rules adopt a number of these proposals in modified fashion in order to reduce the rules' burden and costs, while also maintaining their regulatory benefits. The Commission has taken a conservative approach and made no downward adjustment for cost savings attributable to modifications that the Commission has made to the final rules to accommodate commenters' proposals.

iv. Reporting Burdens—New and Revised Forms

New Form 102A—§ 17.01(a):

Method 1 (102A FTP submission—lower estimate): Method 1 assumes that each New Form 102A reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102A records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102A change and refresh updates will not increase a reporting party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[195]

An assessment of Commission data collection efforts demonstrated that the Commission received Form 102 submissions from 260 reporting parties in 2012. The Commission anticipates that it will receive New Form 102A submissions from a similar number of reporting parties each year. Assuming all New Form 102A reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for New Form 102A will equal 27,560 hours. Using an estimated wage rate of $70.07 per hour,[196] annual industry costs for 102A filings made pursuant to Method 1 are estimated at $1,931,129. As indicated throughout this section VIII(A), the Commission has applied the same wage rate of $70.07 to submission via both the web portal and FTP, although each submission method will require a different annual or annualized burden, in terms of hours. This $70.07 wage rate encompasses the work of a senior programmer, programmer, intermediate compliance advisor, systems analyst, and assistant/associate general counsel, in the proportions described in the preceding footnote.

[194] Certain parties that will be required to report under these final rules now provide certain forms under the current reporting system (*e.g.,* the current Forms 102 and 40).

[195] All annualized development burden estimates are based on 5 year, straight line depreciation. The 106 hour figure is arrived at by dividing 264 hours (initial development burden per reporting party) by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. 53 hours plus 53 hours (annual, ongoing operation and maintenance burdens per reporting party) equals 106 hours per reporting party. The submission of Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis.

[196] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $70.07 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (30% weight); ''programmer'' (29% weight); ''compliance advisor (intermediate)'' (15%), ''systems analyst'' (16%), and ''assistant/associate general counsel'' (10%). The $70.07 wage rate is a blended rate, such that the Commission has applied the same $70.07 wage rate when calculating the cost of submission via both FTP and the web-based portal. As noted above, the NPRM contemplated that Forms 40/S and 71 could be submitted only via the web portal. However, pursuant to these final rules, the Commission is allowing reporting parties to submit Forms 40/S and 71 via FTP as well, with the result that reporting parties may submit all forms either via the web portal or via FTP. In light of this change, the wage rage percentages in these final rules have been updated and slightly modified from the wage rate percentages in the NPRM, to more accurately reflect anticipated labor allocations. The NPRM employed the following wage rage percentages: ''programmer (senior)'' (30% weight); ''programmer'' (30% weight); ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%). While the NPRM calculated an estimated wage rate of $78.61 per hour, these final rules calculate an estimated wage rate of $70.07 per hour, using the 2011 SIFMA statistics and updated wage rate percentages. (Note that the national average of salary and bonuses for the professionals listed above declined between 2010 to 2011, according to the SIFMA report addressing each of those years. The 2010 SIMA report (which is the basis for the wage rate in the NPRM) indicates an aggregate national average of salary and bonuses of $530,321 for these professionals, while the 2011 SIFMA report indicates an aggregate national average of salary and bonuses of $510,943.) The Commission has also updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission (including, for example, the number of reporting forms and/or records received by the Commission in 2012). The NPRM calculated an estimated total annual cost to the industry of $9,147,061, as compared to an estimated total cost to the industry of $9,574,296 in these final rules, *supra. See also infra* note 265.

FORM 102A—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [197]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
260	106	27,560	$70.07	$1,931,129

Method 2 (102A web submission—higher estimate): Method 2 assumes that each New Form 102A reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 20 hours per New Form 102A record. The Commission also estimates that the annual ongoing burden, which includes change and refresh filings, will average 7 hours per year for each New Form 102A record. The estimated Method 2 total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 11 hours per New Form 102A record.[198]

In connection with the introduction of New Form 102A pursuant to this rulemaking, the Commission notes that (except as otherwise instructed by the Commission or its designee) its regulations require reporting firms to separately aggregate positions by common ownership and by common control for the purpose of identifying and reporting special accounts.[199] On the basis of such regulations, the Commission anticipates that it will receive 7,726 New Form 102A records per year.[200] Assuming each of the 7,726 New Form 102A records are provided via Method 2, the Commission estimates that the total annual industry burden for New Form 102A will equal 84,986 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for 102A filings made pursuant to Method 2 are estimated at $5,954,969.[201]

[197] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[198] All annualized development burden estimates are based on 5 year, straight line depreciation.

[199] See §§ 17.00 and 150.4 of the Commission's regulations.

[200] This estimate is based on the requirements of §§ 17.00 and 150.4 of the Commission's regulations. The 7,726 figure represents an increase from the 4,415 Form 102 records the Commission received in 2012. The Commission calculated that in approximately 75 percent of New Form 102A filings, the owner and controller of a special account reported on the form will be different. As a result, the Commission multiplied the 4,415 figure from 2012 by 1.75, and estimated that it will receive approximately 7,726 New Form 102A records per year.

Notwithstanding this estimate, which is based on the requirements of §§ 17.00 and 150.4, reporting parties should continue to report special accounts pursuant to § 17.00 on a disaggregated basis following the implementation of these final rules, if the parties have been so instructed by the Commission or its designee. All reporting parties should continue to provide position reporting based on control of a special account. As an example, if a special account is controlled by one reporting party but owned by another, such account should be reported only by the reporting party that controls the special account. Consistent with this guidance, and notwithstanding the requirement on New Form 102A to also report based solely on ownership of a reportable position, the Commission will not require reporting based on this trigger via New Form 102A following the implementation of these final rules. Because the Commission will not require reporting on New Form 102A based solely on ownership of a reportable position, the Commission anticipates that the number of New Form 102A records it receives per year is likely to be lower than the estimated 7,726 records. *See also supra* section V(A)(i).

[201] The $5,954,969 figure is arrived at by multiplying 7,726 records by 11 hours (equals 84,986 hours) by $70.07 (equals $5,954,969).

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 102A filings should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates that the annual cost to the industry of filing 102A will be approximately $1,931,129 (Method 1—FTP submission), the lower of the two estimated filing methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 102B—§ 17.01(b)

Method 1 (102B FTP submission—lower estimate): Method 1 assumes that each New Form 102B reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102B change and refresh updates will not increase a reporting party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 106 hours per reporting party.[202]

Because New Form 102B provides a new volume-based reporting structure not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B reporting parties. Instead, based on a review of transaction volume across a sample of several DCMs from the second half of 2011, the Commission estimated the number of trading accounts that the Commission anticipates will qualify as volume threshold accounts. The Commission estimated the number of DCM-related New Form 102B reporting parties by calculating the number of clearing members associated with these projected volume threshold accounts.

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive New Form 102B submissions from approximately 100 reporting parties annually. Assuming that all such reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 10,600 hours.[203] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $742,742.[204]
- In estimating the number of reporting parties that will submit New Form 102B for volume threshold accounts associated with SEFs, the Commission has made an assumption that trading activity in the SEF marketplace will be lower than in the futures marketplace. For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive New Form 102B submissions from approximately 75 reporting parties annually. Assuming that all such reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 7,950 hours.[205] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $557,057.[206]

Collectively, annual industry costs for 102B filings made pursuant to Method 1 are estimated at $1,299,799.[207]

FORM 102B—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [208]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
175	106	18,550	$70.07	$1,299,799

Method 2 (102B web submission—higher estimate): Method 2 assumes that each New Form 102B reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 20 hours per New Form 102B record. The Commission also estimates that annual ongoing burdens, which include both change and refresh updates, will average 7 hours per year for each New Form 102B record. The estimated Method 2 total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 11 hours per New Form 102B record.[209]

Because New Form 102B provides a new volume-based reporting structure

[202] All annualized development burden estimates are based on 5 year, straight line depreciation.

[203] The 10,600 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance burden per reporting party) by 100 reporting parties.

[204] The $742,742 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by $70.07 (equals $742,742).

[205] The 7,950 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance burden per reporting party) by 75 reporting parties.

[206] The $557,057 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by $70.07 (equals $557,057).

[207] The $1,299,799 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by $70.07 (equals $1,299,799).

[208] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[209] All annualized development burden estimates are based on 5 year, straight line depreciation.

not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B records it might receive. Instead, the Commission estimated the number of New Form 102B records that it will receive on an annual basis by reviewing transaction volume across a sample of several DCMs from the second half of 2011. Based on this data, the Commission calculated the relationship between (a) volume activity on the DCMs reviewed, (b) the number of reportable volume threshold accounts that would result from this volume activity, and (c) the number of DCM-related New Form 102B records the Commission would receive in connection with these volume threshold accounts. The Commission created a mathematical function based on these three factors. The Commission then made a projection regarding anticipated SEF-related volume activity, and applied the mathematical function described above to estimate (i) the number of SEF-related, reportable volume threshold accounts that would result from this volume activity, and (ii) the number of SEF-related New Form 102B records the Commission would receive in connection with these volume threshold accounts. Based on the preceding methodology, the Commission estimated the following:

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive approximately 126,000 New Form 102B records annually. Assuming each such record is provided via Method 2, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 1,386,000 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $97,117,020.[210]

- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive approximately 62,015 New Form 102B records annually. Assuming each such record is provided via Method 2, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B would equal 682,165 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $47,799,302.[211]

Collectively, annual industry costs for 102B filings made pursuant to Method 2 are estimated at $144,916,322.[212]

Conclusion

As discussed above, while the Commission estimates that establishing an FTP link will require an initial development burden of 264 hours, the Commission also believes that submission via FTP will virtually eliminate the ongoing marginal costs associated with each additional submission or each additional record contained in a submission. For this reason, the Commission believes that FTP submission will be more cost effective for reporting parties making a large number of filings. The Commission expects that a significant majority of New Form 102B reporting parties will be making a large number of filings. Therefore, when estimating the industry-wide costs, the Commission has made the simplifying assumption that all reporting parties will use the FTP submission method when submitting New Form 102B.

Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing DCM and SEF-related 102B will be approximately $1,299,799 (Method 1—FTP submission), the lower of the two estimated filing methods. Notwithstanding the preceding discussion regarding submission via FTP by New Form 102B reporting parties, the Commission recognizes that reporting parties, given their own individualized needs, will make the most cost-effective choice for them, which may be either of the two submission methods.

New Form 71—§ 17.01(c)

Method 1 (71 FTP submission—higher estimate): New Form 71 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 71 reporting party will use an automated program to submit its form via secure FTP. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[213]

The number of New Form 71 filings per year will vary according to the number of special calls for the form made by the Commission. In order to estimate the annual number of New Form 71 filings (*i.e.,* the number of special calls made), the Commission considered the number of current Form 102 omnibus special accounts and estimated that New Form 102B will capture a similar number of DCM-related omnibus volume threshold accounts.[214] Furthermore, the Commission estimated that it will require a New Form 71 for every such omnibus volume threshold account. Commission records indicate 564 omnibus special accounts in 2012, and the Commission expects an equal number of DCM-related omnibus volume threshold accounts. The Commission therefore anticipates that it will receive approximately 564 DCM-related New Form 71 filings per year, from the same number of reporting parties (564).

Because the Commission does not presently receive filings pertaining to SEF-related omnibus volume threshold accounts, the Commission is unable to refer to historical reporting statistics to calculate the number of applicable reporting parties. To estimate the number of Form 71 reporting parties for omnibus volume threshold accounts associated with SEFs, the Commission assumed that SEF transactions will likely be intermediated to a lesser extent than DCM transactions. The Commission estimates that there may be 35 percent as many SEF-related omnibus volume threshold accounts as DCM-related omnibus volume threshold accounts. Accordingly, the Commission estimates that there will be 198 SEF-related omnibus volume threshold accounts, and an equal number of reporting parties (198).

The Commission notes that the final rules do not require change or refresh updates of New Form 71. Accordingly, the burdens and costs associated with such updates in the case of other forms described herein are not relevant to the calculation of burdens and costs for

[210] The $97,117,020 figure is arrived at by multiplying 126,000 records by 11 hours (equals 1,386,000 records) by $70.07 (equals $97,117,020).

[211] The $47,799,302 figure is arrived at by multiplying 62,015 records by 11 hours (equals 682,165 records) by $70.07 (equals $47,799,302).

[212] The $144,916,322 figure is arrived at by multiplying 188,015 records by 11 hours (equals 2,068,165 hours) by $70.07 (equals $144,916,322).

[213] All annualized development burden estimates are based on 5 year, straight line depreciation.

[214] The Commission is estimating the number of New Form 71 filings in this manner because New Form 71 provides for an omnibus account reporting structure that does not currently exist, making direct estimates impracticable.

New Form 71 filings. The Commission also notes that it is likely to request the resubmission of New Form 71 each year.

• Based on an estimated 564 DCM-related New Form 71 reporting parties per year, the Commission estimates an aggregate reporting burden of 59,784 hours annually for DCM-related New Form 71 filings via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $4,189,065.[215]

• Based on an estimated 198 SEF-related New Form 71 reporting parties per year, the Commission estimates an aggregate reporting burden of 20,988 hours annually for SEF-related New Form 71 filings via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $1,470,629.[216]

Collectively, annual industry costs for New Form 71 filings made pursuant to Method 1 are estimated at $5,659,694.[217]

Method 2 (71 web submission—lower estimate): Method 2 assumes that each New Form 71 reporting party (*i.e.,* originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit New Form 71 online via a secure portal provided by the Commission.[218] The Commission estimates that, on average, New Form 71 will create an annual reporting burden of 8 hours per filing.[219]

As discussed above, the Commission expects approximately 564 DCM-related New Form 71 filings per year, and 198 SEF-related New Form 71 filings per year.

• Based on an estimated 564 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,512 hours annually for such filings via Method 2. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $316,156.[220]

• Based on an estimated 198 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,584 hours annually for such filings via Method 2. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 2 are estimated at $110,991.[221]

Collectively, annual industry costs for New Form 71 filings made pursuant to Method 2 are estimated at $427,147.[222]

FORM 71—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annual burden per response (hours)	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
762	8	6,096	$70.07	$427,147

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 71 filings should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing 71 will be approximately $427,147 (Method 2—web submission), the lower of the two estimated filing methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. New Form 40—§ 18.04(a) (arising from New Form 102A):[223]

Method 1 (40 FTP submission (arising from New Form 102A)—higher estimate): New Form 40 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40 reporting party will use an automated program to submit its forms (arising from New Form 102A) via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[224]

As noted above, in connection with the introduction of New Form 102A pursuant to this rulemaking, the Commission notes that (except as otherwise instructed by the Commission or its designee) its regulations require reporting firms to separately aggregate positions by common ownership and by common control for the purpose of identifying and reporting special accounts.[225] On the basis of such regulations, the Commission anticipates that it will receive a greater number of

[215] The $4,189,065 figure is arrived at by multiplying 564 reporting parties by 106 hours (equals 59,784 hours) by $70.07 (equals $4,189,065).

[216] The $1,470,629 figure is arrived at by multiplying 198 reporting parties by 106 hours (equals 20,988 hours) by $70.07 (equals $1,470,629).

[217] The $5,659,694 figure is arrived at by multiplying 762 reporting parties by 106 hours (equals 80,772 hours) by $70.07 (equals $5,659,694).

[218] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[219] The submission of New Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis.

[220] The $316,156 figure is arrived at by multiplying 564 records by 8 hours (equals 4,512 hours) by $70.07 (equals $316,156).

[221] The $110,991 figure is arrived at by multiplying 198 records by 8 hours (equals 1,584 hours) by $70.07 (equals $110,991).

[222] The $427,147 figure is arrived at by multiplying 762 records by 8 hours (equals 6,096 hours) by $70.07 (equals $427,147).

[223] As discussed in section VIII(A)(iii) above, the Commission is evaluating the burden associated with each regulation and associated form separately. It should be noted that the burdens estimated for New Form 40 filings, arising from proposed § 18.04(a) and (b), are especially duplicative. For example, many of the traders that complete New Form 40 pursuant to § 18.04(a) may also be volume threshold account controllers that could receive New Form 40 pursuant to § 18.04(b). In practice, if the Commission possesses a recent Form 40 filing from a reporting party, it may elect not to request a second Form 40 filing from that same entity if the entity becomes reportable under an additional provision of the proposed regulations and there is no additional information to be gained.

[224] All annualized development burden estimates are based on 5 year, straight line depreciation.

[225] See §§ 17.00 and 150.4 of the Commission's regulations.

New Form 102A records per year (7,726) than the number of Form 102 records it has received in recent years.[226] While the number of New Form 40 filings arising from New Form 102A filings will vary according to the number of special calls made by the Commission, the Commission nonetheless anticipates that it may make a larger number of special calls than in recent years, due to the larger number of anticipated New Form 102A records.[227] As a result, the Commission estimates that New Form 102A will result in approximately 5,250 New Form 40 records per year, submitted by an equal number of reporting parties (5,250).[228]

Entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information they provide. Entities can update this information by either visiting the online New Form 40 portal to review, verify, and/or update their information, or by submitting updated information via FTP. Regardless of whether entities update the information contained in New Form 40 via the web or FTP, the Commission believes that the time required to provide this information will be *de minimis.*[229]

Assuming all 5,250 New Form 40 reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for New Form 40, as a result of New Form 102A, will equal 514,500 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for such New Form 40 filings made pursuant to Method 1 are estimated at $36,051,015.[230]

Method 2 (40 web submission (arising from New Form 102A)—lower estimate): Method 2 assumes that each reporting party filing New Form 40 as a result of Form 102A (*i.e.,* special account owners and controllers) will complete and submit New Form 40 online via a secure portal provided by the Commission.[231]

The Commission estimates that each of the 5,250 New Form 40 records will require three hours to complete.[232] Assuming each such New Form 40 record is provided via Method 2, the Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102A, will equal 15,750 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40 filings arising from special accounts are estimated at $1,103,603.[233]

FORM 40—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours)[234]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
5,250	3	15,750	$70.07	$1,103,603

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 40 filings, as a result of New Form 102A, should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing 40, as a result of New Form 102A, will be approximately $1,103,603 (Method 2—web submission), the lower of the two estimated filing methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 40—§ 18.04(b) (arising from New Form 102B and New Form 71):

Method 1 (40 FTP submission (arising from New Form 102B and New Form 71)—higher estimate):

New Form 40 must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40 reporting party will use an automated program to submit its forms (arising from New Form 102B and New Form 71) via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[235]

In estimating the number of anticipated New Form 40 special calls arising from both DCM-related and SEF-related New Form 102B and New Form 71, the Commission first considered the number of Form 40 special calls made in 2012 (approximately 3,000). The Commission sent some of these special calls to a subset of the 260 special account owners and controllers identified via existing DCM-related

[226] The Commission received 4,415 Form 102 records in 2012. *See also supra* note 200.

[227] The Commission made approximately 3,000 special calls in 2012. Such calls were made to special account owners and controllers identified via existing DCM-related Form 102.

[228] *See also supra* note 200. Because the Commission anticipates that the number of New Form 102A records it receives per year is likely to be lower than the estimated 7,726 records, the Commission may also make fewer special calls than the estimated 5,250 calls.

[229] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

[230] The $36,051,015 figure is arrived at by multiplying 5,250 reporting parties by 98 hours (equals 514,500 hours) by $70.07 (equals $36,051,015).

[231] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[232] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[233] The $1,103,603 figure is arrived at by multiplying 5,250 records by 3 hours (equals 15,750 hours) by $70.07 (equals $1,103,603).

[234] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[235] All annualized development burden estimates are based on 5 year, straight line depreciation.

Form 102 in 2012. The Commission sent other of these special calls to individuals that were not identified via Form 102, but instead were identified through other surveillance means. The 260 reporting parties that submitted a Form 102 in 2012 represent approximately 8.7 percent of the 3,000 special calls sent in 2012 (''the special call ratio''). The Commission used this special call ratio as a baseline in calculating the number of anticipated New Form 40 filings arising from New Form 102B and New Form 71. The Commission acknowledges that this percentage represents a high-end baseline, since as noted above, the Commission made a special call in 2012 to a subset of the 260 reporting parties, rather than to each one.

Form 40s Arising From DCM-related New Form 102B and New Form 71. To estimate the number of Form 40 special calls arising from DCM-related New Form 102B and New Form 71, the Commission first calculated the number of anticipated reporting parties for each form: 100 reporting parties for DCM-related New Form 102B, and 564 reporting parties for DCM-related New Form 71, or 664 in total. Based on the special call ratio calculations performed above with respect to the Commission's 2012 special call practices, the Commission estimated that it will send special calls to approximately 7,662 recipients per year in connection with DCM-related New Form 102B and New Form 71.[236] Finally, the Commission calculated that in approximately 75 percent of New Form 102B and New Form 71 filings, the owner and controller of a volume threshold account reported on the form will be different.[237] In this scenario, the Commission may make a separate special call to both the owner and controller. As a result, the Commission multiplied the 7,662 recipient estimate by 1.75, and concluded that it will receive approximately 13,409 New Form 40 filings annually arising from DCM-related New Form 102B and New Form 71, from the same number of reporting parties (13,409).

Form 40s Arising From SEF-related New Form 102B and New Form 71. The Commission applied the same rationale to calculate the number of anticipated New Form 40 filings arising from SEF-related New Form 102B and New Form 71. The Commission first calculated the number of anticipated reporting parties for each form: 75 reporting parties for SEF-related New Form 102B, and 198 reporting parties for SEF-related New Form 71, or 273 in total. Based on the special call ratio calculations performed above with respect to the Commission's 2012 special call practices, the Commission estimated that it will send special calls to approximately 3,149 recipients per year in connection with SEF-related New Form 102B and New Form 71.[238] Finally, the Commission calculated that in approximately 75 percent of New Form 102B and New Form 71 filings, the owner and controller of a volume threshold account reported on the form will be different.[239] In this scenario, the Commission may make a separate special call to both the owner and controller. As a result, the Commission multiplied the 3,149 recipient estimate by 1.75, and concluded that it will receive approximately 5,511 New Form 40 filings annually arising from SEF-related New Form 102B and New Form 71, from the same number of reporting parties (5,511).

As discussed above, the Commission estimates that the time required to update information contained in New Form 40, whether submitted via the web or FTP, will be *de minimis.*[240]

- Based on an estimated 13,409 DCM-related New Form 40 reporting parties per year, the Commission estimates an aggregate reporting burden of 1,314,082 hours annually for DCM-related New Form 40 filings, arising from New Form 102B and New Form 71, via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $92,077,726.[241]
- Based on an estimated 5,511 SEF-related New Form 40 reporting parties per year, the Commission estimates an aggregate reporting burden of 540,078 hours annually for SEF-related New Form 40 filings, arising from New Form 102B and New Form 71, via Method 1. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to Method 1 are estimated at $37,843,265.[242]

Collectively, annual industry costs for New Form 40 filings (arising from New Form 102B and New Form 71) made pursuant to Method 1 are estimated at $129,920,991.[243]

Method 2 (40 web submission (arising from New Form 102B and New Form 71)—lower estimate):

Method 2 assumes that each reporting party filing New Form 40 as a result of New Form 102B and New Form 71 (*i.e.,* volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) will complete and submit New Form 40 online via a secure portal provided by the Commission.[244]

As discussed above, the Commission anticipates that it will receive approximately 13,409 DCM-related New Form 40 filings annually and approximately 5,511 SEF-related New Form 40 filings annually, in each case arising from New Form 102B and New Form 71.[245] Each such New Form 40 filing is estimated to require three hours.[246] Assuming each such New

[236] The Commission applied the ratio of reporting parties to special calls that it developed with respect to its 2012 Form 40 special call practices. 260 reporting parties represents approximately 8.7 percent of the 3,000 special calls sent in 2012. Similarly, 664 reporting parties represents approximately 8.7 percent of 7,662 special calls. The Commission believes that 664 reporting parties is a high-end estimate, because the Commission will likely send New Form 40 to a subset of New Form 71 reporting parties, rather than to each reporting party, as this calculation assumes.

[237] As with 102A records, the Commission estimates that in approximately 25 percent of filings, the owner and the controller of a volume threshold account reported on New Form 102B or New Form 71 will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[238] The Commission applied the ratio of reporting parties to special calls that it developed with respect to its 2012 Form 40 special call practices. 260 reporting parties represents approximately 8.7 percent of the 3,000 special calls sent in 2012. Similarly, 273 reporting parties represents approximately 8.7 percent of 3,149 special calls. The Commission believes that 273 reporting parties is a high-end estimate, because the Commission will likely send New Form 40 to a subset of New Form 71 reporting parties, rather than to each reporting party, as this calculation assumes.

[239] *See supra* note 237.

[240] *See infra* section VIII(B)(iv) for a discussion of the Commission's contact reference database, which is intended to streamline the automated submission process and reduce the burden on reporting parties.

[241] The $92,077,726 figure is arrived at by multiplying 13,409 reporting parties by 98 hours (equals 1,314,082 hours) by $70.07 (equals $92,077,726).

[242] The $37,843,265 figure is arrived at by multiplying 5,511 reporting parties by 98 hours (equals 540,078 hours) by $70.07 (equals $37,843,265).

[243] The $129,920,991 figure is arrived at by multiplying 18,920 reporting parties by 98 hours (equals 1,854,160 hours) by $70.07 (equals $129,920,991).

[244] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[245] As with 102A records, the Commission estimates that in approximately 25 percent of filings, the owner and the controller of a volume threshold account reported on New Form 102B will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[246] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

Form 40 record is provided via Method 2:

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 40,227 hours for DCM-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $2,818,706.[247]

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 16,533 hours for SEF-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $1,158,467.[248]

Collectively, annual industry costs for New Form 40 filings, as a result of New Form 102B and New Form 71, are estimated at $3,977,173.[249]

FORM 40—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours) [250]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
18,920	3	56,760	$70.07	$3,977,173

Conclusion: The Commission believes that providing filing options to the industry should lower their ultimate costs. Because of this, estimated total costs to the industry for 40 filings, as a result of New Form 102B and New Form 71, should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing 40, as a result of New Form 102B and New Form 71, will be approximately $3,977,173 (Method 2—web submission), the lower of the two estimated filing methods. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. New Form 102S — § 20.5(a):

Method 1 (102S FTP submission—lower estimate): Method 1 assumes that each New Form 102S reporting party will use an automated program to submit its forms via secure FTP. Each Method 1 submission will likely contain numerous 102S records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. The Commission believes that the timing requirements for 102S filings in current § 20.5(a)(3),[251] or any new submission procedures arising from the Swaps Large Trader Guidebook (*i.e.,* frequency of 102S filing submission), will not increase a reporting party's burden when using Method 1. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[252]

The 102S filing requirements in current § 20.5 [253] are nearly identical to the filing requirements for revised 102S; accordingly, the Commission used its recent experience with 102S filings to estimate the number of 102S reporting parties. An assessment of Commission data collection efforts demonstrated that the Commission received Form 102S submissions from 39 reporting parties in 2012. The Commission anticipates that it will receive New Form 102S submissions from a similar number of reporting parties each year. Assuming 102S reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for 102S filing will equal 4,134 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S are estimated at $289,669.[254]

[247] The $2,818,706 figure is arrived at by multiplying 13,409 filings by 3 hours (equals 40,227 hours) by $70.07 (equals $2,818,706).

[248] The $1,158,467 figure is arrived at by multiplying 5,511 filings by 3 hours (equals 16,533 hours) by $70.07 (equals $1,158,467).

[249] The $3,977,173 figure is arrived at by multiplying 18,920 filings by 3 hours (equals 56,760 hours) by $70.07 (equals $3,977,173).

[250] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[251] 17 CFR 20.5(a)(3).

[252] All annualized development burden estimates are based on 5 year, straight line depreciation.

[253] 17 CFR 20.5.

[254] The $289,669 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by $70.07 (equals $289,669).

FORM 102S—LOWER ESTIMATE IS METHOD 1

[FTP submission]

Number of reporting parties per year	Annualized burden per reporting party (hours) [255]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
39	106	4,134	$70.07	$289,669

Method 2 (102S web submission—higher estimate): Method 2 assumes that each New Form 102S reporting party will complete and submit its forms online via a secure portal provided by the Commission. The Commission estimates that the total initial development burden will average 17 hours per 102S record. The Commission also estimates that the annual ongoing burden, including change and refresh updates, will average 7 hours per year for each 102S record. The sum of the Method 2 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 10 hours per 102S record.[256]

An assessment of Commission data collection efforts demonstrated that the Commission received approximately 2,508 102S records in 2012. The Commission anticipates that it will receive a similar number of 102S records each year. Assuming each of the estimated 2,508 102S records are provided via Method 2, the Commission estimates that the total annual industry burden for New Form 102S will equal 25,080 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S filings made pursuant to Method 2 are estimated at $1,757,356.[257]

Conclusion: The Commission understands that providing options to the industry should lower costs relative to failing to provide these options. Because of this, estimated total costs to the industry for 102S filing should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual cost to the industry of filing 102S will be approximately $289,669 (Method 1—FTP submission), the lower of the two estimated submission costs. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

New Form 40S—§ 20.5(b): [258]

Method 1 (40S FTP submission—higher estimate): New Form 40S must be provided in response to a special call by the Commission or its designee. Method 1 assumes that each New Form 40S reporting party will use an automated program to submit its forms via secure FTP. The Commission estimates that the total initial development burden will average 224 hours per reporting party. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total Method 1 annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 98 hours per reporting party.[259]

Current § 20.5(b),[260] which requires the 40S filing, will not be altered by this rulemaking. As noted above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Assuming all Form 40S reporting parties utilize Method 1, the Commission estimates that the total annual industry burden for Form 40S will equal 245,784 hours. Time required to update information contained in 40S filings, whether submitted via the web or FTP, will be *de minimis.* Using an estimated wage rate of $70.07 per hour, annual industry costs for Form 40S filings made pursuant to Method 1 are estimated at $17,222,085.[261]

Method 2 (40S web submission—lower estimate): Method 2 assumes that each New Form 40S reporting party will complete and submit its forms online via a secure portal provided by the Commission.[262] As noted above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Each response is estimated to require three hours,[263] resulting in an estimated total annual reporting burden of 7,524 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40S filings made pursuant to Method 2 are estimated at $527,207.[264]

[255] *See supra* note 195 for a discussion of the calculation of this annualized burden. As discussed above, the initial development burden per reporting party (264 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $18,498 (264 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[256] All annualized development burden estimates are based on 5 year, straight line depreciation.

[257] The $1,757,356 figure is arrived at by multiplying 2,508 records by 10 hours (equals 25,080 hours) by $70.07 (equals $1,757,356).

[258] The final rules do not revise § 20.5(b); however, current § 20.5(b) requires a person, after special call by the Commission, to submit a 40S filing, which shall consist of the submission of Form 40. The final rules do include changes to Form 40. Accordingly, the reporting burden associated with § 20.5(b) and the 40S filing is being recalculated to account for variations between current and New Form 40.

[259] All annualized development burden estimates are based on 5 year, straight line depreciation.

[260] 17 CFR 20.5(b).

[261] The $17,222,085 figure is arrived at by multiplying 2,508 reporting parties by 98 hours (equals 245,784 hours) by $70.07 (equals $17,222,085).

[262] The Commission's special call will likely be in the form of an email request that will contain a URL for the portal, and a unique login and password for access to the portal.

[263] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[264] The $527,207 figure is arrived at by multiplying 2,508 filings by 3 hours (equals 7,524 hours) by $70.07 (equals $527,207).

FORM 40S—LOWER ESTIMATE IS METHOD 2

[Web submission]

Number of responses per year	Annualized burden per response (hours) [265]	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
2,508	3	7,524	$70.07	$527,207

Conclusion: The Commission understands that providing options to the industry should lower costs relative to failing to provide these options. Because of this, estimated total costs to the industry for 40S filing should be lower than any cost associated with mandating either Method 1 or Method 2. Given the cost estimates for the two individual methods discussed above, the Commission anticipates the annual industry cost to the industry of filing 40S will be approximately $527,207 (Method 2—web submission), the lower of the two estimated submission costs. In developing this estimate, the Commission does not make any assumptions about the behavior of an individual reporting party. Reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods.

v. Recordkeeping Burdens—Revised § 18.05

Current § 18.05 requires traders who hold or control reportable positions to maintain books and records regarding all positions and transactions in the commodity in which they have reportable positions.[266] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission is expanding § 18.05 to also impose books and records requirements upon (1) Volume threshold account controllers and (2) owners of volume threshold accounts, and upon (3) reportable sub-account controllers and (4) persons who own reportable sub-accounts. As a result, revised § 18.05 will likely impose a recordkeeping burden on a larger number of persons than current § 18.05. However, any additional persons subject to § 18.05 may be able to rely on books and records already kept in the ordinary course of business to meet the requirements of the final regulation. Accordingly, the Commission believes that revised § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope.

The Commission sent 59 special calls pursuant to § 18.05 in 2012, 42 of which were based on trade data reflected in the TCR data feed.[267] As noted above, revised § 18.05 will make four new categories of persons, identified through the volume-based reporting regime, subject to § 18.05. Because the volume-based reporting regime is designed to identify designated types of trading activity, the Commission estimates that it will send special calls pursuant to revised § 18.05 to, at a minimum, 42 recipients (*i.e.,* the same number of persons to which the Commission sent special calls in 2012 based on trade data reflected in the TCR). At the same time, the Commission expects that the introduction of volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime will identify new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of revised § 18.05, the Commission assumes it will send 25% more special calls in response to trade data than it did in 2012, for a total of 53 special calls per year. These special calls will require a response from approximately 53 individual traders per year.

This estimate reflects only special calls sent pursuant to § 18.05 as a result of information collected via the volume-based reporting regime (*i.e.,* New Form 102B and New Form 71).[268] The estimated 53 recipients of such special calls may include some traders that are already subject to the costs and obligations of current § 18.05. The Commission estimates that each special call response submitted by the new categories of persons subject to revised § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of $70.07 per hour, annual reporting costs for the new categories of persons that are subject to revised § 18.05 are estimated at $18,569.[269]

§ 18.05—RECORDKEEPING BURDEN

Number of responses per year	Annual burden per response (hours)	Total annual industry burden (hours)	Estimated wage rate	Annual industry costs
53	5	265	$70.07	$18,569

[265] As discussed above, the initial development burden per reporting party (10 hours) has been divided by 5 years, which results in an estimated annualized initial development burden of two hours per reporting party. On a non-annualized basis, the initial development cost per reporting party is estimated at $701 (10 hours × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[266] 17 CFR 18.05.

[267] *See supra* section I(B) for a discussion of the TCR.

[268] The NPRM estimated the total annual cost to the industry of § 18.05 following implementation of the final rules as $214,605. This figure included the cost to parties already subject to § 18.05 who will not be impacted by the amendments to § 18.05 described herein. Consistent with the description of costs to reporting parties presented elsewhere herein, the estimate of $18,569 represents only the new or incremental costs imposed by the changes to § 18.05 described in these final rules. The $18,569 estimate is therefore less than the $214,605 estimate for revised § 18.05 in the NPRM.

[269] The $18,569 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by $70.07 (equals $18,569).

B. Consideration of Costs and Benefits

i. Background

The current rules and forms, which these final rules update, require FCMs, clearing members, and foreign brokers to identify special account traders to the Commission via Form 102.[270] The Commission sends a Form 40 in its discretion via a special call to a trader identified on Form 102, requiring the trader to provide the Commission with detailed information regarding the nature of the trader's market activity. The current Form 102 and Form 40 are generally submitted to the Commission via a manual submission process (via email, facsimile, or regular mail). The Commission then individually uploads the forms into the Commission's Integrated Surveillance System (ISS), discussed in section I(B) above. The questions and data points on both forms relate only to the Commission's current position-based reporting rules.

The final rules establish the information architecture necessary for the Commission to efficiently identify and categorize individual trading accounts and market participants that trigger position or newly-created volume-based reporting thresholds. By requiring the collection of ownership and control information via the new and amended forms, the Commission will be able to efficiently and effectively monitor risk exposure by institution, market class, and asset class over an extended period of time. To accomplish this, the final rules modify current Forms 102 and 40 to require additional information, require additional reporting via New Form 71, and modify the timing and method by which market participants are required to submit these forms to the Commission. New Form 102 will now be divided into three sections: 102A, 102B, and 102S. Section 102A captures information that must be reported when a trading account exceeds open position thresholds (a ''special account''); section 102B, which is new in its entirety, will capture information that must be reported when a trading account exceeds a specified volume threshold during a single trading day (a ''volume threshold account''); and section 102S will capture information that must be reported for consolidated accounts and swap counterparties that have a reportable position in swaps. The following summarizes each of the new and amended forms that will take the place of current Form 102 and 40 pursuant to these final rules.[271]

New Form 102A. As noted above, Form 102A is a position-based reporting form, which requires the reporting of both special accounts and the trading accounts that comprise special accounts. This reporting will allow the Commission to link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission. By illustrating the connections between end-of-day position reporting via Form 102 and daily trade capture reports, the final rules will enable the Commission to perform a more accurate and timely accounting of market position at the level of individual trading accounts, thereby improving the Commission's surveillance capabilities.[272]

New Form 102B. While Form 102A requires the reporting of large trader positions that remain open at the end of the day, Form 102B requires the reporting of trading accounts that exceed a stated volume threshold during a single trading day, regardless of whether these positions remain open at the end of the day. This will identify traders whose end-of-day open interest does not reach reportable levels on Form 102A, but whose intra-day trading reaches the volume threshold, thus enabling the Commission to monitor trading that could potentially impact markets during concentrated periods of intra-day trading. The Commission expects that the addition of volume-based reporting will provide much needed information about high-frequency traders and other market participants using algorithmic systems, whose activities are not typically captured by the current position-based reporting regime. When combined with the position data reported on Form 102A, New Form 102B will improve the Commission's ability to: (i) Aggregate accounts under common ownership and/or control; (ii) better understand how certain market segments may affect the process of price formation; (iii) efficiently analyze trading behavior surrounding price spikes and other pricing anomalies throughout the day; and (iv) detect and investigate disruptive trading activities, including intraday speculative position limit violations and wash trades.

New Form 71. The Commission will send Form 71, in its discretion via a special call, to collect additional information on omnibus volume threshold accounts identified on Form 102B (or on another Form 71). Form 71 is designed to permit originating firms to report the required information directly to the Commission without requiring such firms to disclose information regarding customers to potential competitors. Form 71 illustrates the 'nested' structure of omnibus accounts and underlying omnibus sub-accounts that are volume threshold accounts, and identifies the ultimate owner and controller of these accounts. Form 71 will provide crucial ownership and control information to the Commission that is not collected under the current reporting regime. The Commission will use this ownership information to aggregate and analyze all trading by a market participant for surveillance purposes, irrespective of whether this trading is conducted through a single account, or through a number of accounts maintained by one or more intermediaries.

New Form 102S. Form 102S is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to 17 CFR 20.5(a)) through a non-automated process. Form 102S will provide position-based reporting of consolidated accounts in the swaps market. The form expands the current 102S reporting regime to require the reporting of ownership and control information with respect to such accounts. Swap reporting on Form 102S significantly improves the Commission's surveillance capabilities, by enabling it to track the market activity of a specific trader, including traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. Swap reporting will also enable the Commission to more efficiently aggregate position exposure in a particular product or commodity group. Such reporting also aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and improves transparency into markets that, historically, have often been opaque and/or over-the-counter.

New Form 40/40S. Each of the 102 forms and Form 71 requires respondents to identify the parties that the Commission should contact (such as the account owner, controller, and related contact persons) if the Commission requires additional information regarding traders or trading accounts identified on the forms. The

[270] *See supra* section III for a discussion of the current trader and account identification programs.

[271] *See supra* section IV for a detailed summary of the new and amended forms adopted in these final rules.

[272] See the discussion of the daily trade capture reports in section I(B) above.

Commission will send New Form 40 in its discretion via a special call to collect additional information from traders reported on each of the 102 forms and Form 71. These final rules expand Form 40 by requiring the reporting trader to: (1) Indicate whether it is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40); (2) report its control relationships with other entities, and other relationships with persons that influence or exercise authority over the trading of a reporting trader (a question that has been expanded on New Form 40); (3) identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40); and (4) identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40), among other information.

Responses to these questions will improve the Commission's ability to perform effective surveillance, by enabling it to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. The Commission will, furthermore, be able to use information reported on New Form 40 to cross-check several of the ownership and control data fields reported on New Form 102. The additional information requested on New Form 40 will improve the quality of data published in the Commission's reports, including the classifications in the Commitments of Traders Report. Finally, the Commission will be able to compare the trading goals that a respondent reports on New Form 40 to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

In sum, the final rules will build upon the Commission's existing market and trade practice surveillance programs for futures, options on futures, and swaps, by improving the Commission's understanding of the impact of special accounts, consolidated accounts, and newly designated volume threshold accounts on market activity. In turn, this will allow the Commission to better perform risk-based monitoring and surveillance among related accounts; efficiently monitor risk exposure by institution, market class, and asset class; facilitate investigations into disruptive trading activity by Commission enforcement staff; and expand the Commission's ability to research and analyze how a wide-ranging variety of market participants impact market behavior.

ii. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions

Section 15(a) of the CEA [273] 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 must be evaluated in light of the following 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 below.

As a general matter, the Commission considers the incremental costs and benefits of these rules, that is the costs and benefits that are above the standard established by the Commission's existing regulations.[274] Where reasonably feasible, the Commission has endeavored to estimate quantifiable costs and benefits. Where quantification is not feasible, the Commission identifies and describes costs and benefits qualitatively.[275]

iii. Commission Request for Comments Regarding Cost and Benefit Estimates

The Commission requested comment on a variety of cost and benefit metrics in the NPRM. As a general matter, the Commission requested that commenters provide data and any other information or statistics that they relied on to reach conclusions on the Commission's cost and benefit estimates. The Commission also requested comment, including specific quantitative estimates, on the expected costs related to upgrading or obtaining systems to implement and comply with the reporting requirement under the proposed new and revised forms, as well as the impact of the proposed rules (or the relative impact of any alternative rules) on the section 15(a) factors. Although some commenters stated that the NPRM understated the total cost to the industry, no commenter provided specific quantitative cost or benefit estimates, or other information to more precisely estimate costs beyond those presented in the NPRM.[276]

In the absence of specific quantitative estimates or alternative cost proposals by commenters, the Commission performed its own analysis in updating the NPRM cost benefit considerations for these final rules. As explained below, for purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission. In this section VIII(B), the Commission has also calculated an estimated range of 25 percent below and 25 percent above the estimated total annual industry cost for each form. The Commission has applied these ranges because reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).[277]

iv. Methodology Used To Estimate Costs

As discussed above, the Commission has calculated the total estimated industry cost for submitting each form via FTP or via the web portal. For each form, these calculations represent the total industry cost if all reporting parties submit information via one method—as compared to the total industry cost if all parties submit via the other method. For example, the 102A estimates described in sections VIII(A) and (B) represent the total estimated industry cost if all reporting parties submit 102A via FTP ($1,931,129), or if all parties submit 102A via the web portal ($5,954,969). The Commission recognizes that, even if it is less expensive for the industry as a whole to submit 102A via FTP, it may be less expensive for certain individual reporting parties to submit 102A via the web portal. This may be due to the limited number of forms these parties

[273] 7 U.S.C. 19(a).

[274] As discussed below with respect to costs more specifically, the Commission's estimated cost ranges assume that all market participants will start from the same point in developing the systems required to implement OCR reporting, irrespective of whether they provide certain forms under the current reporting system (e.g., the current Forms 102 and 40).

[275] For example, to quantify benefits such as improved transparency and enhanced protections for market participants and the public would require information, data and/or metrics that either do not exist, or to which the Commission generally does not have access.

[276] *See* section VIII(B)(vi) below for additional discussion of comments received by the Commission regarding the costs and benefits of reporting.

[277] *See id.*

expect to submit, their technology infrastructure, or other factors.

To expand on this example, if a new reporting party anticipates that it will submit only two 102A filings per year, it might logically conclude that it would be less expensive to submit its two filings via the web portal than to incur the development costs associated with establishing an FTP link to the Commission. In this instance, the Commission has estimated that the reporting party would incur 20 hours of initial development burden for each of the two records submitted via the web portal, or a total initial development burden of 40 hours. Accordingly, the reporting party may conclude that submitting its 102A filings via the web portal is more cost-effective than submitting the same information via FTP, which the Commission has estimated would require an initial development burden of 264 hours per entity (regardless of the number of forms submitted).[278]

The cost estimates in section VIII(A) and (B) assume that all market participants will start from the same point in developing the systems required to implement OCR reporting. Accordingly, to the extent that current reporting parties leverage their existing reporting systems [279] to implement OCR reporting, the cost estimates are likely to overestimate actual costs to some degree for such parties.

For the following additional reasons, the Commission anticipates that total reporting and recordkeeping costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated herein.

First, the reporting and recordkeeping burdens arising from each regulation and associated form were estimated independently of the requirements of the other regulations and associated forms. The Commission anticipates that substantial synergies are likely to exist across the systems and data necessary to meet the reporting requirements. For example, many reporting firms submitting New Form 102A via FTP (which the Commission believes is the more cost-effective submission method for the industry as a whole) will also submit New Form 102B via FTP, and will be able to leverage systems and information necessary for submitting one form to meet the requirement to submit the other.

Second, the Commission has incorporated a number of proposals made by commenters that are intended to reduce the reporting burden and associated costs to market participants. These proposals are described in section VII above and section VIII(B)(vii) below. While the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission, in order to generate more conservative cost estimates, the Commission has not reduced the cost estimates in these final rules to account for the incorporation of these cost-saving proposals.

v. Costs and Benefits of Individual Reporting Forms and Reporting and Recordkeeping Requirements

The discussion below considers the anticipated costs and benefits to the industry of New Form 102A, New Form 102B, New Form 71, New Form 40, New Form 102S, New Form 40S, and the reporting and recordkeeping requirements of revised § 18.05.

New Form 102A

(1) Overview of New Form 102A

New Form 102A, which identifies owners and controllers of special accounts and other related information, is based on the Form 102 currently in use. These final rules do not modify the definition of what constitutes a ''special account'' for reporting purposes.[280] The rules do, however, increase the amount of information required to be reported with respect to each special account. For example, New Form 102A requests that the respondent provide the Web site, NFA ID, and Legal Entity Identifier of the owners and controllers reported on the form, to the extent this information is available in the respondent's records. More significantly, New Form 102A requires respondents to identify the owners and controllers of each trading account that comprises the reported special account. The preceding information is not collected on current Form 102. These newly collected data points will allow the Commission to link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission. The Commission understands that (as noted by comment letters on the 2010 OCR NPRM) [281] the majority of these data points already reside with reporting parties.[282] As a result, reporting parties will not need to coordinate with external parties in order to compile most data points required by New Form 102A.

(2) Benefits of New Form 102A

The reporting of trading accounts that comprise a special account will provide common reference points between TSS and ISS data, thereby enabling the Commission to efficiently compare end-of-day reportable positions with intra-day account activity.[283] By connecting end-of-day position level data with intra-day account activity, the Commission will be able to efficiently determine the ownership or control of specific positions held by individual trading accounts at any time throughout the trading day, thereby improving market transparency. More specifically, Commission staff will use the additional ownership and control information to determine whether a reported account is a new account of a previously reported trader, or whether it correlates to a previously unreported trader. If the account is owned or controlled by a previously reported trader, it will be aggregated with other related accounts currently being reported. By identifying and aggregating accounts in this manner, Commission staff can more thoroughly monitor and assess a trader's potential market impact during significant periods such as price spikes or settlement periods, monitor the trader's compliance with speculative position limits, and determine whether

[278] In this example, the Commission expects that reporting parties making a small number of filings would choose to submit via the web-based portal, because web submission would be the most cost-effective submission method for such parties. In doing so, they will incur fewer costs than they would if they submitted via FTP, thereby lowering the total costs to the industry. As a result, the simplifying assumption that all reporting parties will submit New Form 102A (along with certain other forms discussed below) via FTP is a conservative assumption, which will tend to overestimate the total industry cost.

[279] Certain parties that will be required to report under these final rules now provide certain forms under the current reporting system (*e.g.,* the current Forms 102 and 40).

[280] See § 15.005(r) of the Commission's regulations.

[281] All 2010 OCR NPRM comment letters are available through the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=755&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=1*

[282] The Commission received a number of comment letters in response to the 2010 OCR NPRM, and incorporated several of their suggestions in the NPRM (published in the **Federal Register** in 2012), which forms the basis for these final rules. Among these changes, the Commission removed certain questions from the reporting forms asking for data that, in the view of commenters, is not maintained by reporting parties. *See* NPRM *supra* note 10 at 43973–43974 for a discussion of comments received in response to the 2010 OCR NPRM that were incorporated in the NPRM. *See also* the December 23, 2010 comment letter from FIA at 9 and Exhibit A; October 7, 2010 comment letter from CME at 4; and October 7, 2010 comment letter from ICE at 3, which establish that the majority of the remaining data points, which appear on the forms adopted in these final rules, already reside with reporting parties.

[283] *See supra* section I(B) for a discussion of the TSS and ISS.

the trader is engaging in abusive or disruptive practices (such as marking the close, ''wash trading,'' or money passing). By aggregating the accounts of individual traders, the Commission will also be able to more efficiently calculate aggregate position exposure in a particular product or commodity group. In sum, the additional information provided by New Form 102A will contribute to the overall integrity of the financial markets, by improving the Commission's ability to detect and investigate disruptive or manipulative behavior.

(3) Costs of New Form 102A

The Commission assumes that each New Form 102A reporting party will submit New Form 102A via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102A records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102A change and refresh updates will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[284]

An assessment of Commission data collection efforts demonstrated that the Commission received Form 102 submissions from 260 reporting parties in 2012. The Commission anticipates that it will receive New Form 102A submissions from a similar number of reporting parties each year. Assuming all New Form 102A reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for New Form 102A will equal 27,560 hours. Using an estimated wage rate of $70.07 per hour,[285] annual industry costs for 102A filings made pursuant to the FTP submission method are estimated at $1,931,129.

As indicated throughout this section VIII(B), the Commission has used the same wage rate of $70.07 when calculating the cost of submission via both the web portal and FTP. Each submission method will, nonetheless, require a different annual or annualized burden, in terms of hours. This $70.07 wage rate represents the work of a senior programmer, programmer, intermediate compliance advisor, systems analyst, and assistant/associate general counsel, in the proportions described in the preceding footnote.

FORM 102A

Regulation	Estimated total annual industry cost[286]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[287]	Anticipated transmission method[288]
17.01(a)	$1,931,129	$1,448,347–$2,413,911	FTP

[284] All annualized development burden estimates are based on 5 year, straight line depreciation. The 106 hour figure is arrived at by dividing 264 hours (initial development burden per reporting party) by 5 years, which results in an estimated annualized initial development burden of 53 hours per reporting party. 53 hours plus 53 hours (annual, ongoing operation and maintenance burdens per reporting party) equals 106 hours per reporting party.

[285] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $70.07 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (30% weight); ''programmer'' (29% weight); ''compliance advisor (intermediate)'' (15%), ''systems analyst'' (16%), and ''assistant/associate general counsel'' (10%). The $70.07 wage rate is a blended rate, such that the Commission has applied the same $70.07 wage rate when calculating the cost of submission via both FTP and the web-based portal. As noted above, the NPRM contemplated that Forms 40/S and 71 could be submitted only via the web portal. However, pursuant to these final rules, the Commission is allowing reporting parties to submit Forms 40/S and 71 via FTP as well, with the result that reporting parties may submit all forms either via the web portal or via FTP. In light of this change, the wage rage percentages in these final rules have been updated and slightly modified from the wage rate percentages in the NPRM, to more accurately reflect anticipated labor allocations. The NPRM employed the following wage rage percentages: ''programmer (senior)'' (30% weight); ''programmer'' (30% weight); ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%). While the NPRM calculated an estimated wage rate of $78.61 per hour, these final rules calculate an estimated wage rate of $70.07 per hour using the 2011 SIFMA statistics and updated wage rate percentages. (Note that the national average of salary and bonuses for the professionals listed above declined between 2010 to 2011, according to the SIFMA report addressing each of those years. The 2010 SIMA report (which is the basis for the wage rate in the NPRM) indicates an aggregate national average of salary and bonuses of $530,321 for these professionals, while the 2011 SIFMA report indicates an aggregate national average of salary and bonuses of $510,943.) The Commission has also updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission (including, for example, the number of reporting forms received by the Commission in 2012). The NPRM calculated an estimated total annual cost to the industry of $9,147,061, as compared to an estimated total cost to the industry of $9,574,296 in these final rules, per section VIII(A) above. *See also supra* note 265.

[286] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[287] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[288] The Commission estimated the total annual industry cost associated with each filing obligation by considering the two distinct filing methods that it will accommodate pursuant to these final rules (web-based submission and FTP submission). The estimated cost of each filing obligation assumes that all reporting parties will file via the less expensive of the two filing methods. However, reporting parties, given their own individualized needs, are assumed to make the most cost-effective choice for them, which may be either of the two methods. As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $5,954,969. The $5,954,969 figure is arrived at by multiplying the anticipated 7,726 records by 11 hours anticipated burden per record (equals 84,986 hours) by a wage rate of $70.07 (equals $5,954,969). An estimated low and high range (25% below and above this figure) equals $4,466,227 and $7,443,711, respectively.

New Form 102B

(4) Overview of New Form 102B

New Form 102B provides a new volume-based reporting structure not found in current Form 102. While current Form 102 reporting requirements arise when an account (or collection of related accounts) has a reportable position, 102B reporting is triggered when an individual trading account meets a specified trading volume level in an individual product and, as a result, becomes a ''volume threshold account.'' As noted above, volume threshold accounts could reflect, without limitation, trading in futures, options on futures, swaps, and any other product traded on or subject to the rules of a DCM or SEF.

(5) Benefits of New Form 102B

The current position-based reporting regime captures over 90 percent of open interest in many markets regulated by the Commission. Nonetheless, the current system is not specifically designed to identify market participants using algorithmic systems, whose activities have been opaque under the position-based reporting regime. These traders typically enter and exit a given market position within very brief periods intraday, and are therefore rarely captured by end-of-day position reports. In highly liquid markets, participants of this type can make up a meaningful percentage of market activity. The addition of volume-based reporting, which identifies intra-day trading activity meeting a volume threshold regardless of whether positions continue to be held at the end of day, will enable the Commission to better understand the behavior and evolution of this rapidly growing market segment. Reporting on 102B will also enable the Commission to identify other types of high-volume traders that may hold positions for longer periods of time than is characteristic of high-frequency traders, but nonetheless enter and exit positions intraday.

While the Commission is able to view intraday transactions via the Commission's trade capture report, this report does not provide ownership or control information regarding the relevant trading accounts. Because the Commission lacks the information necessary to efficiently link transaction and account data, the Commission is unable to aggregate the positions of individual trading accounts, or associate trading accounts with special accounts in a timely fashion. The addition of volume-based reporting via New Form 102B will remedy this, by providing the Commission with an efficient means to collect the information required to aggregate positions, detect intra-day position limit violations, and calculate market share. When analyzing periods of elevated volatility—especially at significant trading times such as market open and close—the ability to aggregate intra-day trading behavior by owner/controller is crucial to understanding whether a trader has adversely affected (or has the potential to affect) market quality or price discovery.

In sum, the information collected on new Form 102B will significantly improve the efficiency and performance of the Commission's market and trade practice surveillance program. The Commission anticipates that New Form 102B will allow the Commission to perform more comprehensive surveillance, by identifying over 90 percent of market activity in many significant products that are traded intra-day but not held overnight, mirroring the level of account identification under the current end-of-day position-based reporting regime. In so doing, it will improve the integrity of financial markets, protecting market participants and the public from the costs of disruptive trading practices and other market abuses. Improving the Commission's surveillance program will also support the Commission's enforcement efforts to investigate such market abuses. Finally, the ability to more efficiently identify and aggregate trading activity will improve the Commission's research capabilities as well as its forensic analysis of disruptive market events, even when prohibited practices are not involved. For example, the Commission's efforts to identify and aggregate trading activity were shown to be particularly helpful in diagnosing events such as the Flash Crash of 2010.[289]

(6) Costs of New Form 102B

The Commission assumes that each New Form 102B reporting party will submit New Form 102B via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102B records. The Commission estimates that the total initial development burden should average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. Accordingly, the Commission estimates that 102B change and refresh updates will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) equals approximately 106 hours per reporting party.[290]

Because New Form 102B provides a new volume-based reporting structure not found in current Form 102, the Commission is unable to refer to historical reporting statistics to directly estimate the number of New Form 102B reporting parties. Instead, the Commission estimated the number of New Form 102B reporting parties by estimating the number of clearing members associated with trading accounts that the Commission projects will qualify as volume threshold accounts.

- For volume threshold accounts associated with DCMs, the Commission anticipates that it will receive New Form 102B submissions from approximately 100 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 10,600 hours.[291] Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at $742,742.[292]
- For volume threshold accounts associated with SEFs, the Commission anticipates that it will receive New Form 102B submissions from approximately 75 reporting parties annually. Assuming that all such reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for the reporting of such accounts on New Form 102B will equal 7,950 hours.[293] Using an estimated wage

[289] See ''Findings Regarding the Market Events of May 6, 2010,'' available at: *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[290] All annualized development burden estimates are based on 5 year, straight line depreciation.

[291] The 10,600 hour figure is arrived at by multiplying 106 hours (annualized development burden and ongoing operation and maintenance burden per reporting party) by 100 reporting parties.

[292] The $742,742 figure is arrived at by multiplying 100 reporting parties by 106 hours (equals 10,600 hours) by $70.07 (equals $742,742).

[293] The 7,950 hour figure is arrived at by multiplying 106 hours (annualized development

rate of $70.07 per hour, annual industry costs for such filings made pursuant to the FTP submission method are estimated at $557,057.[294]

Collectively, annual industry costs for 102B filings made pursuant to the FTP submission method are estimated at $1,299,799.[295]

FORM 102B

Regulation	Estimated total annual industry cost[296]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[297]	Anticipated transmission method[298]
17.01(b)	$1,299,799	$974,849–$1,624,749	FTP

New Form 71

(7) Overview of New Form 71

New Form 71 (''Identification of Omnibus Accounts and Sub-Accounts'') will be sent, in the Commission's discretion, in the event that a volume threshold account is identified as a customer omnibus account on Form 102B. The Commission will send New Form 71 via a special call to the originating firm of such an account. If the originating firm indicates that this account is itself an omnibus account (an ''omnibus reportable sub-account''), then the originating firm will be required to indicate whether the omnibus reportable sub-account is a house or customer omnibus account and identify the originator of the omnibus reportable sub-account. Another Form 71 will be sent, at the discretion of Commission staff, to the originator of a customer omnibus reportable sub-account identified on Form 71. At its discretion, the Commission will continue to reach through layered customer omnibus reportable sub-accounts via successive Form 71s until reaching all reportable sub-accounts, if any, that are not omnibus sub-accounts. Form 71 therefore illustrates the 'nested' structure of omnibus accounts and underlying omnibus sub-accounts that are volume threshold accounts, and identifies the ultimate owner and controller of these accounts.

(8) Benefits of New Form 71

Without the information provided on New Form 71, the Commission is unable to determine whether trading activity in omnibus accounts is attributable to accounts under common ownership or control, or whether it simply represents the combined trading activity of multiple traders acting independently of one another. Similar to the benefits of New Form 102B, the ability to aggregate trading activity will enable the Commission to better identify manipulative and disruptive trading activity, regardless of whether this activity is conducted through a single account, or spread across a number of omnibus accounts and sub-accounts.

(9) Costs of New Form 71

The Commission assumes that each New Form 71 reporting party (*i.e.,* originators of omnibus volume threshold accounts or omnibus reportable sub-accounts) will complete and submit New Form 71 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. The Commission estimates that, on average, New Form 71 will create an annual reporting burden of 8 hours per filing.[299]

As discussed in section VIII(A) above, the Commission expects approximately 564 DCM-related New Form 71 filings per year, and 198 SEF-related New Form 71 filings per year.

- Based on an estimated 564 DCM-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 4,512 hours annually for such filings via the web-based portal. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at $316,156.[300]
- Based on an estimated 198 SEF-related New Form 71 filings per year, the Commission estimates an aggregate reporting burden of 1,584 hours annually for such filings via the web-based portal. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings made via the web-based portal are estimated at $110,991.[301]

Collectively, annual industry costs for New Form 71 filings made via the web-based portal are estimated at $427,147.[302]

burden and ongoing operation and maintenance burden per reporting party) by 75 reporting parties.

[294] The $557,057 figure is arrived at by multiplying 75 reporting parties by 106 hours (equals 7,950 hours) by $70.07 (equals $557,057).

[295] The $1,299,799 figure is arrived at by multiplying 175 reporting parties by 106 hours (equals 18,550 hours) by $70.07 (equals $1,299,799).

[296] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[297] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[298] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $144,916,322. The $144,916,322 figure is arrived at by multiplying the anticipated 188,015 records by 11 hours anticipated burden per record (equals 2,068,165 hours) by a wage rate of $70.07 (equals $144,916,322). An estimated low and high range (25% below and above this figure) equals $108,687,242 and $181,145,403, respectively.

[299] The submission of New Form 71 through the web-based portal does not require initial development expenditures; as a result, the burdens and costs for this form are calculated on an annual basis rather than an annualized basis. In addition, Form 71 does not require change or refresh updates.

[300] The $316,156 figure is arrived at by multiplying 564 records by 8 hours (equals 4,512 hours) by $70.07 (equals $316,156).

[301] The $110,991 figure is arrived at by multiplying 198 records by 8 hours (equals 1,584 hours) by $70.07 (equals $110,991).

[302] The $427,147 figure is arrived at by multiplying 762 records by 8 hours (equals 6,096 hours) by $70.07 (equals $427,147).

[303] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[304] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via FTP data feed,

Continued

FORM 71

Regulation	Estimated total annual industry cost	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [303]	Anticipated transmission method [304]
17.01(c)	$427,147	$320,360–$533,934	web

New Form 40

(10) Overview of New Form 40

New Form 40 will be sent, on special call of the Commission, to individuals and other entities identified on any of 102A, 102B, and Form 71. New Form 40, still referred to as the ''Statement of Reporting Trader,'' will continue to serve the function traditionally met by current Form 40. At the same time, New Form 40 will provide the Commission with more detailed information than current Form 40 regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102 program (as updated by these final rules). New Form 40 will also be the vehicle through which market participants subject to 17 CFR 20.5(b) submit their 40S filings (discussed below), and will be used to collect additional information regarding the owners and controllers of non-omnibus volume threshold accounts identified by Form 71. Those entities required to complete a New Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40 by periodically updating the information on the New Form 40 web portal or by periodically resubmitting New Form 40 by secure FTP transmission.

Among other requested data fields, New Form 40: asks if the respondent is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40); requires the respondent to identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40); requires the respondent to identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40); and requires the respondent to indicate the business purpose for which it uses derivatives markets (a question that has been expanded on New Form 40).

(11) Benefits of New Form 40

The expanded Form 40 will improve the Commission's ability to perform effective surveillance, by providing the Commission with more detailed data on reporting traders, including: information regarding reporting traders' control relationships with other entities; other relationships with persons that influence or exercise authority over the trading of a reporting trader; and more detailed information regarding the business activities of the reporting trader. Responses to the questions above will enable the Commission to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. This enhanced visibility will, in turn, improve the Commission's ability to respond to market disruptions, which can come at a high cost to the investing and general public. The Commission will also be able to use information reported on New Form 40 to cross-check several of the ownership and control data fields reported on New Form 102. The Commission will be able to compare the trading goals that a respondent reports on New Form 40 to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

Currently, Form 40s (as well as Form 102s) are submitted to the Commission via facsimile, email, and physical mail. The Commission converts these submissions into an electronic format, and loads them into the Commission's Integrated Surveillance System. Automating Form 40 submission will improve efficiency by eliminating this additional layer of transcription. As a result, these final rules will reduce the likelihood of input errors. The rules will also reduce the burden and costs that arise when Commission staff must contact reporting parties to request additional information or clarification due to errors arising from mistaken inputs. The more accurate data reported via the automated Form 40 will, in turn, improve the quality of the Commission's published reports, such as the classifications in the Commitments of Traders report.

(12) Costs of New Form 40

New Form 40 Submissions Resulting from New Form 102A. The Commission assumes that each reporting party filing New Form 40 as a result of New Form 102A (*i.e.,* special account owners and controllers) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole.

As discussed in section VIII(A) above, the Commission expects approximately 5,250 New Form 40 records filings per year arising from New Form 102A filings. The Commission estimates that each of the 5,250 New Form 40 records will require three hours to complete.[305] Assuming each such New Form 40 record is provided via the web-based portal, the Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102A, will equal 15,750 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40 filings arising from special accounts are estimated at $1,103,603.[306]

New Form 40 Submissions Resulting from New Form 102B and New Form 71. The Commission also assumes that each reporting party filing New Form 40 as a result of New Form 102B and New Form 71 (*i.e.,* volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts) will complete and submit New Form 40 online via a secure web-based portal provided by the Commission.

is $5,659,694. The $5,659,694 figure is arrived at by multiplying the anticipated 762 reporting parties by 106 hours of annualized development burden and ongoing operation and maintenance burden (equals 80,772 hours) by a wage rate of $70.07 (equals $5,659,694). An estimated low and high range (25% below and above this figure) equals $4,244,771 and $7,074,618, respectively.

[305] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[306] The $1,103,603 figure is arrived at by multiplying 5,250 records by 3 hours (equals 15,750 hours) by $70.07 (equals $1,103,603).

As discussed in section VIII(A) above, the Commission anticipates that it will receive approximately 13,409 DCM-related New Form 40 filings annually and approximately 5,511 SEF-related New Form 40 filings annually, in each case arising from New Form 102B and New Form 71.[307] Each such New Form 40 filing is estimated to require three hours.[308] Assuming each such New Form 40 record is provided via the web-based portal:

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 40,227 hours for DCM-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $2,818,706.[309]

• The Commission estimates that the total annual industry burden for reporting on New Form 40, as a result of New Form 102B and New Form 71, will equal 16,533 hours for SEF-related New Form 40 filings. Using an estimated wage rate of $70.07 per hour, annual industry costs for such filings arising from volume threshold accounts and reportable sub-accounts are estimated at $1,158,467.[310]

Collectively, annual industry costs for New Form 40 filings, as a result of New Form 102B and New Form 71, are estimated at $3,977,173.[311]

FORM 40—SUBMISSIONS RESULTING FROM (a) NEW FORM 102A AND (b) NEW FORM 102B AND NEW FORM 71

Regulation	Estimated total annual industry cost[312]	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[313]	Anticipated transmission method
18.04(a)	$1,103,603	$827,702–$1,379,504	web[314]
18.04(b)	3,977,173	$2,982,880–$4,971,466	web[315]

New Form 102S

(13) Overview of New Form 102S

Section 102S of New Form 102 is designed to facilitate the electronic submission of 102S filings. Such filings are currently being submitted to the Commission (pursuant to 17 CFR 20.5(a)) through a non-automated process.[316] Pursuant to § 20.5(a), 102S filings must be submitted by a part 20 reporting party (a swap dealer or clearing firm) for each reportable counterparty consolidated account when such account first becomes reportable.[317] By incorporating 102S in New Form 102, these final rules will require more detailed ownership and control information regarding identified consolidated accounts, and require the submission of consolidated account reporting via an automated submission.

(14) Benefits of New Form 102S

Form 102S will require reporting parties to identify swap counterparty or customer consolidated accounts with reportable positions. Swap reporting on Form 102S significantly improves the Commission's surveillance capabilities, by enabling it to track the market activity of a specific trader, including traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. Swap reporting will also enable the Commission to more efficiently aggregate position exposure in a particular product or commodity group. The reporting of swap activity on Form 102S aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and provides further transparency into markets that, historically, have often been opaque and/or over-the-counter.

As further changes arise in the commodity swap market, such as the introduction of SEFs, the identification of both special accounts (via 102A) and consolidated accounts (via 102S) will enable the Commission to monitor a broad range of market activity across traditional futures exchanges and SEFs. This will enable the Commission to quantify the amount of activity in a given product across different execution platforms, and monitor changes in this amount over time. The Commission's expanded view of the marketplace will enable it to more quickly and efficiently identify disruptive market activity occurring across multiple trading facilities (similar to the transmission effects that occurred during the Flash

[307] As with 102A records, the Commission estimates that in approximately 25 percent of filings, the owner and the controller of a volume threshold account reported on New Form 102B will be the same, and that accordingly, only one New Form 40 would be required. Similarly, a number of potential New Form 40 reporting parties are likely to own or control both DCM-related and SEF-related volume threshold accounts, but only one New Form 40 would be required.

[308] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[309] The $2,818,706 figure is arrived at by multiplying 13,409 filings by 3 hours (equals 40,227 hours) by $70.07 (equals $2,818,706).

[310] The $1,158,467 figure is arrived at by multiplying 5,511 filings by 3 hours (equals 16,533 hours) by $70.07 (equals $1,158,467).

[311] The $3,977,173 figure is arrived at by multiplying 18,920 filings by 3 hours (equals 56,760 hours) by $70.07 (equals $3,977,173).

[312] As noted in section VIII(A) above, the initial development cost per reporting party is estimated at $701 (10 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[313] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[314] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method for New Form 40 submissions arising from New Form 102A, via FTP data feed, is $36,051,015. The $36,051,015 figure is arrived at by multiplying the anticipated 5,250 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 514,500 hours) by a wage rate of $70.07 (equals $36,051,015). An estimated low and high range (25% below and above this figure) equals $27,038,261 and $45,063,769, respectively.

[315] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method for New Form 40 submissions arising from New Form 102B and New Form 71, via FTP data feed, is $129,920,991. The $129,920,991 figure is arrived at by multiplying the anticipated 18,920 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 1,854,160 hours) by a wage rate of $70.07 (equals $129,920,991). An estimated low and high range (25% below and above this figure) equals $97,440,743 and $162,401,239, respectively.

[316] References in these final rules to ''102S filings'' are based on the regulatory text of § 20.5, which refers to ''102S filings'' and ''40S filings.''

[317] 17 CFR 20.5(a).

Crash).[318] In particular, New Form 102S will improve the Commission's ability to perform risk-based monitoring of trading activity conducted through accounts owned or controlled by, for example, a single market participant, but spread across multiple platform types.[319] In the event the Commission identifies trading activity requiring further investigation, the Commission will be able to contact market participants more quickly and efficiently using the ownership and control information collected through the OCR reporting process.

(15) Costs of New Form 102S

The Commission assumes that each New Form 102S reporting party will submit New Form 102S via secure FTP, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. Each FTP submission will likely contain numerous 102S records. The Commission estimates that the total initial development burden will average 264 hours per reporting party. The Commission also estimates that the highly automated nature of this option will virtually eliminate the marginal costs associated with each additional submission or each additional record contained in a submission. The Commission believes that the timing requirements for 102S filings in current § 20.5(a)(3),[320] or any new submission procedures arising from the Swaps Large Trader Guidebook (*i.e.,* frequency of 102S filing submission), will not increase a reporting party's burden when using the FTP submission method. The Commission further estimates that the ongoing operation and maintenance burden will average 53 hours per year no matter how many records are contained in a submission. The total annualized initial development burden and the ongoing operation and maintenance burden (total yearly burden) will equal approximately 106 hours per reporting party.[321]

The 102S filing requirements in current § 20.5 [322] are nearly identical to the filing requirements for revised 102S; accordingly, the Commission used its experience to date with 102S filings to estimate the number of 102S reporting parties. An assessment of Commission data collection efforts demonstrated that the Commission received Form 102S submissions from 39 reporting parties in 2012. The Commission anticipates that it will receive New Form 102S submissions from a similar number of reporting parties each year. Assuming 102S reporting parties utilize the FTP submission method, the Commission estimates that the total annual industry burden for 102S filing will equal 4,134 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 102S are estimated at $289,669.[323]

FORM 102S

Regulation	Estimated total annual industry cost [324]	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [325]	Anticipated transmission method [326]
20.5(a)	$289,669	$217,252–$362,086	FTP

New Form 40S

(16) Overview of New Form 40S

New Form 40 will be the vehicle through which market participants subject to 17 CFR 20.5(b) submit New Form 40S. As a result, New Form 40 and New Form 40S are substantively identical. New Form 40S will be sent, on special call of the Commission, to individuals and other entities identified on Form 102S. New Form 40S will continue to serve the function traditionally met by current Form 40S. New Form 40S will provide the Commission with detailed information regarding both the business activities and the ownership and control structure of a reporting trader identified in the Commission's Form 102S program (as updated by these final rules). As noted above, a reporting party (a swap dealer or clearing firm) must submit a Form 102S for each reportable counterparty consolidated account when such account first becomes reportable. Those entities required to complete a New Form 40S will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information submitted on New Form 40S by periodically updating the information on the New Form 40S web portal or by periodically resubmitting New Form 40S by secure FTP transmission.

The expanded Form 40S will provide the Commission with more detailed data on reporting traders, including information regarding reporting traders' control relationships with other entities, and other relationships with persons that influence or exercise authority over the trading of a reporting trader. The expanded form also collects more detailed information regarding the business activities of the reporting trader. For example, New Form 40S:

[318] *See supra* note 289 for further information regarding the Flash Crash.

[319] The Commission also notes that 102S reporting is a necessary complement to SDR reporting under Part 45, and will provide information that is not otherwise available under the SDR reporting regime. The Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. Although this counterparty data may, in some cases, include the owners and controllers of consolidated accounts, it will not include this information in all cases. As a result, the Commission cannot rely on SDR reporting under Part 45 as a substitute for 102S reporting.

[320] 17 CFR 20.5(a)(3).

[321] All annualized development burden estimates are based on 5 year, straight line depreciation.

[322] 17 CFR 20.5.

[323] The $289,669 figure is arrived at by multiplying 39 reporting parties by 106 hours (equals 4,134 hours) by $70.07 (equals $289,669).

[324] As noted in section VIII(A), the initial development cost per reporting party is estimated at $18,498 (264 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[325] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[326] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via the web-based portal, is $1,757,356. The $1,757,356 figure is arrived at by multiplying the anticipated 2,508 records by 10 hours anticipated burden per record (equals 25,080 hours) by a wage rate of $70.07 (equals $1,757,356). An estimated low and high range (25% below and above this figure) equals $568,017 and $946,695, respectively.

Asks if the respondent is engaged in commodity index trading (as that term is defined in the form) (a question that does not appear on current Form 40S); requires the respondent to identify all the business sectors that pertain to its business activities or occupation (a question that has been expanded on New Form 40S); requires the respondent to identify all commodity groups and individual commodities that it presently trades, or expects to trade in the near future, in derivatives markets (a question that has been expanded on New Form 40S); and requires the respondent to indicate the business purpose for which it uses derivatives markets (a question that has been expanded on New Form 40S).

(17) Benefits of New Form 40S

Responses to the questions above will improve the Commission's ability to perform effective surveillance, by enabling it to better understand the ownership and control structure of reporting traders, and the extent of their business activities across multiple markets and product groups. The collection of the information described above will improve the Commission's ability to analyze and/or respond to market disruptions, which can exact a high cost to the investing and general public. The Commission will also be able to use information reported on New Form 40S to cross-check several of the ownership and control data fields reported on New Form 102S. The Commission will be able to compare the trading goals that a respondent reports on New Form 40S to its subsequent market activity. If the two do not correspond, the Commission will request additional information from the respondent in order to maintain accuracy in Commission databases and reports, or take other appropriate action.

(18) Costs of New Form 40S

The Commission assumes that each New Form 40S reporting party will complete and submit its forms online via a secure web-based portal provided by the Commission, which the Commission believes is the more cost-effective of the two filing methods for the industry as a whole. As discussed in section VIII(A) above, the Commission anticipates that it will receive approximately 2,508 102S records per year, and the Commission estimates that it will make approximately the same number of 40S special calls each year (2,508). Each response is estimated to require three hours,[327] resulting in an estimated total annual reporting burden of 7,524 hours. Using an estimated wage rate of $70.07 per hour, annual industry costs for New Form 40S filings made via the web-based portal are estimated at $527,207.[328]

FORM 40S

Regulation	Estimated total annual industry cost [329]	Estimated low and high range (25% below and 25% above estimated total annual industry cost) [330]	Anticipated transmission method [331]
20.5(b)	$527,207	$395,405–$659,009	web

Expanded Obligation To Maintain Books and Records and Furnish Information to the Commission Under § 18.05

(19) Overview of § 18.05

Current § 18.05 requires traders who hold or control reportable positions to maintain books and records regarding all positions and transactions in the commodity in which they have reportable positions.[332] In addition, current § 18.05 requires that the trader furnish the Commission with information concerning such positions upon request. The Commission is expanding § 18.05 to impose books and records requirements upon four new categories of market participants, who are not required to maintain books and records pursuant to current § 18.05: (1) Owners of volume threshold accounts reported on New Form 102B; (2) controllers of volume threshold accounts reported on New Form 102B; (3) owners of reportable sub-accounts reported on New Form 71; and (4) controllers of reportable sub-accounts reported on New Form 71. Traders who hold or control reportable positions will remain subject to the books and records requirements, consistent with the current requirements.

(20) Benefits of Expanded Recordkeeping

As a result of the final rules, the four new categories of persons identified above will have the same books and records requirements as traders who hold or control a reportable futures or options on futures position, and are therefore required to maintain books and records under current § 18.05. When the Commission identifies potential instances of manipulative or abusive practices via the new and amended Forms 102, 40 and 71, or in the daily trade capture reports received by the Commission, it may request additional information via special call regarding traders' positions, transactions or activities. The § 18.05 special call enables the Commission to analyze a trader's activities in Commission-regulated markets and related cash markets, as well as the trader's other commercial activity. By requiring all persons subject to the revised reporting regime to provide detailed books and records to the Commission upon its request, the Commission will strengthen its ability to conduct surveillance and pursue enforcement actions in the event

[327] The Commission's estimate of three hours per response reflects an initial, one-time burden of 10 hours, annualized over a five-year period, plus an additional hour per year for change updates.

[328] The $527,207 figure is arrived at by multiplying 2,508 filings by 3 hours (equals 7,524 hours) by $70.07 (equals $527,207).

[329] As noted in section VIII(A) above, the initial development cost per reporting party is estimated at $701 (10 hours of initial development burden × a wage rate of $70.07). The Commission expects that reporting parties will budget initial development costs in the manner that is most cost-effective for each party, which may result in some reporting parties incurring the majority of these initial development costs in the beginning of the rule compliance period.

[330] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that reporting costs will differ among market participants based on a variety of factors, including the state of their current technology systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[331] As noted in section VIII(A) above, the estimated total annual industry cost of the more expensive submission method, via FTP data feed, is $17,222,085. The $17,222,085 figure is arrived at by multiplying the anticipated 2,508 reporting parties by 98 hours of annualized development burden and ongoing operation and maintenance burden (equals 245,784 hours) by a wage rate of $70.07 (equals $17,222,085). An estimated low and high range (25% below and above this figure) equals $12,916,564 and $21,527,606, respectively.

[332] 17 CFR 18.05.

of potentially manipulative or abusive activity.

(21) Costs of Expanded Recordkeeping

As noted above, revised § 18.05 will likely impose a recordkeeping burden on a larger number of persons than current § 18.05. The Commission anticipates that additional persons subject to § 18.05 will likely be able to rely on books and records already kept in the ordinary course of business to meet the requirements of the final regulation. This is due, in part, to the fact that § 18.05 requires traders to maintain fairly limited information regarding their trading activity. Section 18.05(a), for example, requires that, ''Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity'' on certain enumerated trading markets. Furthermore, the Commission assumes that some parties required to maintain books and records pursuant to revised § 18.05 are likely required to maintain books and records under current § 18.05, because they hold or control reportable positions (*i.e.,* there will be a certain amount of overlap between these two groups). Accordingly, the Commission believes that revised § 18.05 will not meaningfully increase recordkeeping burdens on persons brought under its scope. As noted in section VII above, the Commission did not receive any comments regarding the changes to § 18.05 proposed in the NPRM.

The Commission sent 59 special calls pursuant to § 18.05 in 2012, 42 of which were based on trade data reflected in the TCR data feed.[333] As noted above, revised § 18.05 will make four new categories of persons, identified through the volume-based reporting regime, subject to § 18.05. Because the volume-based reporting regime is designed to identify designated types of trading activity, the Commission estimates that it will send special calls pursuant to revised § 18.05 to, at a minimum, 42 recipients (*i.e.,* the same number of persons to which the Commission sent special calls in 2012 based on trade data reflected in the TCR). At the same time, the Commission expects that the introduction of volume-based reporting will lead to the Commission sending more special calls than it would otherwise, because this regime will identify new ownership and control relationships and patterns of trading activity. As a result, for purposes of estimating the costs of revised § 18.05, the Commission assumes it will send 25% more special calls in response to trade data than it did in 2012, for a total of 53 special calls per year. These special calls will require a response from approximately 53 individual traders per year.

This estimate reflects only special calls sent pursuant to § 18.05 as a result of information collected via the volume-based reporting regime (*i.e.,* New Form 102B and New Form 71). The estimated 53 recipients of such special calls may include some traders that are already subject to the costs and obligations of current § 18.05. The Commission estimates that each special call response submitted by the new categories of persons subject to revised § 18.05 will take approximately 5 hours, for a total annual reporting burden of 265 hours. Using an estimated wage rate of $70.07 per hour, annual reporting costs for the new categories of persons that are subject to revised § 18.05 are estimated at $18,569.[334]

§ 18.05 RECORDKEEPING BURDEN

Regulation	Estimated total annual industry cost	Estimated low and high range (25% below and 25% above estimated total annual industry cost)[335]
18.05	$18,569	$13,927–$23,211

vi. Comments Regarding Costs and Benefits

As previously noted, the NPRM requested comment on many aspects of the proposed rules, including the Commission's evaluation of the rules' costs and benefits.[336] In response, ICE commented that it ''recognizes the value in collecting this OCR information for accounts that actively trade on DCMs, and integrating it with existing market surveillance and trade practice surveillance data to bridge gaps that may exist between individual transaction data contained in the trade register and position data contained in LTRs [large trader reporting]. Having such data readily available in Commission . . . surveillance systems would improve the efficiency of the investigative process by saving the additional work and time required to manually request such information from clearing members.'' [337]

ICE's comments are consistent with other supportive comments received in response to the 2009 NPRM.[338] Petroleum Marketers Association of America (PMAA), for example, stated that, ''Efficient integration of large trader and trade register data from DCMs, ECMS, and [other markets] will improve market transparency and ensure that no one trader, investment fund or other entity controls a large percentage of the interest on commodity futures exchanges. Increased reporting requirements will help to identify those who possibly attempt to corner the market by taking huge positions in the futures markets which can move futures prices beyond what supply and demand fundamentals dictate.'' [339]

Other NPRM commenters, however, asserted that the Commission's cost

[333] *See supra* section I(B) for a discussion of the TCR.

[334] The $18,569 figure is arrived at by multiplying 53 responses by 5 hours (equals 265 hours) by $70.07 (equals $18,569).

[335] The Commission has calculated an estimated range of 25% below and 25% above the estimated total annual industry cost, due to the fact that recordkeeping costs will differ among market participants based on a variety of factors, including the state of their current technology and recordkeeping systems, and their differing levels of market and reporting experience. The upper end of the ranges also responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

[336] *See* NPRM *supra* note 10 at 43984 and 43990.

[337] CL–2012–ICE *supra* note 55 at 5.

[338] *See supra* note 8. All 2009 Advanced NPRM comment letters (''CL–2009'') are available through the Commission's Web site at: *http://www.cftc.gov/LawRegulation/FederalRegister/CommentFiles/09-008.*

[339] CL–2009–PMAA *supra* note 338 at 2. Similarly, the Air Transport Association (ATA), commenting on the 2009 Advanced NPRM, included a list of market and regulatory benefits of the ownership and control report. These include allowing Commission staff to aggregate trading accounts under common ownership or control, allowing large trader reports and exchange trade registers to be linked, allowing expanded oversight of trading by widely dispersed individuals and accounts, linking traders' intra-day transactions with end-of-day positions, assisting investigations into intra-day manipulation and other trade practice abuses, and bridging gaps in current data reporting systems. CL–2009–ATA *supra* note 338 at 2–3.

estimates were underestimated, that certain requirements imposed costs unwarranted by the magnitude of the anticipated benefits, and/or that certain requirements would not provide meaningful benefits.[340] CME commented that ''Commission estimates do not appear to take into consideration the process changes that firms would need to engage in to obtain all OCR data, nor do they contain estimates for changes that SROs might have to institute to their systems to incorporate the three tiered reporting method.'' [341] FIA commented that ''the proposed rules . . . would require significant changes to the procedures, processes and systems pursuant to which FCMs create and maintain records with respect to their customers and customer transactions. Such redesign would take longer and be substantially more expensive than the Commission has suggested in the **Federal Register** release accompanying the proposed rules.'' [342] FIA also stated that ''we are still developing our costs analyses and will forward them to the Commission as soon as they are ready.''[343] FIA did not provide the cost analyses mentioned in its comment letter to the Commission.

In the absence of specific quantitative estimates or alternative cost proposals by commenters, the Commission performed its own analysis in updating the NPRM cost benefit considerations for these final rules. As noted above, for purposes of these final rules, the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission. The Commission has also calculated the total initial development burden on a non-annualized basis for each reporting form, as applicable, and presented cost ranges below and above each estimate in this section VIII(B). The high end of the cost ranges responds to comments stating that the cost estimates in the NPRM understated the total cost to the industry (without expressing by how much, or to what degree).

Commenters asserting that certain requirements imposed costs unwarranted by the magnitude of anticipated benefits, and/or that certain requirements would not provide meaningful benefits, typically proposed an alternative approach, such as removing a question on the reporting forms, or modifying a reporting deadline. Such comments are addressed in the consideration of alternatives below. In addition, section VII above contains a detailed discussion of the comments received in response to the NPRM, the Commission's response to comments, and any changes made to the final rules in response to comments.

vii. Consideration of Alternatives

Commenters suggested a number of alternatives to the rules proposed in the NPRM for purposes of minimizing the cost to market participants. The final rules incorporate a number of these alternative proposals, or otherwise modify the proposed rules where doing so reduces costs without sacrificing benefits.[344] The various alternatives considered for purposes of minimizing the cost to market participants (including those not ultimately adopted) are discussed below.

(a) Creation of Contact Reference Database

FIA commented that requiring firms to potentially submit three separate forms (102A, 102B and 102S) for the same customer ''will create unnecessary work and be more challenging to keep current.'' [345] To address this issue, FIA suggested that the Commission create a reporting contact reference database, which would ''ensure that contact information is stored and maintained as a single record, eliminate redundancy and improve the quality of information in the ownership and control reporting process.'' [346] In response to FIA's comment, the Commission is creating a contact reference database that will store contact information previously provided through the web-based portal by a reporting party on each of the reporting forms with respect to owners, controllers, and other parties. When a reporting party submits a subsequent reporting form through the web-based portal, the Commission will, to the extent practicable, pre-populate contact information that the reporting party previously provided. This will reduce the amount of time that is required for reporting entities to update information submitted to the Commission through the web-based portal without reducing the amount of information that is required to be submitted through the portal.[347]

Definition of ''Control''

Section 15.00(t), as proposed in the NPRM, added ''control'' to the list of defined terms in § 15.00.[348] The Commission's proposed definition, which applied only to special accounts (New Form 102A) and consolidated accounts (Form 102S), defined control as ''to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account.'' FIA commented that it would be difficult and/or meaningless to provide the requested control information, because the individuals responsible for trading an account within a special account or a volume threshold account can change often, even within the same trading day.[349] Furthermore, ''in the case of algorithmic trading programs, there likely will not be an identifiable individual who 'actually directs the trading' of the program. For this reason, FCMs do not currently collect this information.'' [350] FIA recommended removing the requirement to identify account controllers on Forms 102A and 102B.[351]

As noted in section VII, these final rules adopt proposed § 15.00(t) without modification. At the same time, the Commission is modifying the instructions on Form 102 in response to comments that discussed the difficulty of identifying individuals that exercise control on a transient basis, such as individuals operating an automated trading system (''ATS'') during a daily shift. The instructions for Form 102A and Form 102B have been revised to state that respondents should report all individuals who qualify as ''trading account controllers'' or ''volume threshold account controllers,'' as defined in § 15.00(bb) and (cc), respectively.[352] The Commission notes

[340] *See, e.g.,* the discussion of § 15.00(v) (direct market access), § 15.04 (reportable trading volume level) and § 17.01(a) in section VII, above.

[341] CL–2012–CME *supra* note 55 at 4.

[342] CL–2012–FIA NPRM *supra* note 55 at 9.

[343] *Id.*

[344] As noted in section VIII(A) above, while the Commission has updated the cost estimates that appeared in the NPRM based on the most recent data and statistics available to the Commission, the Commission has not reduced the cost estimates in these final rules to account for the incorporation of the cost-saving proposals described below. As a result, total reporting costs to the industry are likely to be lower than the sum of the costs associated with each form individually, as the Commission has calculated above.

[345] CL–2012–FIA *supra* note 55 at 4.

[346] *Id.*

[347] *See also supra* note 41 for a discussion of certain fields in the reporting forms that have been made optional, subject to certain conditions discussed in the reporting forms, in order to leverage information that reporting parties have previously provided.

[348] The definition of ''control'' in § 15.00 is based upon the definition of ''controlled account'' in § 1.3(j) of the Commission's regulations.

[349] CL–2012–FIA *supra* note 55 at 5.

[350] CL–2012–FIA *supra* note 55 at 6.

[351] CL–2012–FIA *supra* note 55 at 5.

[352] The Commission recognizes that, for some respondents that conduct trading in a reportable trading account or volume threshold account in whole or in part through an ATS, the individuals involved in the administration of such ATS may not qualify as trading account controllers or volume threshold account controllers. *See supra* section V(A)(ii).

that regardless of whether the trading is carried out in whole or in part through an automated trading system or direct human initiation, the underlying analysis remains the same. When completing Form 102A and Form 102B, reporting parties should identify each person that satisfies the definition of ''trading account controller'' or ''volume threshold account controller,'' as defined in § 15.00(bb) and (cc), respectively. Once respondents have identified all individuals meeting the applicable controller definition in a Form 102A or Form 102B submission, they will not be required to submit change updates to the submission if one previously identified controller takes the place of another previously identified controller. These changes to the instructions on Form 102 are intended to reduce the reporting burden on market participants, who would otherwise be required to submit change updates to the 102 in the prior scenario. Respondents will be required to report the same number of controllers that they would be required to report under the NPRM proposal, but will do so in their original 102 submission, thereby eliminating the cost of submitting change updates due to a shift change. The Commission believes that this is a more effective solution than removing the control question altogether, as FIA had suggested, which would deprive the Commission of the ability to aggregate trading accounts based on common control.

Definition of ''Volume Threshold Account''

The NPRM defined a volume threshold account as any trading account that executes, or receives via allocation or give-up, reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

In the case of a give-up trade, this NPRM definition was intended to require reporting by: (i) The carrying firm of the original executing account; (ii) the carrying firm of any intervening account(s); and (iii) the carrying firm of the account to which the give-up trade was ultimately allocated. Question 10 in Section VII of the NPRM emphasized the broad scope of the definition: ''The Commission intends that the definition of 'volume threshold account' captures all possible categories of accounts with reportable trading volume . . . The Commission requests public comment regarding whether the proposed definition of 'volume threshold account' achieves this purpose.'' In response to this question, CME commented that volume-based accounts should be reported at the carrying broker level, and noted that, ''this is where the account ownership and control information resides, not at executing brokers.'' [353]

As noted in section VII above, the Commission is adopting the definition of volume threshold account with one modification.[354] The following change incorporates CME's comment. It is also intended to reduce the burden and cost to reporting parties. The definition of volume threshold account is being scaled back in the final rules, to capture a smaller number of volume threshold accounts than under the NPRM proposal. The definition is being modified to: ''any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a [DCM or SEF].'' This change will lessen the burden on reporting parties, by reducing the number of reportable volume threshold accounts in the case of a give-up trade:

- In a give-up scenario, this definition will require reporting by the carrying firm of the account to which the trade is ultimately allocated. Reporting will not be required, however, by the carrying firm of the original executing account, or by the carrying firm of any intervening account(s).
- In a non-give-up scenario, there will be no change to the number of reportable volume threshold accounts. Under both the original and revised definition, reporting will be required by the carrying firm of the account in which the trade is both executed and cleared.

The Commission believes that this approach, which incorporates CME's comment, will be more efficient (and less burdensome and costly) for reporting parties than the approach proposed in the NPRM. At the same time, it captures a sufficient number of volume threshold accounts to advance the Commission's surveillance objectives.

Reportable Trading Volume Level

Section 15.04, as proposed in the NPRM, provided that reportable trading volume for a trading account is trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months). Relative to alternatives proposed by commenters, the Commission has determined—as shown through its analysis of sample DCM trade data received through the TCR during a recent six-month period—that the 50-contract threshold represents the level that best optimizes visibility into both trading volume and the absolute number of trading accounts. Both components are fundamental to the volume-based reporting regime established by Form 102B. At the same time, the RTVL is calibrated to minimize the impact of the volume-based reporting requirements on low-volume accounts whose trading activity would not meaningfully advance the Commission's volume-based surveillance goals.

Several commenters criticized the 50-contract RTVL, and proposed alternatives to it. FIA, CME and ICE commented that the RTVL, as proposed, would generate an excessive amount of data that may not be meaningful to the Commission's trade practice and market surveillance programs.[355] More specifically, Nadex commented that the proposed 50-contract RTVL would capture too many retail customers that are trading contracts with very small notional values.[356] FIA and ICE both recommended that the Commission phase in a descending RTVL until the optimum level is reached.[357] FIA, for example, recommended that ''the Commission could require that only accounts meeting a volume threshold of 1,000 contracts per day be reported in the first three months; contracts meeting a volume threshold of 750 contracts per day be reported in the second three months after the compliance date; and so on until the optimum volume threshold is reached.'' [358] CME also expressed concern that the RTVL will capture too many accounts, but recommended that the RTVL should be changed to 250 contracts bought or sold during a calendar week.[359]

Nadex recommended that a different RTVL should be applied to contracts with small notional values, as compared to contracts with larger, traditional notional values. ''For any contract with a notional value of $1,000 or less, the

[353] CL–2012–CME *supra* note 55 at 4.

[354] The definition of volume threshold account appears in the final rules as § 15.00(x).

[355] CL–2012–FIA *supra* note 55 at 8. CL–2012–CME *supra* note 55 at 3. CL–2012–ICE *supra* note 55 at 6.

[356] CL–2012–Nadex *supra* note 55 at 2–3.

[357] CL–2012–FIA *supra* note 55 at 8. CL–2012–ICE *supra* note 55 at 6.

[358] CL–2012–FIA *supra* note 55 at 8.

[359] CL–2012–CME *supra* note 55 at 3.

RTVL could be increased to 5,000 (*i.e.,* 1,000 times the standard RTVL of 50). This would still result in the Commission capturing information with respect to a relatively insignificant amount of trading activity in terms of notional value, but would be significantly less burdensome for the DCMs that offer these contracts.'' [360]

Compared to these various alternatives, the 50-contract RTVL—which the Commission's analysis has shown to identify approximately 85 percent of trading volume in approximately 90 percent of the products sampled, and approximately one-third of the trading accounts in the sample set—best achieves the regulatory objective and design-purpose of Form 102B. That objective is to identify a critical mass of the trading accounts active in its regulated markets through 102B reporting, measured not only by the percentage of trading volume for which those accounts are responsible, but also by the number of accounts identified. This objective is independent of whether the identified accounts hold reportable positions and what trading strategies market participants may pursue. The 50-contract RTVL achieves this objective by capturing both: (1) Those accounts responsible for the majority of trading volume; and (2) a meaningful number of the trading accounts active in the Commission's regulated markets. The Commission seeks to identify a meaningful number of such trading accounts in order to improve its ability to protect market participants from instances of fraudulent or deceptive trading practices, regardless of the amount of trading volume that such practices represent, or their impact on the overall market. In determining the optimal threshold level, the Commission gave equal weight to the twin objectives of the volume-based reporting regime—trading volume and trading account identification. In its analysis, the Commission found that although higher RTVLs, such as those proposed by commenters, may have a relatively minor impact on the identification of trading volume in a particular market, they would likely lead to a disproportionately large exclusion of the number of trading accounts, thus rendering the RTVL ineffective to achieve the Commission's objective.[361] In particular, the alternative proposals to raise the RTVL threshold to 250 contracts and/or to incrementally introduce moderately lower thresholds down from 1,000 contracts over time would sacrifice visibility with respect to the number of trading accounts (and at the highest threshold levels perhaps in trading volume, as well) to a degree likely to frustrate the intent of volume account surveillance.

Furthermore, if the Commission were to substitute an alternative RTVL, in response to commenter proposals, that does not identify a sufficient percentage of trading volume or absolute number of trading accounts, the Commission would, in effect, partially transform 102B into another vehicle for identifying trading accounts associated with reportable positions. Form 102A will accomplish this objective separately.

Finally, even if modifying the RTVL to make fewer accounts reportable were consistent with the Commission's regulatory objectives (which it is not), doing so is unlikely to result in significant cost savings to market participants. As explained above, FTP submission of New Form 102B will be most cost-effective for the industry as a whole. Furthermore, the ongoing operation and maintenance burden for FTP submission of New Form 102B will average the same number of hours per year (53 hours) irrespective of how many records are contained in a submission.[362] Accordingly, the number of volume threshold accounts reported to the Commission by a reporting party via FTP should not have a material impact on the overall cost burden.

The Commission also considered the alternative of adopting threshold levels that distinguish on the basis of notional value, such as proposed by Nadex, and/or other contract or market characteristics. The Commission recognizes that the uniform 50-contract threshold will capture a relatively small degree of market activity that is less significant for purposes of its Form 102B regulatory objectives. However, an alternative that would appropriately filter for such less-significant contracts would be administratively impracticable for the Commission and increase the administrative burden for some, if not many, reporting parties. For example, in the five year period from January 1, 2008 through December 31, 2012, the Commission received from DCMs self-certifications or requests for approval for approximately 5,400 new products, or an average of almost 21 new products per week. It is simpler, and far superior in terms of administrative cost and burden to set a single RTVL level, above which all parties report, than to determine differing levels for different markets/products, monitor the appropriateness of such levels and adjust them as circumstances warrant over time, and effectively communicate such differing levels and their periodic adjustments to the trading community. Moreover, the cost of determining whether parties were compliant with the reporting requirements and enforcing those requirements would place further burden upon the Commission and reporting parties.

In sum, the Commission believes that it is has achieved an appropriate balance by implementing a uniform 50-contract RTVL rather than a product-by-product RTVL. While the uniform RVTL may capture a small number of additional accounts, representing a relatively small degree of market activity that is less significant for purposes of its Form 102B regulatory objectives, it avoids the administrative complexity of a product-by-product RTVL, which carries the potential to hobble Form 102B's regulatory effectiveness.

Direct Market Access

CME commented on a question in proposed Forms 102A and 102B, discussed in more detail in section VII above, which asks whether certain trading accounts have been granted direct market access (DMA).[363] CME stated that ''requiring this data may force substantial process change at the firms to obtain the data upfront and record it in the firm's reference database with other account information.'' [364] As discussed in section VII above, the Commission is not including the question regarding DMA in the final rules.

Reporting Deadline for Certain Information Required on Forms

FIA commented that obtaining all the information required by the Form 102 could potentially take longer than the

[360] CL–2012–Nadex *supra* note 55 at 3.

[361] This is because the correlation between trading volume and number of accounts when RTVL is adjusted up or down is not proportional. Rather, the curve for the number of accounts is much steeper than for trading account volume, meaning that, while a tick up or down in RTVL translates to a relatively modest proportional change in trading volume coverage, the impact on number-of-account coverage is more exaggerated. The Commission took this relationship into account when proposing the 50 RTVL threshold: while a lower RTVL threshold would yield a substantially higher number of accounts, the slight incremental gain in trading volume coverage would not significantly advance the Commission's volume account surveillance objectives. Furthermore, the relationship also explains why the alternatives proposed are suboptimal and unacceptable to capture the twin elements essential to achieve the regulatory objective of volume account surveillance.

[362] *See supra* section VIII(A)(iv).

[363] See the discussion of the definition of direct market access in proposed § 15.00(v).

[364] CL–2012–CME *supra* note 55 at 3.

deadlines proposed in the NPRM. ''Although it is possible to file limited information by 9:00 a.m., *i.e.,* the name of the account holder and the special account number, it is not practical to complete the entire Form 102 by that deadline.'' [365] As a result, FIA recommended that the deadline for filing a complete Form 102A or any change update be modified to five business days from the date the account or change becomes reportable.[366] In response to this comment, the Commission is extending the reporting deadline for new and changed Form 102A filings, specifically with respect to the reporting of non-omnibus trading accounts that comprise a special account. Respondents are required to provide the names of such trading account owners and controllers by 9:00 a.m. the following business day.[367] However, respondents are required to provide the other contact details with respect to such trading account owners and controllers (address, telephone number, etc.) within three business days, in order to permit respondents additional time to compile the required information.[368]

The Commission is also modifying the reporting deadline for new and changed Form 102B filings, specifically with respect to the reporting of non-omnibus volume threshold accounts. Respondents are required to provide the names of non-omnibus volume threshold account owners and controllers reported on 102B by 9:00 a.m. the following business day. Consistent with the change described above, respondents are required to provide the other contact details reported on 102B with respect to such parties (*i.e.,* the address, telephone number, etc. of non-omnibus volume threshold account owners and controllers) within three business days, in order to permit respondents additional time to compile the required information.[369]

FIA commented that the refresh filing deadline proposed by the NPRM, which required firms to resubmit the Form 102 for each special account, volume threshold account and consolidated account every six months, was too short. FIA stated that this six-month schedule ''will impose a significant operational and financial burden on reporting firms,'' and recommended that refresh updates instead be required every two years.[370] CME also recommended that refresh updates be required every two years.[371] In response to this comment, the Commission is modifying the reporting deadline for refresh filings. Refresh filings for special accounts, volume threshold accounts and consolidated accounts will be required once per year, as opposed to once every six months.[372] The Commission believes that the annual refresh requirement is a reasonable accommodation that will limit costs to market participants while still achieving the Commission's surveillance objectives. For the majority of accounts, there should be little or no change to prior reported information. As a result, the reporting burden for refresh filings should be minimal.

viii. Reporting on Form 102S

FIA commented on the utility of Form 102S, which requires swap dealers and clearing members to identify and report a swap counterparty or customer consolidated account with a reportable position. FIA stated that the information that will be reported to swap data repositories under part 45 would provide the Commission with access to essentially the same information that proposed Form 102S will require.[373] FIA commented that ''requiring FCMs, and the industry generally, to divert critical operational and financial resources from building the systems necessary to implement the part 45 recordkeeping and reporting requirements to implement this interim solution, would impose an unnecessary operational burden and cost without a significant offsetting benefit.'' [374] CME commented that ''requiring swap reporting as part of OCR, to accomplish reporting that is already being done under part 20—and soon to be duplicated under SDR reporting with new unique legal entity identifiers—is unnecessary and imposes additional unjustified costs on the industry.'' [375]

In light of FIA and CME's comments regarding the Form 102S, the Commission considered, but rejected, the alternative of omitting Form 102S from the final rules. Contrary to commenters' claims, SDRs will not, in all cases, be able to provide the ownership and control information requested on 102S. For example, the Commission anticipates that swap dealers and clearing members (the 102S reporting parties) will be able to consistently provide the contact information for owners and controllers of consolidated accounts on the 102S, based on the records these entities maintain. Part 45 reporting, by contrast, is based on counterparty data. This counterparty data may, in some cases,

[365] *Id.*

[366] *Id.*

[367] Unless otherwise specified by the Commission or its designee, the stated time in the final rules is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets, in accordance with § 17.02(a).

[368] Specifically, the information marked as 'Follow-On Information' in questions 10(ii) and (iii) on New Form 102A may be provided within three business days. All other required fields on New Form 102A must be completed by 9:00 a.m. the following business day. See New Form 102A in the Appendix to these final rules for more information. Notwithstanding the change to the reporting deadline with respect to non-omnibus trading accounts that comprise a special account, these final rules do not modify the reporting deadline for information with respect to *omnibus* trading accounts that comprise a special account (question 10(i) on New Form 102A). Such omnibus account information must be reported by 9:00 a.m. the following business day. The Commission is adopting a reporting requirement of three business days as an intermediate compromise between one business day (as proposed in the NPRM) and five business days (as requested by FIA). The three business day requirement is therefore less burdensome than the one business day requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the three business day requirement, while longer than the one day proposal in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events that occur close to the time of reporting. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a five business day reporting deadline is too long to perform timely market surveillance, and maintain databases that are sufficiently accurate and current to be useful.

[369] Specifically, the information marked as 'Follow-On Information' in questions 5 and 6 on New Form 102B may be provided within three business days. All other required fields on New Form 102B must be completed by 9:00 a.m. the following business day. See New Form 102B in the Appendix to these final rules for more information. Notwithstanding the change to the reporting deadline with respect to non-omnibus volume threshold accounts, these final rules do not modify the reporting deadline for information with respect to *omnibus* volume threshold accounts (question 4 on New Form 102B). Such omnibus account information must be reported by 9:00 a.m. the following business day.

[370] CL–2012–FIA *supra* note 55 at 7.

[371] CL–2012–CME *supra* note 55 at 3.

[372] The Commission is adopting a refresh reporting requirement of once per year as an acceptable intermediate point between once each six months (as proposed in the NPRM) and once every two years (as requested by FIA and CME). The annual refresh requirement is therefore less burdensome than the six month requirement proposed in the NPRM. Based on the experience of the Commission's surveillance group, the Commission believes that the annual refresh requirement, while longer than the six month requirement proposed in the NPRM, will nonetheless enable the Commission to maintain current databases, including up-to-date contact information that will allow the Commission to contact market participants quickly in the event of significant market events. By contrast, based on the experience of the Commission's surveillance group, the Commission believes that a two year refresh deadline is too long to perform timely market surveillance and maintain databases that are sufficiently accurate and current to be useful.

[373] CL–2012–FIA *supra* note 55 at 2–3.

[374] CL–2012–FIA *supra* note 55 at 3.

[375] CL–2012–CME *supra* note 55 at 3.

overlap with the owners and controllers of consolidated accounts reported on 102S. However, counterparty data will not, in all cases, overlap with 102S reporting. Furthermore, even when counterparty data does overlap with 102S reporting, it does not provide the ownership and control information required by 102S. Counterparty data provides a Legal Entity Identifier, which is a numeric data field that must be cross-checked against an external source in order to generate the names of owners and controllers. As a result, the Commission cannot rely on SDR reporting under part 45 as a substitute for 102S. For these reasons, the Commission is implementing 102S reporting pursuant to these final rules.

ix. Consolidated Form Proposed by FIA

For purposes of reducing the costs to reporting parties, and alleviating perceived inefficiencies in the forms proposed in the NPRM, FIA recommended consolidating the proposed forms into a single Form 102.[376] FIA attached a proposed form to its NPRM comment letter that consolidates Forms 102A, 102B and 102S (the ''FIA consolidated form''). The FIA consolidated form is the principal alternative approach proposed by commenters on the NPRM.[377]

The Commission notes that FIA's description of New Form 102A, 102B and 102S as inefficient and overlapping appears to arise from a presumption that reporting parties will print and complete each form as a separate paper filing. The forms included in the Appendix to these final rules are visual representations of reporting forms that will be completed through the Commission's web-based portal. In such an electronic environment, it will not be more burdensome for reporting parties to enter information via separate screens on a web portal (for 102A, 102B and 102S), as compared to via a single screen.

The Commission does not consider the FIA consolidated form an acceptable alternative, because it is missing a number of key data fields that appear on Forms 102A, 102B, and 102S. As discussed in more detail below, while the list of data fields that the FIA consolidated form is missing is not extensive, the absence of these data fields would create gaps in the reporting of ownership and control information. These gaps would prevent the Commission from realizing the goals of the OCR data collection. If the missing data fields were added back to FIA consolidated form, then the FIA form would be substantively identical to the forms adopted in these final rules.

The FIA consolidated form does not include the following data fields collected on New Forms 102A, 102B and 102S:

- The FIA consolidated form does not require respondents to state the reporting trigger. *I.e.,* the form does not clarify whether respondents are reporting a special account, volume threshold account, or consolidated account that has reached a reportable level. Instead, the directions to the FIA consolidated form state that, ''This form must be completed if an account exceeds the reportable levels on special accounts, volume threshold accounts or consolidated accounts.'' The Commission would receive ownership and control information regarding the reported trading accounts, but would not know what market activity the trader had engaged in that necessitated reporting pursuant to the Commission's regulations. Without knowing the reporting trigger for the form (*e.g.,* whether the reporting party had reached a reportable position or reportable volume level), the Commission would be unable to efficiently and accurately categorize the trading accounts reported on the form, and utilize this account information for surveillance or other related purposes.
- The FIA consolidated form does not require respondents to identify the originator of a consolidated account that is also an omnibus account, and provide contact information for this originator.[378] Without this contact information, the Commission would not know which party to contact to request additional information on the reported omnibus account (*e.g.,* via a Form 40). As noted above, one of the key reasons that the Commission is requesting additional information regarding ownership and control on the reporting forms is to enable it to send a Form 40 to such parties in order to identify them for surveillance purposes. Alternative proposals that would leave significant and potentially exploitable gaps in the reporting and identification system—*e.g.,* with respect to omnibus accounts—would defeat the Commission's intent for these final rules.
- Similarly, the FIA consolidated form does not require respondents to state whether a volume threshold account is an omnibus account—and if so, to identify the originator of the omnibus account and provide contact information for this originator.[379] Without the name and contact information of the originator of an omnibus volume threshold account, the Commission would be unable to send a Form 71 to the originator and collect ownership and control information for underlying sub-accounts. If the Commission does not send a Form 71 in this scenario, the Commission would again be unable to send a Form 40 to identify the ultimate owner and controller of the underlying sub-accounts. This would again create significant gaps in the reporting and identification system, which would defeat the Commission's intent for these final rules.

As discussed above, FIA commented that requiring respondents to potentially submit three separate forms (102A, 102B and 102S) for the same customer is inefficient. FIA proposed its consolidated form in an attempt to address this overlap, reduce the costs to reporting parties, and alleviate other perceived inefficiencies in the forms proposed in the NPRM.[380] As previously noted, the Commission is implementing a contact reference database to reduce the burden on parties reporting via the web-based portal.[381] This database will pre-populate certain fields on the portal with information previously provided by the respondent, thereby reducing the inefficiency associated with responding to more than one section of New Form 102.[382]

[376] CL–2012–FIA NPRM *supra* note 55 at 4.

[377] Note that the Commission published a prior Notice of Proposed Rulemaking on July 19, 2010 (the 2010 OCR NPRM) with respect to ownership and control reporting, which the Commission withdrew concurrent with the publication of the NPRM. *See supra* note 9. The Commission received a number of comment letters in response to the 2010 OCR NPRM, and incorporated several of their suggestions in the NPRM (published in the **Federal Register** in 2012), which forms the basis for these final rules. *See* NPRM *supra* note 10 at 43973–43974 for a discussion of comments received in response to the 2010 OCR NPRM that were incorporated in the NPRM.

[378] This information will be collected on New Form 102S as a result of these final rules.

[379] This information will be collected on New Form 102B as a result of these final rules.

[380] CL–2012–FIA *supra* note 55 at 4.

[381] As discussed in section VIII(B)(iv) above, the Commission has determined that it will be more cost-effective for the industry as a whole to submit Forms 102A, 102B and 102S via FTP. Nonetheless, it may be less expensive for certain individual reporting parties to submit these forms via the web portal. This may be due to the limited number of forms these parties expect to submit, their technology infrastructure, or other factors. The Commission has also determined that it will be more cost-effective for the industry as a whole to submit Forms 40/S and 71 via the web portal. The contact reference database will pre-populate information on Forms 40/S and 71 to the extent practicable.

[382] *See also supra* note 41 for a discussion of certain fields in the reporting forms that have been made optional, subject to certain conditions discussed in the reporting forms, in order to leverage information that reporting parties have previously provided.

x. Section 15(a) Factors

(a) Protection of Market Participants and the Public

The data collection requirements under these final rules will support the Commission in its mission to protect market participants and the public, by significantly improving the Commission's visibility with respect to market participants and their activities across derivatives markets. Specifically, the final rules build upon the Commission's existing market and trade practice surveillance programs for futures, options on futures, and swaps, by providing for the timely and efficient analysis of market data related to special accounts, consolidated accounts, and newly designated volume threshold accounts. The rules implement these goals in a manner designed to reduce costs to reporting entities. Improving the capabilities of the Commission's market and trade practice surveillance programs will support the integrity of financial markets, and protect market participants and the public from the costs of disruptive trading practices and other market abuses.

New Form 102A. As an example of these benefits, New Form 102A requires reporting of ownership and control information for the trading accounts that constitute special accounts. This will allow the Commission to more efficiently link special accounts holding reportable positions to the transactions (and associated trading accounts) identified on daily trade capture reports received by the Commission.[383] By illustrating the connections between end-of-day position reporting via Form 102 and daily trade capture reports, the final rules will enable the Commission to perform a more accurate and timely accounting of market position at the level of individual trading accounts. With this information, the Commission will be able to conduct a thorough assessment of a trader's potential market impact, including with respect to disruptive practices.

New Form 102B. New Form 102B institutes a reporting requirement for trading accounts that exceed a specific volume threshold on any single trading day, regardless of whether the account maintains open positions at the end of the day. The addition of volume-based reporting will provide the Commission with an efficient means to collect the information required to aggregate positions, detect intra-day position limit violations, and calculate market share. When analyzing periods of elevated volatility—especially at significant trading times such as market open and close—the ability to aggregate intra-day trading behavior by owner/controller is crucial to understanding whether a trader has adversely affected (or has the potential to affect) market quality or price discovery.

New Form 102S. New Form 102S will improve upon the current 102S reporting system by providing detailed ownership and control information regarding consolidated accounts. The information collected via Form 102S will allow the Commission's market and trade practice surveillance programs to track the market activity of traders that may be dividing risk exposure between both on-exchange and off-exchange instruments. In addition to the ability to track individual traders, swap reporting will also enable the Commission to aggregate exposure in a particular product or commodity group. The reporting of swap activity on Form 102S aligns with the Commission's recently finalized rules on real-time public and regulatory reporting of swap trades, and provides further transparency into markets that, historically, have often been opaque and/or over-the-counter.

Collectively, the ownership and control information on New Forms 102A/102B/102S, 40/40S and 71 will improve the Commission's ability to analyze and/or respond to market disruptions, which can come at a high cost to the investing and general public. The information will also enable the Commission to perform more robust research and analytics, encompassing a significantly greater segment of market activity on a more diverse set of platforms, as well as improve its classification of traders in Commission publications, such as the Commitments of Traders report. Finally, the Commission will be able to perform data integrity checks within and between its databases using the additional fields collected on the revised forms.

Efficiency, Competitiveness, and Financial Integrity of the Markets

The collection of ownership and control information via the new and amended forms will enable the Commission to better perform risk-based monitoring and surveillance among related accounts, and monitor risk exposure by institution, market class, and asset class. For example, the rules will enable the Commission to more efficiently link end-of-day position reporting and the trade capture reports received by the Commission. Accordingly, the rules will allow the Commission to aggregate respondents' positions across multiple products and markets, assess their potential market impact with respect to disruptive or manipulative activities during important periods, and analyze their compliance with speculative position limits at any time during the trading day. In the event the Commission identifies trading activity requiring further investigation, the Commission will be able to contact market participants more quickly and efficiently using the ownership and control information collected through the OCR reporting process.

The final rules will also promote resource allocation efficiency by automating the submission process, eliminating an additional layer of transcription and reducing the likelihood of input errors and/or the need to revert back to reporting parties for further explanation. In addition, the final rules permit respondents to use either of two available submission methods (FTP or web portal), thereby allowing respondents to select the method that is most economical in light of the number of filings they expect to make, and that integrates most efficiently with their existing data and technology infrastructure. These improvements in resource efficiency and data quality will also improve the Commission's published reports, such as the classifications in the Commitments of Traders report. Finally, the Commission will be able to perform data integrity checks within and between its databases using the additional data fields collected on the revised forms.

The Commission believes that market integrity is essential to fair and orderly markets that serve as effective centers for price discovery and risk management. By promoting these important goals, the final rules will help promote the utility of Commission-regulated markets.

Price Discovery

The Commission does not view the costs and benefits of the final rules as impacting price discovery in markets that it regulates.

Sound Risk Management Practices

The final rules establish the information architecture necessary to support Dodd-Frank's objectives of reducing risk, increasing transparency, and promoting market integrity within the financial system. The expanded reporting requirements will significantly improve the Commission's ability to perform risk-based monitoring of trading activity spread across multiple platform types but directed or controlled by individual entities. Such

[383] See the discussion of the daily trade capture reports in section I(B) above.

an expanded view of the marketplace will enable the Commission to more effectively identify disruptive or manipulative trading activity. The Commission does not believe that the costs arising from the final rules, which the Commission has taken steps to reduce, threaten the ability of market participants to manage risk.

Other Public Interest Considerations

The Commission does not view the costs and benefits of the final rules as impacting other public interest considerations beyond those discussed above.

C. 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 regarding the impact.[384] A regulatory flexibility analysis or certification is typically required for ''any rule for which the agency publishes a general notice of proposed rulemaking'' pursuant to the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[385]

The final rules require FCMs, clearing members, foreign brokers, swap dealers and other reporting traders (including natural persons) to complete New Forms 102 or 71, and to submit them to the Commission as specified in the final rules, or upon special call by the Commission. The Commission has previously determined that FCMs, clearing members, foreign brokers, and swap dealers are not small entities for purposes of the RFA.[386] The Commission has also determined that natural persons are not 'entities' for purposes of the RFA.[387] Accordingly, the final rules with respect to Forms 102 and 71 will not have a significant economic impact on a substantial number of small entities.

The final rules also require certain reporting traders to complete and submit New Form 40 upon special call by the Commission. Some of these reporting traders may be ''small entities'' under the RFA. In 2012, the Commission received approximately 3,123 completed Form 40s, from a total population of approximately 10,000 reporting traders. Of these 3,123 Form 40s, approximately 2,500 were completed by institutions, a portion of which could potentially be small entities under the RFA. For example, the Commission has received comments on its Dodd-Frank Act rulemakings indicating that certain entities that may be required to comply with the reporting and recordkeeping requirements in the final rules have been determined by the Small Business Administration to be small entities. In particular, the Commission understands that some not-for-profit electric generators, transmitters, and distributors that may be required to comply with the proposed rules have been determined to be small entities by the 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.'' [388]

The Commission believes that, due to the limited number of institutions likely to receive a New Form 40 request in any given year, as well as the limited nature of the New Form 40 reporting burden, the final rules with respect to New Form 40 will not have a significant economic impact on a substantial number of small entities. New Form 40 will not be required on a routine and ongoing basis, but rather will be sent by the Commission on a discretionary basis in response to the reporting of an account that reaches a minimum position or volume threshold. As summarized above, in 2012 the Commission made Form 40 requests to only 25 percent of all reporting traders that could potentially be small entities; furthermore, some of these reporting traders were not in fact small entities. As a result, New Form 40 should be expected to affect only a small subset of the entities that may be small entities under the RFA. In addition, New Form 40 is not lengthy or complex, and will require reporting traders to provide only limited information to the Commission. As discussed above, the Commission estimates that a reporting trader submitting New Form 40 via the web-based portal will require only three hours, on an annualized basis, to complete the form.[389]

The final rules regarding revised § 18.05 will also impose books and records obligations upon a new category of market participants—specifically, certain owners (but not controllers) of a volume threshold account or a reportable sub-account. Such owners may be small entities under the RFA. The Commission does not believe that the obligation to maintain books and records under revised § 18.05 will impose significant costs on the additional small entities subject to the recordkeeping requirements of such section. The Commission expects that such account owners may largely rely on the books and records that they maintain in the ordinary course of business to fulfill the requirements of revised § 18.05. The Commission also expects that a portion of the account owners subject to revised § 18.05 are subject to the position-based recordkeeping requirements of current § 18.05,[390] and will not incur significant costs expanding their recordkeeping practices to comply with revised § 18.05. To the extent that certain small entities are required to modify their practices to comply with the volume-based recordkeeping requirements of revised § 18.05, the Commission believes that the resulting economic burden will be appropriate, because this requirement will: (a) Ensure that (i) owners of volume threshold accounts and reportable sub-accounts and (ii) owners of reportable positions are subject to equivalent recordkeeping obligations under § 18.05, and therefore maintain books and records in a consistent format; and (b) promote the Commission's surveillance and investigatory functions to better deter price manipulation and other disruptions of market integrity.

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

[384] 5 U.S.C. 601 *et seq.*

[385] 5 U.S.C. 601(2), 603, 604 and 605. While the definition of ''entity'' does not encompass natural persons, it does encompass sole proprietorships. 5 U.S.C. 601(6). The Commission recognizes that floor brokers and other natural persons doing business as sole proprietors could potentially be considered small entities. *See generally* 58 FR 40,335 at 40,347–48, n. 45 (July 28, 1993); 47 FR 18618 at 18,620, (Apr. 30, 1982).

[386] *See* respectively and as indicated: 47 FR 18618 (April 30, 1982) (FCMs and large traders); 72 FR 34417 at 34418 (June 22, 2007) (foreign brokers); 76 FR 71626 at 71680 (November 18, 2011) (swap dealers); 76 FR 71626 at 71680 (November 18, 2011) and 76 FR 43851 at 43860 (July 22, 2011) (clearing members).

[387] *See* 5 U.S.C. 601(6).

[388] Small Business Administration, *Table of Small Business Size Standards* (Nov. 5, 2010). *See also* the regulatory flexibility analysis regarding such entities in 77 FR 1182 at 1240 (January 9, 2012), 77 FR 2136 at 2170 (January 13, 2012), and 77 FR 2613 at 2620 (January 19, 2012).

[389] *See supra* section VIII(A).

[390] 17 CFR 18.05.

17 CFR Part 20

Physical commodity swaps, Swap dealers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR parts 15, 17, 18, and 20 as follows:

PART 15—REPORTS—GENERAL PROVISIONS

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

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 15.00 by revising paragraph (q) and adding paragraphs (t) through (dd) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 19, and 21 of this chapter.

* * * * *

(q) *Reporting market* means a designated contract market or a registered entity under section 1a(40) of the Act.

* * * * *

(t) *Control* means to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account. A special account or a consolidated account may have more than one controller.

(u) *Reportable trading volume* means contract trading volume that meets or exceeds the level specified in § 15.04.

(v) *Omnibus account* means any trading account that one futures commission merchant, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

(w) *Omnibus account originator* means any futures commission merchant, clearing member or foreign broker that executes trades for one or more customers via one or more accounts that are part of an omnibus account carried by another futures commission merchant, clearing member or foreign broker.

(x) *Volume threshold account* means any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

(y) *Omnibus volume threshold account* means any trading account that, on an omnibus basis, carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

(z) *Omnibus reportable sub-account* means any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account.

(aa) *Reportable sub-account* means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

(bb) *Trading account controller* means, for reports specified in § 17.01(a) of this chapter, a natural person who by power of attorney or otherwise actually directs the trading of a trading account. A trading account may have more than one controller.

(cc) *Volume threshold account controller* means a natural person who by power of attorney or otherwise actually directs the trading of a volume threshold account. A volume threshold account may have more than one controller.

(dd) *Reportable sub-account controller* means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

■ 3. In § 15.01, revise paragraph (c) to read as follows:

§ 15.01 Persons required to report.

* * * * *

(c) As specified in part 18 of this chapter:

(1) Traders who own, hold, or control reportable positions;

(2) Volume threshold account controllers;

(3) Persons who own volume threshold accounts;

(4) Reportable sub-account controllers; and

(5) Persons who own reportable sub-accounts.

* * * * *

■ 4. Revise § 15.02 to read as follows:

§ 15.02 Reporting forms.

Forms on which to report may be obtained from any office of the Commission or via the Internet (*http://www.cftc.gov*). Forms to be used for the filing of reports follow, and persons required to file these forms may be determined by referring to the rule listed in the column opposite the form number.

Form No.	Title	Rule
40	Statement of Reporting Trader	18.04
101	Positions of Special Accounts	17.00
102	Identification of Special Accounts, Volume Threshold Accounts, and Consolidated Accounts	17.01
204	Cash Positions of Grain Traders (including Oilseeds and Products)	19.00
304	Cash Positions of Cotton Traders	19.00
71	Identification of Omnibus Accounts and Sub-accounts	17.01

(Approved by the Office of Management and Budget under control numbers 3038–0007, 3038–0009, and 3038–0103.)

■ 5. Add § 15.04 to read as follows:

§ 15.04 Reportable trading volume level.

The volume quantity for the purpose of reports filed under parts 17 and 18 of this chapter is trading volume of 50 or more contracts, during a single trading day, on a single reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act, in all instruments that such reporting market designates with the same product identifier (including purchases and sales, and inclusive of all expiration months).

PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

■ 6. The authority citation for part 17 is revised to read as follows:

Authority: 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 6t, 7, 7a, and 12a, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 7. In § 17.00, revise paragraph (g)(2)(iii) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

* * * * *

(g) * * *

(2) * * *

(iii) *Account Number.* A unique identifier assigned by the reporting firm to each special account. The field is zero filled with the account number right-justified. Assignment of the account number is subject to the provisions of paragraph (b) of this section and appendix A of this part (Form 102).

* * * * *

■ 8. Revise § 17.01 to read as follows:

§ 17.01 Identification of special accounts, volume threshold accounts, and omnibus accounts.

(a) *Identification of special accounts.* When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the special account to the Commission on Form 102, in accordance with the form instructions and as specified in § 17.02(b).

(b) *Identification of volume threshold accounts.* Each clearing member shall identify and report its volume threshold accounts to the Commission on Form 102, in accordance with the form instructions and as specified in § 17.02(c).

(c) *Identification of omnibus accounts and sub-accounts.* Each originator of an omnibus volume threshold account identified in Form 102 or an omnibus reportable sub-account identified in Form 71 shall, after a special call upon such originator by the Commission or its designee, file with the Commission an ''Identification of Omnibus Accounts and Sub-Accounts'' on Form 71, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

(d) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) and (b) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

(e) *Special call provision.* Upon a call by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members, foreign brokers, and reporting markets under paragraphs (a) through (d) of this section shall be submitted within 24 hours of the Commission or its designee's request in accordance with the instructions accompanying the request.

■ 9. Amend § 17.02 by revising the introductory text and paragraph (b) and adding paragraph (c) to read as follows:

§ 17.02 Form, manner and time of filing reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by reporting markets, futures commission merchants, clearing members, and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) through (c) of this section.

* * * * *

(b) *Section 17.01(a) reports.* For data submitted pursuant to § 17.01(a) on Form 102:

(1) *Form of submission.* Form 102 must be submitted to the Commission in the form and manner provided on *www.cftc.gov*.

(2) *Time of submission.* For each account that becomes reportable as a special account, the futures commission merchant, clearing member, or foreign broker, as appropriate, shall submit a Form 102 to the Commission, in accordance with the instructions thereto, and in the manner specified by the Commission or its designee. Such form shall be submitted in accordance with the instructions and schedule set forth in paragraphs (b)(2)(i) and (ii) of this section:

(i) The applicable reporting party shall submit a completed Form 102 to the Commission no later than 9 a.m. on the business day following the date on which the special account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (b)(3) and (4) of this section. Such form shall include all required information, including the names of the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on the form, *provided that,* with respect to such owners(s) and controller(s), information other than the names of such parties may be reported in accordance with the instructions and schedule set forth in paragraph (b)(2)(ii) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(ii) With respect to the owner(s) and controller(s) of each trading account that is not an omnibus account, and that comprises a special account reported on Form 102, information other than the names of such parties must be provided on Form 102 no later than 9 a.m. on the third business day following the date on which the special account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (b)(3) and (4) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(3) *Change updates.* If any change causes the information filed by a futures commission merchant, clearing member, or foreign broker on a Form 102 for a special account to no longer be accurate, then such futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission in accordance with the instructions and schedule set forth in paragraphs (b)(2)(i) and (ii) of this section, or on such other date as directed by special call of the Commission, *provided that,* a futures commission merchant, clearing member, or foreign broker may stop providing change updates for a Form 102 that it has submitted to the Commission for any special account upon notifying the Commission or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months.

(4) *Refresh updates.* For Special Accounts—Starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each futures commission merchant, clearing member, or foreign broker shall resubmit every Form 102 that it has submitted to the Commission for each of its special accounts, *provided that,* a futures commission merchant, clearing member, or foreign broker may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any special account upon notifying the Commission or its designee that the account in question is no longer reportable as a special account and has not been reportable as a special account for the past six months.

(c) *Section 17.01(b) reports.* For data submitted pursuant to § 17.01(b) on Form 102:

(1) *Form of submission.* Form 102 must be submitted to the Commission in the form and manner provided on *www.cftc.gov.*

(2) *Time of submission.* For each account that becomes reportable as a volume threshold account, the clearing member shall submit a Form 102 to the Commission, in accordance with the instructions thereto, and in the manner specified by the Commission or its designee. Such form shall be submitted in accordance with the instructions and schedule set forth in paragraphs (c)(2)(i) and (ii) of this section:

(i) The clearing member shall submit a completed Form 102 to the Commission no later than 9 a.m. on the business day following the date on which the volume threshold account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (c)(3) and (4) of this section. Such form shall include all required information, including the names of the owner(s) and controller(s) of each volume threshold account reported on the form that is not an omnibus account, *provided that,* with respect to such owners(s) and controller(s), information other than the names of such parties may be reported in accordance with the instructions and schedule set forth in paragraph (c)(2)(ii) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(ii) With respect to the owner(s) and controller(s) of each volume threshold account reported on Form 102 that is not an omnibus account, information other than the names of such parties must be provided on Form 102 no later than 9 a.m. on the third business day following the date on which the volume threshold account becomes reportable, or on such other date as directed by special call of the Commission or its designee, and as periodically required thereafter by paragraphs (c)(3) and (4) of this section. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(3) *Change updates.* If any change causes the information filed by a clearing member on a Form 102 for a volume threshold account to no longer be accurate, then such clearing member shall file an updated Form 102 with the Commission in accordance with the instructions and schedule set forth in paragraphs (c)(2)(i) and (ii) of this section, or on such other date as directed by special call of the Commission, *provided that,* a clearing member may stop providing Form 102 change updates for a volume threshold account upon notifying the Commission or its designee that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

(4) *Refresh updates.* For Volume Threshold Accounts—Starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member shall resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts, *provided that,* a clearing member may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any volume threshold account upon notifying the Commission or its designee that the volume threshold account executed no trades in any product in the past six months on the reporting market at which the volume threshold account reached the reportable trading volume level.

■ 10. Revise § 17.03 to read as follows:

§ 17.03 Delegation of authority to the Director of the Office of Data and Technology or the Director of the Division of Market Oversight.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in the paragraphs below to either the Director of the Office of Data and Technology or the Director of the Division of Market Oversight, as indicated below, to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by such Director. The Director of the Office of Data and Technology or the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated to such Director in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(a) Pursuant to § 17.00(a) and (h), the authority shall be designated to the Director of the Office of Data and Technology to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under § 17.00(a) and (h) on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority shall be designated to the Director of the Office of Data and Technology to instruct or approve the time at which the information required under §§ 17.00 and 17.01(a) and (b) must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.02.

(c) Pursuant to § 17.01, the authority shall be designated to the Director of the Office of Data and Technology to determine whether to permit an authorized representative of a firm filing the Form 102 or person filing the Form 71 to use a means of authenticating the report other than by signing the Form 102 or Form 71 and, if so, to determine the alternative means of authentication that shall be used.

(d) Pursuant to § 17.00(a), the authority shall be designated to the Director of the Office of Data and Technology to approve a format and coding structure other than that set forth in § 17.00(g).

(e) Pursuant to § 17.01(c), the authority shall be designated to the Director of the Office of Data and Technology to make special calls on omnibus volume threshold account originators and omnibus reportable sub-account originators for information as set forth in § 17.01(c).

(f) Pursuant to § 17.02(b)(4), the authority shall be designated to the Director of the Division of Market Oversight to determine the date on which each futures commission merchant, clearing member, or foreign broker shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its special accounts.

(g) Pursuant to § 17.02(c)(4), the authority shall be designated to the Director of the Division of Market Oversight to determine the date on which each clearing member shall update or otherwise resubmit every Form 102 that it has submitted to the Commission for each of its volume threshold accounts.

■ 11. Add appendix A to part 17 to read as follows:

Appendix A to Part 17—Form 102

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in part 17, either via the Commission's web portal or via XML-based, secure FTP transmission.

CFTC FORM 102
Identification of Special Accounts, Volume Threshold Accounts, and Consolidated Accounts

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[1] and the regulations thereunder,[2] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (*see*, e.g., 17 CFR § 17.01(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.

[1] 7 U.S.C. section 1, *et seq*.

[2] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

BACKGROUND & INSTRUCTIONS

17 CFR 17.01(a) requires each futures commission merchant, clearing member, or foreign broker to identify and report its special accounts to the Commission on Form 102. 17 CFR 17.01(b) requires each clearing member to identify and report its volume threshold accounts to the Commission on Form 102. In addition, 17 CFR 20.5 requires each reporting entity holding or carrying a consolidated account with a reportable position to identify and report the counterparty of such account to the Commission by submitting a 102S filing. As appropriate, please follow the instructions below to generate and submit the required report or filing. Unless the context requires otherwise, the terms used herein shall have the same meaning as ascribed in parts 15 to 21 of the Commission's regulations.

Complete Form 102 as follows:

General Information – Cover Sheet:	All filers.
Section 102A:	Only complete when submitting Form 102 for a special account.
Section 102B:	Only complete when submitting Form 102 for a volume threshold account.
Section 102S:	Only complete when submitting a 102S filing.
Signature/Authentication:	All filers.

Submitting Form 102: Once completed, please submit this form to the Commission pursuant to the instructions on www.cftc.gov or as otherwise directed by Commission staff. If submission attempts fail, the reporting trader shall contact the Commission at techsupport@cftc.gov for further technical support.

Please be advised that pursuant to 5 CFR 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

General Information – Cover Sheet.

Please indicate the type of account to be reported (choose only one):

Special Account (please complete section 102A)	☐
Volume Threshold Account 102 (please complete section 102B)	☐
Consolidated Account 102S filing (please complete section 102S)	☐

Reporting Firm Contact Information:[3]

Whether submitting Form 102 for a special account, volume threshold account, or as a 102S filing for a consolidated account, please provide the contact information of the reporting firm and, as applicable, indicate whether the reporting firm is a futures commission merchant, clearing member, foreign broker, and/or swap dealer. In addition, provide the reporting firm's reporting firm ID.[4]

Name of Reporting Firm: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Reporting Firm Contact Name (a natural person, "Contact"):
Contact Job Title:
Contact Phone Number:[5]
Contact Email Address:
Firm Website:
Firm NFA ID (if any):
Firm Legal Entity Identifier (if any):[6]
Reporting Firm Type(s) (mark all that apply):

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[3] The term "reporting firm" as used herein may refer to a futures commission merchant, clearing member, foreign broker, swap dealer, or other reporting entity, as appropriate.
[4] The "reporting firm ID" is an alpha-numeric identifier assigned by the Commission.
[5] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[6] If the Firm Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Reporting Firm, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Firm Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Firm Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

☐ Futures commission merchant

☐ Clearing member

☐ Foreign broker

☐ Swap dealer

☐ Other: _____

Reporting Firm ID:

Section 102A – Identifying and reporting a *special account*.

1. *New/Modified Indicator:*

☐ Special account being reported for the first time

☐ Re-submitted or modified Information for a previously reported special account

2. *Special Account Origination.*

For each special account, indicate whether the account is being reported based on ownership of a reportable position, control of a reportable position, both ownership and control of a reportable position, or because it is an omnibus account with a reportable position (choose only one):

Ownership of a reportable position[7] (complete questions 3, 4, 6, 9, and 10)	☐
Control of a reportable position (complete questions 3, 7, 9, and 10)	☐
Ownership and control of a reportable position (complete questions 3, 6, 7, 9, and 10)	☐
Omnibus account with a reportable position[8] (complete questions 3, 5, 8, 9, and 10)	☐

3. *Reporting number and name.*[9]

Provide the reporting number and name of the special account.

Special Account Number:
Special Account Name:

4. *House or Customer Indicator.*

If the reported special account is being reported based on ownership of a reportable position, indicate whether the special account is a house or customer account of the reporting firm:

☐ HOUSE

☐ CUSTOMER

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[7] Reporting parties are not required to submit Form 102A based solely on ownership of a reportable position at this time.

[8] Omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

[9] Reporting firms shall assign a reporting number and name to each special account when it is reportable for the first time in futures or options on futures. If an account has been assigned a number and name for reporting in futures (options), use the same number and name for reporting options (futures). Such reporting number and name must not be changed or assigned to any other special account without the prior approval of the Commission.

5. *Omnibus Account Information*.

If the reported special account is an omnibus account, indicate whether the account is a house or customer omnibus account:[10]

☐ HOUSE

☐ CUSTOMER

6. *Special Account Owner(s) Contact Information*.

Provide the following information regarding the owner of this special account. Owners may be natural persons or any type of legal entity.

Indicate whether the owner is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Special Account Owner: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[11]
Email Address:
Contact Name (if owner not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[12]
Contact Email Address:
Owner Website (if any):[13]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[14]

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[10] House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

[11] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[12] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[13] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[14] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Special Account Owner, Street Address, City, State, Country, and Zip/Postal Code (collectively, the

7. *Special Account Controller(s) Contact Information*.

Provide the following information regarding the controller of this special account. Controllers may be natural persons or any type of legal entity.

Indicate whether the controller is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Special Account Controller: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[15]
Email Address:
Contact Name (if controller not a natural person):
Contact Job Title:
Contact Relationship to Controller:
Contact Phone Number:[16]
Contact Email Address:
Controller Website (if any):[17]
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):[18]

"Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[15] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[16] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[17] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[18] If the Controller Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Special Account Controller, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the

8. *Omnibus Account Originator Contact Information.*

Provide contact information for the originator of the omnibus account in this special account.

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[19]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[20]
Contact Email Address:
Originator Website (if any):[21]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[22]

9. *Identification of Trading Account(s) that Comprise the Special Account.*

"Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[19] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[20] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[21] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[22] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

For each special account reported by an entity acting as a *clearing member*, provide the trading account number(s), and any related short code(s), that comprise this special account. Also identify the reporting market at which each trading account number appears.

Trading Account Number:
Short Code(s):
Reporting Market:

10. Trading Account Ownership and Control Information.

(i) Omnibus Account Information.

For each trading account identified in question 9, is such account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

☐ NO

If NO, proceed to (ii) and (iii), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[23]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[24]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[25]

[23] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

[24] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Contact Email Address:
Originator Website (if any):[26]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[27]

(ii) Trading Account Owner(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Trading Account Owner(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Follow-On Information:[28]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[29]
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[30]

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[25] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[26] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[27] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[28] Follow-On Information may be submitted by the later date specified in § 17.02.

[29] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Contact Email Address:
Owner Website (if any):[31]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[32]

(iii) Trading Account Controller(s).

For each trading account identified in question 9 that is not an omnibus account, provide the requested information for each controller ("controller"). NOTE: As defined in §15.00, the controller identified for a trading account that comprises or pertains to a special account must be a natural person.

Name of Trading Account Controller(s):

Follow-On Information:[33]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[34]
Name of Employer:
Employer NFA ID (if any):
Employer Legal Entity Identifier (if any):
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

11. For Reporting Firms That Are Foreign Brokers.

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[30] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[31] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[32] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Trading Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[33] Follow-On Information may be submitted by the later date specified in § 17.02.

[34] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

If the reporting firm indicated that it is a foreign broker in the "Reporting Firm Contact Information" above, identify the reporting firm's U.S. futures commission merchant.

Name of U.S. futures commission merchant:
Street Address:
City:
State:
Country:
Zip/Postal Code:
Contact Name at U.S. futures commission merchant (a natural person, "Contact"):
Contact Job Title:
Contact Phone Number:[35]
Contact Email Address:

_____

Section 102B – Identifying and reporting a *volume threshold account*.

1. *New/Modified Indicator:*

☐ Volume threshold account being reported for the first time

☐ Re-submitted or modified Information for a previously reported volume threshold account

2. *Trading Account Data for the Volume Threshold Account.*

Provide the trading account number, and any related short code(s), deemed to be a volume threshold account. Also identify the reporting market at which the volume threshold account had reportable trading volume.

Trading Account Number:
Short Code(s):
Reporting Market:

3. *Associated Special Account Number.*

If the volume threshold account has been previously identified as a trading account that comprises a special account(s) reported by a clearing member in question 9 in section 102A of this form, provide the associated special account number(s).

4. *Omnibus Account Information.*[36]

[35] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Is the reported volume threshold account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

☐ NO

If NO, proceed to (5) and (6), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[37]

☐ HOUSE

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[38]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[39]
Contact Email Address:
Originator Website (if any):[40]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[41]

[36] As above, omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.
[37] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.
[38] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[39] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[40] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[41] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the

5. *Volume Threshold Account Owner(s).*

For each volume threshold account that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Volume Threshold Account Owner(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]

Follow-On Information:[42]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[43]
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[44]
Contact Email Address:
Owner Website (if any):[45]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[46]

"Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[42] Follow-On Information may be submitted by the later date specified in § 17.02.

[43] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[44] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[45] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[46] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Volume Threshold Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields

6. *Volume Threshold Account Controller(s).*

For each volume threshold account identified that is not an omnibus account, provide the requested information for each volume threshold account controller ("controller"). NOTE: As defined in §15.00, a volume threshold account controller must be a natural person.

Name of Volume Threshold Account Controller(s):

Follow-On Information:[47]

Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[48]
Name of Employer:
Employer NFA ID (if any):
Employer Legal Entity Identifier (if any):
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

[47] Follow-On Information may be submitted by the later date specified in § 17.02.

[48] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Section 102S – Identifying and reporting a swap counterparty or customer *consolidated account* with a reportable position (102S filing).

1. *New/Modified Indicator.*

☐ Counterparty or customer reported for the first time

☐ Re-submitted or modified Information for a previously reported counterparty or customer

2. *102S Identifier.* Please enter the identifier for the consolidated account reported herein. A 102S identifier is a unique identifier for each reporting entity or counterparty/customer as assigned by the reporting entity. If the reporting entity currently identifies a counterparty via Section 102A of a Form 102, the identifier used on Section 102A of the Form 102 may also be used for the 102S identifier, as long as the same legal entity is referenced.

102S identifier:

3. *Counterparty or Customer Ownership and Control Information*. Please provide the requested counterparty or customer contact information for both owners and controllers of the consolidated account.

(i) Consolidated Account Type. Please indicate the consolidated account type:

☐ HOUSE ACCOUNT

☐ CUSTOMER ACCOUNT

(ii) Omnibus Account Information.[49]

Is the reported consolidated account an omnibus account, or used to execute trades for an omnibus account?

☐ YES

☐ NO

If NO, proceed to (iii) and (iv), below. If YES, indicate whether the account is a house or customer omnibus account and provide contact information for the originator of the omnibus account:[50]

☐ HOUSE

[49] As above, omnibus accounts are accounts that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

[50] As above, house omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.

☐ CUSTOMER

Name of Omnibus Account Originator: [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[51]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[52]
Contact Email Address:
Originator Website (if any):[53]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):[54]

(iii) Consolidated Account Owner(s).

For each reportable consolidated account that is not an omnibus account, provide the requested information for each owner ("owner").

Indicate whether the owner is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Consolidated Account Owner(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:

[51] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[52] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[53] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[54] If the Originator Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Omnibus Account Originator, Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Originator Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

City:
State:
Country:
Zip/Postal Code:
Phone Number:[55]
Email Address (if owner(s) a natural person):
Contact Name (provide only if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[56]
Contact Email Address:
Owner Website (if any):[57]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):[58]

(iv) Consolidated Account Controller(s).

For each reportable consolidated account that is not an omnibus account, provide the requested information for each controller ("controller"). Controllers may be natural persons or any type of legal entity.

Indicate whether the controller is a legal entity or a natural person:

Legal entity: ☐

Natural person: ☐

Name of Consolidated Account Controller(s): [For each field, check box if field reported to LEI provider in lieu of reported on this form ☐]
Street Address:
City:
State:
Country:
Zip/Postal Code:

[55] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[56] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[57] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.
[58] If the Owner Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Consolidated Account Owner(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Owner Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

Phone Number:[59]
Email Address:
Contact Name (provide only if controller is not a natural person):
Contact Job Title:
Contact Relationship to controller:
Contact Phone Number:[60]
Contact Email Address:
Controller NFA ID (if any):
Controller Legal Entity Identifier (if any):[61]

4. *Paired Swaps and Swaptions Market Activity*. Provide a brief description of the nature of the counterparty's or customer's paired swaps and swaptions market activity (please include a response for each type of paired swap or swaption market activity):

Enter the description here:

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[59] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[60] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[61] If the Controller Legal Entity Identifier was issued by the CICI Utility (or by any other CFTC-accepted LEI provider), then the reporting party is not required to report any of the fields marked above in bold and italics (Name of Consolidated Account Controller(s), Street Address, City, State, Country, and Zip/Postal Code (collectively, the "Optional Fields")) that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Furthermore, in the event the CICI Utility (or any other CFTC-accepted LEI provider) is modified in the future to accept any of the underlined fields above (the "Supplemental Fields"), then the reporting party will not be required to report any of the Supplemental Fields that were reported to the CICI Utility (or other CFTC-accepted LEI provider) and are associated with this Controller Legal Entity Identifier. Reporting parties that take advantage of such relief from duplicative reporting when making their web-based or FTP submission should check the box in the web form corresponding to the appropriate field (or make appropriate changes to their FTP data submission) to indicate that the omitted information has been reported to an LEI provider.

Signature/Authentication.

1. Please sign/authenticate the Form 102 prior to submitting.

Signature/Electronic Authentication:

☐ By checking this box and submitting this form (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting firm identified below to provide the information and representations submitted on this Form 102, and that the information and representations are true and correct.

Reporting Firm Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Firm Name)

Date of Submission:

_____

BILLING CODE 6351–01–C

■ 12. Add appendix B to part 17 to read as follows:

Appendix B to Part 17—Form 71

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in Part 17, either via the Commission's web portal or via XML-based, secure FTP transmission.

BILLING CODE 6351–01–P

CFTC FORM 71
IDENTIFICATION OF
OMNIBUS ACCOUNTS AND SUB-ACCOUNTS

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[1] and the regulations thereunder,[2] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4a, 4c(b), 4g, 4i and 8 of the CEA and related regulations (*see*, e.g., 17 CFR 17.01(c)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.

[1] 7 U.S.C. section 1, *et seq*.

[2] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

BACKGROUND & GENERAL INSTRUCTIONS

Who Must File a Form 71 – 17 CFR 17.01(c) requires each originator of (a) an omnibus volume threshold account or (b) an omnibus reportable sub-account (collectively, "Reporting Parties") to file a Form 71 – Identification of Omnibus Accounts and Sub-Accounts with the Commodity Futures Trading Commission ("CFTC" or "Commission").

When to file – Each Reporting Party must file a Form 71 on call by the Commission or its designee.

Where to file – The Form 71 shall be filed by submitting the completed form to the nearest CFTC office or as otherwise instructed by the Commission or its designee. Generally, a Form 71 should be submitted via the CFTC's web-based Form 71 submission process at www.cftc.gov or via a secure FTP data feed to the Commission. If submission attempts fail, the reporting trader shall contact the Commission at techsupport@cftc.gov for further technical support.

Signature – Each Form 71 submitted to the Commission must be signed or otherwise authenticated by an individual that is duly authorized by the relevant Reporting Party to provide the information and representations contained in the form.

What to File – Each Reporting Party must complete part A, the relevant question in part B, and part C.

Unless otherwise noted, the terms used herein shall have the same meaning as ascribed in parts 15 to 21 of the Commission's regulations.

Please be advised that pursuant to 5 CFR 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

ACKNOWLEDGEMENT OF DEFINITIONS

Before proceeding with your submission, please check this box to indicate that you have read the definitions for the following terms, as they are used in the Form 71: ☐

Commodity (or commodities) – generally, all goods and articles (except onions and motion picture box office receipts, or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value, or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in (*see* 7 U.S.C. 1a(9)).

Omnibus account – any trading account that one futures commission merchant, clearing member or foreign broker carries for another and in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm.

Omnibus reportable sub-account – means any trading sub-account of an omnibus volume threshold account, which sub-account executes reportable trading volume on an omnibus basis. Omnibus reportable sub-account also means any trading account that is itself an omnibus account, executes reportable trading volume, and is a sub-account of another omnibus reportable sub-account.

Omnibus volume threshold account – means any trading account that, on an omnibus basis, carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

Person – an individual, association, partnership, corporation, trust, or government agency and/or department.

Reportable sub-account – means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Reportable sub-account controller – means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

Reportable trading volume – means contract trading volume that meets or exceeds the level specified in 17 CFR 15.04.

Volume threshold account – means any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

CFTC FORM 71

A. **Re-confirmation of Omnibus Volume Threshold Account or Omnibus Reportable Sub-Account:**

Account number [(auto-populated)] was identified on Form [[102B] OR [71] (auto-populated)] by [[clearing member] OR [preceding originator] (auto-populated)] as an [[omnibus volume threshold account] OR [omnibus reportable sub-account] (auto-populated)] on [reporting market (auto-populated)].

The following information was provided on Form [[102B] OR [71] (auto-populated)] regarding you as the originator ("Originator") of this [[omnibus volume threshold account] OR [omnibus reportable sub-account] (auto-populated)]. Please update any incorrect information in the space provided below.

Name of Originator: [(Fields below will be auto-populated)] [space to correct incorrect info]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[3]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[4]
Contact Email Address:
Originator Website (if any):
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

B. Identification of Reportable Sub-Accounts:

The following questions request information regarding the allocation of trades from account number [[omnibus volume threshold account number] OR [omnibus reportable sub-account number] (auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)] to other accounts.

1. If you did not allocate any trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)], check this box and proceed to part C: □

2. If you allocated trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)], but the sum of allocations did not result in reportable trading volume for a recipient account on [date (auto-populated)], check this box and proceed to part C: □

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[3] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[4] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

3. If you allocated trades from account number [(auto-populated)] on [date (auto-populated)] on [reporting market (auto-populated)] that resulted in reportable trading volume for a recipient account, provide the following information for each such recipient account (hereafter, a "reportable sub-account"):

(a) Identification of Omnibus Reportable Sub-Accounts.

(i) Is the reportable sub-account an omnibus reportable sub-account?

□ YES
□ NO

(ii) If NO, proceed to (b) below. If YES, indicate whether the omnibus reportable sub-account is a house or customer omnibus account and provide the contact information of the originator of the omnibus account.[5]

□ HOUSE
□ CUSTOMER

Name of Reportable Sub-Account Originator:
Account Number of Reportable Sub-Account:[6]
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[7]
Contact Name:
Contact Job Title:
Contact Relationship to Originator:
Contact Phone Number:[8]
Contact Email Address:
Originator Website (if any):[9]
Originator NFA ID (if any):
Originator Legal Entity Identifier (if any):

(b) Identification of Non-Omnibus Reportable Sub-Accounts:

(i) For each reportable sub-account that is not an omnibus account, provide the requested information for each owner ("owner") of the reportable sub-account.

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[5] House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity.
[6] The Account Number should be a number or other identifier that is known to the reportable sub-account originator.
[7] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[8] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.
[9] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

Indicate whether the owner is a legal entity or a natural person:

Legal entity: □

Natural person: □

Name of Reportable Sub-Account Owner(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[10]
Email Address (if owner is a natural person):
Contact Name (if owner is not a natural person):
Contact Job Title:
Contact Relationship to Owner:
Contact Phone Number:[11]
Contact Email Address:
Owner Website (if any):[12]
Owner NFA ID (if any):
Owner Legal Entity Identifier (if any):

(ii) For each reportable sub-account that is not an omnibus account, provide the requested information for each reportable sub-account controller. (NOTE: a reportable sub-account controller must be a natural person.)

Name of Reportable Sub-Account Controller(s):
Street Address:
City:
State:
Country:
Zip/Postal Code:
Phone Number:[13]
Name of Employer:
Job Title:
Relationship to Owner:
Email Address:
Controller NFA ID (if any):

After completing the applicable questions in part B.3, proceed to part C.

C. Signature/Authentication, Name, and Date:

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[10] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[11] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[12] The website and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the website and NFA ID if this information has not been previously collected.

[13] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Please sign/authenticate the Form 71 prior to submitting.

Signature/ Electronic Authentication of [Originator (auto-populated)]:

□ By checking this box and submitting this form (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by [Originator (auto-populated)] to provide the information and representations submitted on this Form 71, and that the information and representations are true and correct.

Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ [Originator (auto-populated)]

Date of Submission:

_____

PART 18—REPORTS BY TRADERS

■ 13. The authority citation for part 18 is revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 6t, 12a, and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 14. Revise § 18.04 to read as follows:

§ 18.04 Statement of reporting trader.

(a) Every trader who owns, holds, or controls a reportable futures and option position shall after a special call upon such trader by the Commission or its designee file with the Commission a ''Statement of Reporting Trader'' on the Form 40, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

(b) Every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account shall after a special call upon such person by the Commission or its designee file with the Commission a ''Statement of Reporting Trader'' on the Form 40, to be completed in accordance with the instructions thereto, at such time and place as directed in the call.

■ 15. Amend § 18.05 to revise introductory paragraph (a), and paragraphs (b) and (c), to read as follows:

§ 18.05 Maintenance of books and records.

(a) Every volume threshold account controller; person who owns a volume threshold account; reportable sub-account controller; person who owns a reportable sub-account; and trader who owns, holds, or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity or swap:

* * * * *

(b) Every such volume threshold account controller; person who owns a volume threshold account; reportable sub-account controller; person who owns a reportable sub-account; and trader who owns, holds, or controls a reportable futures or option position shall also keep books and records showing all details concerning all positions and transactions in the cash commodity or swap, its products and byproducts, and all commercial activities that it hedges in the futures, option, or swap contract in which it is reportable.

(c) Every volume threshold account controller; person who owns a volume threshold account; reportable sub-account controller; person who owns a reportable sub-account; and trader who owns, holds, or controls a reportable futures or option position shall upon request furnish to the Commission any pertinent information concerning such positions, transactions, or activities in a form acceptable to the Commission.

■ 16. Add appendix A to part 18 to read as follows:

Appendix A to Part 18—Form 40

Note: This Appendix is a representation of the final reporting form, which will be submitted in an electronic format pursuant to the rules in Part 18, either via the Commission's web portal or via XML-based, secure FTP transmission.

BILLING CODE 6351–01–P

CFTC FORM 40
STATEMENT OF REPORTING TRADER

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[1] and the regulations thereunder,[2] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 U.S.C. 9), section 9(a)(3) of the Act (7 U.S.C. 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 U.S.C. 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting information from traders with large futures, option, swap, or other derivatives market positions is granted in sections 4a, 4i, 4t and 8 of the CEA (*see* 7 U.S.C. sections 6i and 12). The Commission's authority for soliciting information from volume threshold account controllers, persons who own volume threshold accounts, reportable sub-account controllers, and persons who own reportable sub-accounts is granted in sections 4i and 8 of the CEA and related regulations (*see*, e.g., 17 CFR 18.04(b)). Such entities and individuals are required to provide the information requested, and failure to comply may result in the imposition of criminal or administrative sanctions (*see*, e.g., 7 U.S.C. sections 9 and 13a-1, and/or 18 U.S.C. 1001).

The information requested is most commonly used in the Commission's market and trade practice surveillance activities to (a) provide information concerning the size and composition of the commodity derivatives markets, (b) permit the Commission to monitor and enforce speculative position limits and (c) enhance the Commission's trade surveillance data. Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to contract markets to meet responsibilities assigned to them by law. In accordance with the Privacy Act and the Commission's rules thereunder (*see* 17 CFR part 146), the complete listing of uses of the information contained in these records is found in the Commission's System of Records Notices, available on www.cftc.gov. These uses include CFTC-15, Large Trader Report Files (Integrated Surveillance System).

Information contained in these records may be used by the Commission in the conduct of investigations or litigation and, in limited circumstances, may be made public in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies and to reporting markets to meet responsibilities assigned to them by law.

[1] 7 U.S.C. section 1, *et seq*.

[2] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq*.

BILLING CODE 6351–01–P

General Instructions

Who Must File a Form 40—17 CFR 18.04(a) requires every person who owns or controls a reportable position to file a Form 40—Statement of Reporting Trader with the Commission. 17 CFR 18.04(b) requires every volume threshold account controller, person who owns a volume threshold account, reportable sub-account controller, and person who owns a reportable sub-account to file a Form 40—Statement of Reporting Trader with the Commission. 17 CFR 20.5 requires every person subject to books or records under 17 CFR 20.6 to file a 40S filing[3] with the Commission.

[3] As used in this document, ''Form 40'' may refer to either a Form 40—Statement of Reporting Trader or a 40S Filing, as appropriate, and as the context may require.

When to file—A reporting trader must file a Form 40 on call by the Commission or its designee.

Where to file—The Form 40 should be submitted (a) via the CFTC's web-based Form 40 submission process at *www.cftc.gov,* (b) via a secure FTP data feed to the Commission, or (c) as otherwise instructed by the Commission or its designee. If electronic submission attempts fail, the reporting trader shall contact the Commission at *techsupport@cftc.gov* for further technical support.

When to update—A reporting trader required to complete a Form 40 will be under a continuing obligation, per direction in the special call, to update and maintain the accuracy of the information it provides. Reporting traders can update this information by either visiting the CFTC's web-based Form 40 portal to review, verify, and/or update their information, or by submitting updated information via FTP.

Signature—Each Form 40 submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting trader submitting the form or (2) an individual that is duly authorized by the reporting trader to provide the information and representations contained in the form.

What to File—All reporting traders that are filing a Form 40 pursuant to either 17 CFR 18.04(a) (*i.e.* reportable position reporting traders) or 17 CFR 20.5 (*i.e.* swaps books and records reporting traders) must complete all questions. All reporting traders that are filing a Form 40 pursuant to 17 CFR 18.04(b) (*i.e.* volume threshold account controllers, persons who own a volume threshold account, reportable sub-account controllers, and persons who own a reportable sub-account reporting trader) must complete all questions *unless they are natural persons.* Reporting traders that are filing a Form 40 pursuant to 17 CFR 18.04(b) who are natural persons shall mark not applicable for questions 7 and 8.

Please be advised that pursuant to 5 CFR 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Table of Contents

1. General information for Reporting Trader
2. Contact Information for Individual Responsible for Trading Activities
3. Contact Information for Individual Responsible for Risk Management Operations
4. Contact information for Individual Responsible for Information on the Form 40
5. Omnibus Account Identification
6. Foreign Government Affiliation
7. Non-Domestic Entity Indicator
8. Ownership Structure (Parent/Parents)
9. Ownership Structure (Subsidiary/Subsidiaries)
10. Control of Reporting Trader's Trading Activities by Others
11. Control of Other's Trading Activities by Reporting Trader
12. Other Parties Influencing Trading of Reporting Trader
13. Trading Subject to Express or Implied Agreement
14. Commodity Index Trading Indicator
15. Swap Dealer Identification
16. Major Swap Participant Identification
17. Business Sectors, Subsectors and Occupation
18. Commodities Being Traded in Derivative Markets
19. Business Purpose for Trading in Derivative Markets
20. Signature/Authentication, Name, and Date

Acknowledgement of Definitions

Before proceeding with your submission, please check this box to indicate that you have read the definitions for the following terms—as they are used in the Form 40: ☐

Commodity (or commodities)—generally, all goods and articles (except onions and motion picture box office receipts, or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value, or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in (*see* 7 U.S.C. 1a(9)).

Commodity Index Trading (''CIT'')—means:

a. An investment strategy that consists of investing in an instrument (*e.g.,* a commodity index fund, exchange-traded fund for commodities, or exchange-traded note for commodities) that enters into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities; or

b. An investment strategy that consists of entering into one or more derivative contracts to track the performance of a published index that is based on the price of one or more commodities, or commodities in combination with other securities.

Control—as used in this Form, ''control'' means to actually direct, by power of attorney or otherwise, the trading of a special account or a consolidated account. A special account or a consolidated account may have more than one controller.

Derivatives—futures, options on futures, and swaps.

Omnibus volume threshold account—means any trading account that, on an omnibus basis, carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

Parent—for purposes of Form 40, a person is a parent of a reporting trader if it has a direct or indirect controlling interest in the reporting trader; and a person has a controlling interest if such person has the ability to control the reporting trader through the ownership of voting equity, by contract, or otherwise.

Person—an individual, association, partnership, corporation, trust, or government agency and/or department.

Reportable sub-account—means any trading sub-account of an omnibus volume threshold account or omnibus reportable sub-account, which sub-account executes reportable trading volume.

Reportable sub-account controller—means a natural person who by power of attorney or otherwise actually directs the trading of a reportable sub-account. A reportable sub-account may have more than one controller.

Reportable trading volume—means contract trading volume that meets or exceeds the level specified in 17 CFR 15.04.

Reporting trader—a person who must file a Form 40, whether pursuant to 17 CFR 18.04(a), 17 CFR 18.04(b), or 17 CFR 20.05.

Subsidiary—for purposes of Form 40, a person is a subsidiary of a reporting trader if the reporting trader has a direct or indirect controlling interest in the person; and a reporting trader has a controlling interest if such reporting trader has the ability to control the person through the ownership of voting equity, by contract, or otherwise.

Volume threshold account—means any trading account that carries reportable trading volume on or subject to the rules of a reporting market that is a board of trade designated as a contract market under section 5 of the Act or a swap execution facility registered under section 5h of the Act.

Volume threshold account controller—means a natural person who by power of attorney or otherwise actually directs the trading of a volume threshold account. A volume threshold account may have more than one controller.

CFTC Form 40

General Information for Reporting Trader:

For question 1, please provide the name, contact information and other requested information regarding the reporting trader. If the reporting trader is an individual, provide their full legal name and the name of the reporting trader's employer.

1. Indicate whether the reporting trader is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name of Reporting Trader
Street Address
City
State
Country
Zip/Postal Code
Phone Number [4]
Email Address
Web site
NFA ID (if any)
Legal Entity Identifier (if any)
Name of Employer
Employer NFA ID (if any)
Employer Legal Entity Identifier (if any)

Contact Information

For questions 2, 3, and 4, provide the name and contact information as requested.

2. Individual to contact regarding the derivatives trading of the reporting trader (this individual should be able to answer specific questions about the reporting trader's trading activity when contacted by Commission staff):

Check here if this individual has the same contact information as that of the reporting trader.

[4] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [5]
Email Address
NFA ID (if any)

3. Individual to contact regarding the risk management operations of the reporting trader (this individual should be able to answer specific questions about the reporting trader's risk management operations, including account margining, when contacted by Commission staff):

Check here if this individual has the same contact information as that of the reporting trader.

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [6]
Email Address
NFA ID (if any)

4. Individual responsible for the information on the Form 40 (this individual should be able to verify, clarify, and explain the answers submitted by a reporting trader on the Form 40):

Check here if this individual has the same contact information as that of the reporting trader.

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [7]
Email Address
NFA ID (if any)

Omnibus Account Identification

For question 5, indicate whether the reporting trader has a customer omnibus account with a futures commission merchant, clearing member, or foreign broker (NOTE: For the purpose of this question, an omnibus account is an account that one futures commission merchant, clearing member or foreign broker carries for another in which the transactions of multiple individual accounts are combined. The identities of the holders of the individual accounts are not generally known or disclosed to the carrying firm. In addition, the Commission has traditionally identified omnibus accounts as either *house* or *customer* omnibus accounts. House omnibus accounts exclusively contain the proprietary accounts of the omnibus account originator. Customer omnibus accounts contain the accounts of customers of the omnibus account originator. It is the obligation of the omnibus account originator to correctly identify the omnibus account type to the reporting entity):

5. Does the reporting trader have a customer omnibus account with a futures commission merchant, clearing member, or foreign broker? YES/NO

IF YES, Give the name(s) of the futures commission merchant, clearing member, or foreign broker carrying the account(s) of the reporting trader.

Foreign Government Affiliation

For question 6, please complete the following (NOTE: For the purpose of this question, affiliation can include, but is not limited to, a situation (1) where the foreign government directly or indirectly controls the reporting trader's assets, operations, and/or derivatives trading, or (2) where the reporting trader operates as a direct or indirect subsidiary of a foreign government, its agencies or departments, or any investment program of the foreign government):

6. Is the reporting trader directly or indirectly affiliated with a government other than that of the United States? YES/NO

IF YES, give the name of the government(s).

IF YES, explain the nature of the affiliation between the reporting trader and the government(s) listed above.

Non-Domestic Entity Indicator

For question 7, if the Reporting Trader is a legal entity, please complete the following.

7. Is the reporting trader organized under the laws of a country other than the United States? YES/NO

IF YES, give the name of the country or countries under whose laws the reporting trader is organized.

Ownership Structure of the Reporting Trader

For questions 8 and 9, provide the requested ownership information only as applicable.

If the Reporting Trader is a commodity pool, also provide the requested information in questions 8i, 8ii, and 8iii. If the Reporting Trader is reporting commodity pools in which it has an ownership interest, also provide the requested information in questions 9i, 9ii, and 9iii.

8. List all the parents of the reporting trader (including the immediate parent and any parent(s) of its parent) and, separately, all persons that have a 10 percent or greater ownership interest in the reporting trader (commodity pool investors are deemed to have an ownership interest in the pool). For each such parent or 10 percent or greater owner include the following information:

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [8]
Web site [9]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Parent Company/10% Owner/or Both Indicator

8i. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant, indicate if they are a principal or affiliate of the operator of the commodity pool.

Principal/Affiliate Indicator

8ii. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant, indicate if they are also a commodity pool operator of the pool.

Commodity Pool Operator Indicator

8iii. For each person identified in question 8 that is a limited partner, shareholder, or other similar type of pool participant and where the operator of the commodity pool is exempt from registration under § 4.13 of the Commission's regulations, indicate if that person has an ownership or equity interest of 25 percent or greater in the commodity pool.

25% Ownership Indicator

9. List all the subsidiaries of the reporting trader (including the immediate subsidiary and any subsidiaries of those subsidiaries) and, separately, all persons in which the reporting trader has a 10 percent or greater ownership interest (including a 10 percent or greater interest in a commodity pool(s)). Only list subsidiaries and persons that engage in derivatives trading. For each such subsidiary and/or person include the following information:

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [10]
Web site [11]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)

[5] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[6] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[7] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[8] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[9] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[10] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[11] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

Subsidiary/10% Ownership/or Both Indicator

9i. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant, indicate if you are a principal or affiliate of the operator of the commodity pool.

Principal/Affiliate Indicator

9ii. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant, indicate if you are the commodity pool operator for the pool.

Commodity Pool Operator Indicator

9iii. For each person identified in question 9 that is a commodity pool and for which you are a limited partner, shareholder or other similar type of pool participant and for which the operator of the commodity pool is exempt from registration under § 4.13 of the Commission's regulations, indicate if you have an ownership or equity interest of 25 percent or greater in the commodity pool.

25% Ownership Indicator

Control of Trading

For questions 10, 11, 12, and 13 provide the requested control information only as applicable.

10. List all persons outside of the reporting trader that control some or all of the derivatives trading of the reporting trader (including persons that may have been previously identified as a parent, above):

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [12]
Web site [13]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

11. List all persons for which the reporting trader controls some or all of the derivatives trading (including persons that may have been previously identified as a subsidiary, above):

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [14]
Web site [15]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

12. List any other person(s) that directly or indirectly influence, or exercise authority over, some or all of the trading of the reporting trader, but who do not exercise ''control'' as defined in this Form: Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [16]
Web site [17]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

13. Is some or all of the derivatives trading of the reporting trader subject to an express or implied agreement or understanding with any other person(s) not addressed in questions 10, 11, or 12, above? YES/NO

If yes, provide the following information:

Indicate whether the party identified below is a legal entity or a natural person:

Legal entity: ☐
Natural person: ☐

Name
Street Address
City
State
Country
Zip/Postal Code
Phone Number [18]
Web site [19]
Email Address
NFA ID (if any)
Legal Entity Identifier (if any)
Some/All Indicator

Commodity Index Trading Indicator

For question 14, please answer the following:

14i. Is the reporting trader engaged in commodity index trading as defined in paragraph (a) of the definition of CIT above? YES/NO

14ii. Is the reporting trader engaged in commodity index trading as defined in paragraph (b) of the definition of CIT above? YES/NO

a. If the reporting trader is engaged in CIT (as defined in paragraph (b)) with respect to one or more commodities or commodity groups appearing on Supplemental List II, indicate whether the reporting trader is, in the aggregate, pursuing long exposure or short exposure with respect to such commodities or commodity groups. It is not necessary to respond to this question with respect to CIT that tracks the performance of multiple unrelated commodities or commodity groups (*e.g.,* an investment in an exchange-traded fund that tracks the performance of an index representing commodities spanning multiple commodity groups).

14iii. If the reporting trader is currently engaged in commodity index trading as defined in paragraphs (a) or (b) of the CIT definition above, indicate the month and year on which the reporting trader first became engaged in commodity index trading.

Swaps Participation Indicators

For questions 15 and 16, please indicate if the reporting trader meets the specified definition:

15. Is the reporting trader a Swap Dealer, as defined in § 1.3(ppp) of regulations under the Commodity Exchange Act? YES/NO

16. Is the reporting trader a Major Swap Participant, as defined in § 1.3(qqq) of regulations under the Commodity Exchange Act? YES/NO

Nature of Business and of Derivatives Trading Activities

For questions 17, 18, and 19 provide the requested information only as applicable.

17. Select all business sectors and subsectors that pertain to the business activities or occupation of the reporting trader. If more than one business subsector is selected, indicate which business subsector primarily describes the nature of the reporting trader's business.

Choose From Supplemental List I

18. Select all commodity groups and individual commodities that the reporting trader presently trades or expects to trade in the near future in derivative markets.

Choose From Supplemental List II

19. For each selected individual commodity identified in question 18, indicate the business purpose(s) for which the reporting trader uses derivative markets.

[12] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[13] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[14] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[15] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[16] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[17] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

[18] Please provide a direct number, without any telephone extension. Non-U.S. respondents should also provide the applicable international area code.

[19] The Web site and NFA ID requested in this question are only required to be reported to the extent the respondent has this information available in its records. Respondents are not required to poll customers or other parties for the Web site and NFA ID if this information has not been previously collected.

If the reporting trader has more than one business purpose for trading in an individual commodity, also indicate the predominant business purpose.

Choose From Supplemental List III

Signature/Authentication, Name, and Date

20. Please sign/authenticate the Form 40 prior to submitting.

Signature/Electronic Authentication:

☐ By checking this box and submitting this form (or by clicking ''submit,'' ''send,'' or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting trader identified below to provide the information and representations submitted on this Form 40, and that the information and representations are true and correct.

Reporting Trader Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Trader Name)

Date of Submission:

_____

Supplemental List I: List of Business Sectors and Subsectors

Business Sector

Subsector

Agriculture and Forestry
- Oilseed Farming
- Grain Farming
- Fruit and Tree Nut Farming
- Other Crop Farming (Specify)
- Cattle Ranching and Farming
- Hog and Pig Farming
- Poultry and Egg Production
- Sheep and Goat Farming
- Other Animal Production
- Forestry, Logging, or Timber Production
- Cooperative
- Other (Specify)

Mining, Oil and Natural Gas Extraction
- Oil Exploration/Production
- Natural Gas Exploration/Production
- Coal Mining
- Precious Metal Mining
- Non-Precious Metal Mining
- Other (Specify)

Utilities
- Utility/Cooperative
- Electric Power Generation
- Local Distribution Company
- Natural Gas Distribution
- Other (Specify)

Construction
- Building Construction
- Heavy and Civil Engineering Construction
- Other (Specify)

Manufacturing, Refining and Processing
- Animal Food Manufacturing
- Grain Milling
- Oilseed Milling
- Sugar and Confectionery Product Manufacturing
- Fruit and Vegetable Preserving and Specialty Food Manufacturing
- Dairy Product Manufacturing
- Animal Slaughtering and Processing
- Bakeries
- Other Food Manufacturing
- Beverage Manufacturing Textile Mills
- Textile Product Mills
- Apparel Manufacturing
- Wood Product Manufacturing
- Paper Manufacturing
- Pulp, Paper, and Paperboard Mills
- Petroleum and Coal Products Manufacturing
- Renewable Fuels Manufacturing
- Petrochemical/Chemical Manufacturing
- Plastics and Rubber Products Manufacturing
- Natural Gas Processing
- Precious Metal Processor/Smelter
- Non-Precious Metal Processor
- Metals Fabricator
- Other (Specify)

Wholesale Trade
- Lumber and Other Construction Materials Merchant Wholesalers
- Metal and Mineral Merchant Dealer
- Grocery and Related Product Merchant Wholesaler
- Farm Product Raw Material Merchant Wholesalers
- Chemical and Allied Products Merchant Wholesalers
- Petroleum and Petroleum Products Merchant Wholesalers
- Natural Gas, Power Marketer
- Importer/Exporter (specify commodities)
- Other (Specify)

Retail Trade
- Building Materials and Supplies Dealers
- Food and Beverage Stores
- Jeweler/Precious Metals Retailer
- Vehicle Fuel Retailer/Convenience Store Operator
- Fuel Dealers
- Other (Specify)

Transportation and Warehousing
- Air Transport
- Trucking
- Pipeline Transportation of Crude Oil
- Pipeline Transportation of Natural Gas
- Farm Product Warehousing and Storage
- Energy Distributor (warehousing, storage)
- Other (Specify)

End User (NOTE: May not be the only/primary subsector selected)
- Metals End User (Construction Co., Brass Mill, Steel Mill)
- Emissions End User (Factory, Industrial Cos.)
- Petroleum End User (Airline Cos. Municipalities, Industrial Cos., Trucking Cos.)

Information
- Other (Specify)

Financial Institutions and Investment Management

Dealers and Financial Intermediaries
- Broker/Dealer
- Bank Holding Company
- Investment/Merchant Bank
- Non-US Commercial Bank
- US Commercial Bank
- Swaps/Derivatives Dealer
- Universal Bank

Asset/Investment/Fund Management:
- Asset/Investment Manager
  - Institutional Clients
  - Retail Clients
- Managed Accounts and Pools (CTAs, CPOs, etc.)
  - Institutional Clients
  - Retail Clients
- College Endowment, Trust, Foundation
- Fund of Hedge Funds
- Hedge Fund
- Mutual Fund
- Pension Fund
- Private Wealth Management
- Private Bank
- Exchange Traded Fund Issuer
- Exchange Traded Note Issuer

Government Financial Institution:
- Central Bank
- Sovereign Wealth Fund
- Government Sponsored Enterprise (GSE)
- Other Governmental Entity (Specify)

Other Financial or Trading Entities:
- Arbitrageur
- Individual Trader/Investor
- Floor Broker
- Floor Trader
- Market Maker
- Proprietary Trader
- Corporate Treasury
- Mortgage Originator
- Savings Bank
- Credit Union
- Insurance Company
- Other (Specify)

Real Estate
- Other (Specify)

Arts, Entertainment, and Recreation
- Performing Arts Companies
- Promoters of Performing Arts
- Agents and Managers for Artists and Entertainers
- Independent Artists, Writers, Performers
- Other (Specify)

Accommodation and Food Services
- Food Services
- Other (Specify)

Public Administration
- Administration of Environmental Quality Programs
- Administration of Economic Programs
- Other (Specify)

Supplemental List II: Commodity Groups and Individual Commodities

Commodity Group

Individual Commodity

GRAINS
- OATS
- WHEAT
- CORN
- RICE

LIVESTOCK/MEAT PRODUCTS
- LIVE CATTLE
- PORK BELLIES
- FEEDER CATTLE
- LEAN HOGS

DAIRY PRODUCTS
- MILK
- BUTTER
- CHEESE

OILSEED AND PRODUCTS
- SOYBEAN OIL
- SOYBEAN MEAL
- SOYBEANS

FIBER
- COTTON

FOODSTUFFS/SOFTS
- COFFEE
- FROZEN CONCENTRATED ORANGE JUICE
- SUGAR

COCOA
OTHER AGRICULTURAL
REAL ESTATE
CURRENCY
EQUITIES AND EQUITY INDICIES
INTEREST RATES
TREASURY COMPLEX
OTHER INTEREST RATE PRODUCTS
OTHER FINANCIAL INSTRUMENTS
PETROLEUM AND PRODUCTS
JET FUEL
ETHANOL
BIODIESEL
FUEL OIL
HEATING OIL
GASOLINE
NAPHTHA
CRUDE OIL
DIESEL
NATURAL GAS AND PRODUCTS
NATURAL GAS LIQUIDS
NATURAL GAS
ELECTRICITY AND SOURCES
COAL
ELECTRICITY
URANIUM
PRECIOUS METALS
PALLADIUM
PLATINUM
SILVER
GOLD
BASE METALS
STEEL
COPPER
WOOD PRODUCTS
LUMBER
PULP
CHEMICALS
PLASTICS
EMISSIONS
WEATHER
OTHER (SPECIFY)

Supplemental List III: Business Purposes of Commodity Derivatives Trading

Business Purpose

Definition

Example

Offsetting Cash or Spot Market Input Price Risk

Using derivative markets for commodities that are direct inputs or purchases for your business so as to offset price risk associated with your purchase of these inputs.

E.g. You are a grain processor, so you use wheat futures to offset the price risk incidental to your cash purchases of wheat.

Offsetting Cash or Spot Market Output Price Risk

Using derivative markets for commodities that are direct outputs or sales of your business so as to offset price risk associated with your sale of these outputs.

E.g. You are a gasoline refiner, so you use gasoline futures to offset price risk associated with your production of gasoline.

Offsetting Other Cash or Spot Market Price Risks (Cross Price Risk)

Using derivative markets for a commodity that is not a direct input or output of your business, but which has significant price correlations with the direct inputs or outputs of your business.

E.g. You manufacture ethanol which is used as an additive in and competitor for gasoline as a combustive fuel. While you neither directly consume nor produce gasoline, you may find that the price you receive for your ethanol product is highly correlated with the price of gasoline, and therefore you reduce ethanol price risk by using gasoline futures contracts.

Other Physical Risk Management Strategies

Managing other price risks incidental to the operation of your business or physical assets through the use of commodity derivative markets.

E.g. You are a manufacturer with significant international sales, so you use foreign currency futures to offset risks associated with changes in the competitiveness of your exports and therefore the value of your physical assets such as production plants, land, machinery, etc.

Client Futures/Options on Futures Trading

Fulfilling customer/client desire for portfolio diversification or exposure to various asset classes through your activity as a Commodity Pool Operator, Commodity Trading Advisor, or other similar role.

E.g. You collect funds and execute trading strategies through the use of futures/options on futures markets at the expressed intent and for the sole benefit of clients.

Managing Client Swaps Exposure

Reducing risk stemming from holding or executing swaps contracts on behalf of clients or customers through the use of futures/options on futures markets.

E.g. You sell crude oil swaps to a client and agree to accept the risk inherent in the index price. You offset this risk through purchases of crude oil futures, in effect transferring price risk from the client to another market participant.

Making Markets/Providing Liquidity

Engaging in derivatives transactions to assume risk and help transfer ownership of derivative positions from one market participant to another, realizing the bid-ask spread as the return.

E.g. You accept risk by buying and selling futures/options on futures contracts so that other traders can move into and out of positions when they wish. You then find other traders willing to take the other side of those transactions.

Arbitrage

Using derivative markets as part of a strategy designed to realize risk-free profit from pricing anomalies.

E.g. You realize that the wheat futures contract is trading at a discount (even after considering storage, transport, etc.) relative to the wheat cash price, and therefore find it profitable to purchase the wheat futures contract, take delivery, and then resell the wheat in the cash market for a risk-free profit.

Establishing Price Exposure

Using derivative markets as a way to express your belief in the future movement of market prices. This strategy does not involve offsetting risks incidental to your business, but instead involves directional trading.

E.g. You conduct research and believe that crude oil prices are due to rise, so you take long futures positions in crude oil to profit from your predictions.

Financial Asset Management

Using derivatives to diversify, rebalance, or otherwise allocate financial assets so that risks to the value of the investment portfolio are reduced. This strategy is used by entities such as pension funds and endowments to manage overall risk to their financial portfolios.

E.g. You hold Treasury bonds as a component of your investment portfolio, and use futures contracts to reduce overall portfolio risk that would result from falling bond prices.

Managing Proprietary Swaps Exposure

Reducing risk stemming from your proprietary holding or execution of swaps contracts through the use of futures/options on futures markets.

E.g. You trade interest rate swaps as part of your business or investment strategy, and offset some of the risk inherent in those swaps through your use of Eurodollar futures markets.

Other: Specify

List and explain your business purpose if the above categories do not adequately describe the reason you trade in a particular commodity derivative market.

PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

■ 17. The authority citation for part 20 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 18. Amend § 20.5 to:
■ a. Revise paragraphs (a)(1) and (a)(2); and
■ b. Add paragraphs (a)(4) and (a)(5)

The revisions and additions to read as follows:

§ 20.5 Series S filings.

(a) * * *

(1) When a counterparty consolidated account first becomes reportable, the reporting entity shall submit a 102S filing, in accordance with the form instructions and as specified in this section.

(2) A reporting entity may submit a 102S filing only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions.

* * * * *

(4) *Change updates.* If any change causes the information filed by a

clearing member or swap dealer on a Form 102 for a consolidated account to no longer be accurate, then such clearing member or swap dealer shall file an updated Form 102 with the Commission no later than 9 a.m. on the business day after such change occurs, or on such other date as directed by special call of the Commission, *provided that,* a clearing member or swap dealer may stop providing change updates for a Form 102 that it has submitted to the Commission for any consolidated account upon notifying the Commission or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(5) *Refresh updates.* For Consolidated Accounts—Starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), each clearing member or swap dealer shall resubmit every Form 102 that it has submitted to the Commission for each of its consolidated accounts, *provided that,* a clearing member or swap dealer may stop providing refresh updates for a Form 102 that it has submitted to the Commission for any consolidated account upon notifying the Commission or its designee that the account in question is no longer reportable as a consolidated account and has not been reportable as a consolidated account for the past six months.

* * * * *

Issued in Washington, DC, on November 5, 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 Ownership and Control Reports, Forms 102/102S, 40/40S, and 71—Commission Voting Summary and Statement of Chairman

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule on ownership and control reporting as it provides the Commission with greater detail on both who owns accounts and who controls accounts in the futures, options on futures, and swaps markets.

The reforms require, for the first time, that accounts which trade more than a certain volume in a day have to disclose who owns or controls them. Previously, the Commission only had a window into the ownership of those accounts that had large positions at the end of the day. This new information is critical in today's world of high frequency trading, as many accounts trade often throughout the day but end the day without reportable positions. Thus, with these reforms, the Commission will get additional tools to oversee the markets' largest day traders and high frequency traders.

There is also flexibility built into the rule such that if some of the required information on accounts has already been reported through a legal entity identifier, the market participant does not have to submit it twice.

Further this rule modernizes the reporting by requiring electronic submission of information, rather than by mailing or faxing forms.

These reforms enhance the Commission's ability to oversee the markets, as well as detect market manipulation and abusive or disruptive trading practices.

[FR Doc. 2013–26789 Filed 11–15–13; 8:45 am]

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Part III

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, 208, 212 et al.

Defense Federal Acquisition Regulation Supplement; Interim Rule and Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 208, 212, 215, 233, 239, 244, and 252

RIN 0750–AH96

Defense Federal Acquisition Regulation Supplement: Requirements Relating to Supply Chain Risk (DFARS Case 2012–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011, as amended by the NDAA for FY 2013. This interim rule allows DoD to consider the impact of supply chain risk in specified types of procurements related to national security systems.

DATES: *Effective* November 18, 2013.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before January 17, 2014, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012–D050, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D050'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D050.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D050'' on your attached document.

○ *Email:* dfars@osd.mil. Include DFARS Case 2012–D050 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Dustin Pitsch, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Dustin Pitsch, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, telephone 571–372–6090.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends the DFARS to implement section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383), entitled ''Requirements for Information Relating to Supply Chain Risk,'' as amended by section 806 of the NDAA for FY 2013 (Pub. L. 112–239), and allows DoD to consider the impact of supply chain risk in specified types of procurements related to national security systems. Section 806 defines supply chain risk as ''the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.''

II. Discussion and Analysis

This DFARS change is necessary to implement the authorities provided to DoD by section 806, enabling DoD to establish a pilot program to mitigate supply chain risk, which is set to expire on September 30, 2018. These authorities are in addition to other available mitigations, which may not be adequate to protect against the malicious actions referred to in the definition of supply chain risk.

Section 806 actions are permitted in procurements related to National Security Systems (NSS) (see 44 U.S.C. 3542(b)) that include a requirement relating to supply chain risk. This rule implements section 806's three supply-chain risk-management approaches as follows:

(1) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of 10 U.S.C. 2319, for the purpose of reducing supply chain risk in the acquisition of covered systems.

(2) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(3) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

The rule establishes a new provision and clause (see DFARS 239.7306) for inclusion in all solicitations and contracts, including contracts for commercial items or commercial off-the-shelf items involving the development or delivery of any information technology, whether acquired as a service or as a supply, because portions of these contracts may be used to support or link with one or more NSS. Another reason for including the provision and clause in all DoD solicitations and contracts for information technology is to manage the operational security risks of including the provision and clause only in procurements for very sensitive DoD procurements, thereby identifying those very procurements as a target for the risk section 806 aims to deter.

However, several limiting provisions exist before the Government can exercise its authorities under section 806. First, use of section 806 authorities is limited to the procurement of NSS or of covered items of supply used within NSS. Section 806 defines a ''covered item of supply'' as ''an item of information technology . . . that is purchased for inclusion in (an NSS), and the loss of integrity of which could result in a supply chain risk'' to the entire system. Therefore, though the clause will be inserted in all information-technology contracts, these authorities will not be able to be utilized for all information and communication technology in all systems, but rather only in those meeting the criteria stated above.

Second, the decision to exclude a source under section 806 can only be made by the ''head of a covered agency,'' limited by definition to the Secretary of Defense and the Secretaries of the military departments with delegation limited to officials at or above the level of the service acquisition executive for the agency.

Third, the head of a covered agency seeking to exercise the authority of section 806 must obtain a joint recommendation from the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and the Chief Information Officer of the Department of Defense (DoD CIO), based on a risk assessment from the Under Secretary of Defense for Intelligence

(USD(I)) that there is significant supply chain risk to a particular NSS.

Fourth, the head of a covered agency, with the concurrence of the USD(AT&L), must make a written determination that the use of section 806 authority is ''necessary to protect national security by reducing supply chain risk'' and that ''less intrusive measures are not reasonably available to reduce such supply chain risk.''

Fifth, notice of each determination to exercise section 806 authorities must be provided in advance to the appropriate congressional committees.

Finally, section 806 expires on September 30, 2018 (see section 806 of FY 2013 NDAA, Public Law 112–239).

Section 806 also provides that the head of a covered agency may ''limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action'' if the head of a covered agency, with the concurrence of the USD (AT&L), determines in writing that ''the risk to national security due to disclosure of such information outweighs the risk due to not disclosing such information.''

If the Government exercises the authority provided to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because companies have an existing interest in having a supply chain that it can rely on to provide it with material and supplies that allow the contractor to ultimately supply its customers with products that are safe and that do not impose threats or risks to government information systems.

However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared because there is a growing interest by both the Government and industry in establishing cost efficient ways to protect the supply chain related to information technology purchases. Congress has recognized a growing concern for risks to the supply chain for technology contracts supporting the Department of Defense (DoD). Congress has defined supply chain risk as ''the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.'' (See section 806(e)(4) of Pub. L. 111–383.)

The objective of this rule is to protect DoD against risks arising out of the supply chain.

The legal basis for this rule is section 806 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383), as amended by section 806 of the NDAA for FY 2013 (Pub. L. 112–239). Additionally, the Department of Defense Instruction (DoDI) 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), recognizes the need to improve supply chain risk management (SCRM). In doing so, the DoDI requires, among other things, implementation of section 806 in the DFARS and in appropriate solicitation and contract language.

This rule applies to contractors involved in the development or delivery of any information technology, whether acquired by DoD as a service or as a supply. This includes commercial purchases as well as purchases of commercial off-the-shelf (COTS) services or supplies.

This rule does not require any specific reporting, recordkeeping or compliance requirements. It does, however, recognize the need for information technology contractors to implement appropriate safeguards and countermeasures to minimize supply chain risk. This rule, by itself, does not require contractors to deploy additional supply chain risk protections, but leaves it up to the individual contractors to take the steps they think are necessary to maintain existing or otherwise required safeguards and countermeasures as necessary for their own particular industrial methods to protect their supply chain.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

Consistent with the stated objectives of section 806 and the DoDI, no viable alternatives exist.

Possible alternatives considered included having all contractors report, on all contracts, the nature of the supply chain risk mitigation efforts they have applied to their manufacturing processes. This would be unduly burdensome for both contractors and the Government.

Another alternative is not to have section 806 clauses apply to commercial and COTS items or purchases below the simplified acquisition threshold. However, the requirements of section 806 should apply to contracts and subcontracts at or below the simplified acquisition threshold because the malicious introduction of unwanted functions may occur at any dollar threshold. Therefore, it would not be in the best interest of the Federal Government to exempt contracts and subcontracts at or below the simplified acquisition threshold from this requirement.

In a like manner, the requirements of section 806 should apply to the procurement of commercial items (including COTS items) because the intent of the statute is to protect the supply chain which in turn protects all NSS. Commercial and COTS information technology supplies and services often become part of NSSs. Protection of the NSSs using the authority of section 806 requires application in all information technology supply and services contacts. Therefore, exempting commercial (including COTS) items from application of the statute would negate the intended effect of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012–D050) in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the

Paperwork Reduction Act (44 U.S.C. chapter 35.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because of the urgent need to protect the National Security Systems (NSS) and the integrity of the supply chain to NSS. It is necessary to reduce supply chain risk in the acquisition of sensitive information technology systems that are used for intelligence or cryptologic activities; used for command and control of military forces; or from an integral part of a weapon system by avoiding sabotage, maliciously introducing unwanted functions, or other subversion of the design, integrity, manufacturing, production, installation, operation or maintenance of systems. Such acquisition decisions are made daily and, like other cybersecurity measures, the costs to mitigate supply chain risk after a system is already in operation can be very high. In addition, as this is a pilot authority set to expire on September 30, 2018, and the Congress has requested a report on the effectiveness of the authority not later than January 1, 2017, therefore DoD must make this tool available immediately to begin the pilot program and gather feedback for the report to Congress.

The globalization of information technology has increased the vulnerability of DoD to attacks on its systems and networks. Failure to implement this rule may cause harm to the Government and to individuals relying on the integrity of NSS, for example, the risk of allowing the malicious insertion of software code or an unwanted function designed to degrade DOD's sensitive systems. DoD has proceeded cautiously to ensure that this rule very closely mirrors the authorities provided in the statute and has little leeway to vary from those terms. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 208, 212, 215, 233, 239, 244, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 208, 212, 215, 233, 239, 244, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 208, 212, 215, 233, 239, 244, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Add section 208.405 to read as follows:

208.405 Ordering procedures for Federal Supply Schedules.

In all orders and blanket purchase agreements involving the development or delivery of any information technology, whether acquired as a service or as a supply, consider the need for an evaluation factor regarding supply chain risk (see subpart 239.73).

■ 3. Amend section 208.7402 by—

■ a. Designating the text as paragraph (1); and

■ b. Adding new paragraph (2) to read as follows:

208.7402 General.

(1) * * *

(2) In all orders and blanket purchase agreements involving the development or delivery of any information technology, whether acquired as a service or as a supply, consider the need for an evaluation factor regarding supply chain risk (see subpart 239.73).

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by—

■ a. Revising paragraph (f)(xiv);

■ b. Redesignating—

■ i. Paragraphs (f)(liii) through (lxv) as (lvi) through (lxvii); and

■ ii. Paragraphs (f)(xv) through (lii) as (f)(xvi) through (liii).

■ c. Adding new paragraphs (f)(xv), (liv), and (lv).

Revision and additions to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xiv) Use the provision 252.215–7008, Only One Offer, as prescribed at 215.408(4);

(xv) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), as prescribed in 219.708(b)(1)(A)(*1*), to comply with 15 U.S.C. 637. Use the clause with its Alternate I when prescribed in 219.708(b)(1)(A)(*2*).

* * * * *

(liv) Use the provision at 252.239–7017, Notice of Supply Chain Risk, as prescribed in 239.7306(a), to comply with section 806 of Public Law 111–383, in all solicitations for contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply.

(lv) Use the clause at 252.239–7018, Supply Chain Risk, as prescribed in 239.7306(b), to comply with section 806 of Public Law 111–383, in all solicitations and contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 5. Amend section 215.304 by adding new paragraph (c)(v) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(v) In all solicitations and contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply, consider the need for an evaluation factor regarding supply chain risk (see subpart 239.73).

■ 6. Add new subpart 215.5 to read as follows:

Subpart 215.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

Sec.
215.503 Notifications to unsuccessful offerors.
215.506 Postaward debriefing of offerors.

Subpart 215.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.503 Notifications to unsuccessful offerors.

If the Government exercises the authority provided in 239.7305(d), the notifications to unsuccessful offerors, either preaward or postaward, shall not reveal any information that is determined to be withheld from disclosure in accordance with section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the

National Defense Authorization Act for Fiscal Year 2013 (see subpart 239.73).

215.506 Postaward debriefing of offerors.

(e) If the Government exercises the authority provided in 239.7305(d), the debriefing shall not reveal any information that is determined to be withheld from disclosure in accordance with section 806 of the National Defense Authorization Act for Fiscal Year 2011, as amended by section 806 of the National Defense Authorization Act for Fiscal Year 2013 (see subpart 239.73).

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 7. Add new section 233.102 to read as follows:

233.102 General.

If the Government exercises the authority provided in 239.7305(d) to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court (see subpart 239.73).

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 8. Add new subpart 239.73 to read as follows:

Subpart 239.73—Requirements for Information Relating to Supply Chain Risk

Sec.
239.7300 Scope of subpart.
239.7301 Applicability.
239.7302 Definitions.
239.7303 Authorized individuals.
239.7304 Determination and notification.
239.7305 Exclusion and limitation on disclosure.
239.7306 Solicitation provision and contract clause.

Subpart 239.73—Requirements for Information Relating to Supply Chain Risk

239.7300 Scope of subpart.

(a) This subpart implements section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383) and elements of DoD Instruction 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), at (*http://www.dtic.mil/whs/directives/corres/pdf/520044p.pdf*).

(b) The authority provided in this subpart expires on September 30, 2018 (see section 806(a) of Pub. L. 112–239).

239.7301 Applicability.

Notwithstanding FAR 39.001, this subpart shall be applied to acquisition of information technology for national security systems, as that term is defined at 44 U.S.C. 3542(b), for procurements involving—

(a) A source selection for a covered system or a covered item involving either a performance specification (see 10 U.S.C. 2305(a)(1)(C)(ii)), or an evaluation factor (see 10 U.S.C. 2305(a)(2)(A)), relating to supply chain risk;

(b) The consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item where the task or delivery order contract concerned includes a requirement relating to supply chain risk (see 10 U.S.C. 2304c(d)(3) and FAR 16.505(b)(1)(iv)(D)); or

(c) Any contract action involving a contract for a covered system or a covered item where such contract includes a requirement relating to supply chain risk.

239.7302 Definitions.

As used in this subpart—

Covered item means an item of information technology that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system (see section 806(e)(6) of Pub. L. 111–383).

Covered system means a national security system, as that term is defined at 44 U.S.C. 3542(b) (see section 806(e)(5) of Pub. L. 111–38). It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which—

(i) Involves intelligence activities;

(ii) Involves cryptologic activities related to national security;

(iii) Involves command and control of military forces;

(iv) Involves equipment that is an integral part of a weapon or weapons system; or

(v) Is critical to the direct fulfillment of military or intelligence missions but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Information technology, in lieu of the definition at FAR 2.1, and *supply chain risk,* are defined in the clause at 252.239–7018, Supply Chain Risk.

239.7303 Authorized individuals.

(a) Subject to 239.7304, the following individuals are authorized to take the actions authorized by 239.7305:

(1) The Secretary of Defense.

(2) The Secretary of the Army.

(3) The Secretary of the Navy.

(4) The Secretary of the Air Force.

(b) The individuals authorized at paragraph (a) may not delegate the authority to take the actions at 239.7305 or the responsibility for making the determination required by 239.7304 to an official below the level of—

(1) For the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics; and,

(2) For the military departments, the senior acquisition executive for the department concerned.

239.7304 Determination and notification.

The individuals authorized in 239.7303 may exercise the authority provided in 239.7305 only after—

(a) Obtaining a joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(b) Making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that—

(1) Use of the authority in 239.7305(a)(b) or (c) is necessary to protect national security by reducing supply chain risk;

(2) Less intrusive measures are not reasonably available to reduce such supply chain risk; and

(3) In a case where the individual authorized in 239.7303 plans to limit disclosure of information under 239.7305(d), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(c)(1) Providing a classified or unclassified notice of the determination made under paragraph (b) of this section—

(i) In the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(ii) In the case of a covered system not otherwise included in paragraph (a) of this section, to the congressional defense committees; and

(2) The notice shall include—

(i) The following information (see 10 U.S.C. 2304(f)(3)):

(A) A description of the agency's needs.

(B) An identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception.

(C) A determination that the anticipated cost will be fair and reasonable.

(D) A description of the market survey conducted or a statement of the reasons a market survey was not conducted.

(E) A listing of the sources, if any, that expressed in writing an interest in the procurement.

(F) A statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs;

(ii) The joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense as specified in paragraph (a);

(iii) A summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (a); and

(iv) A summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

239.7305 Exclusion and limitation on disclosure.

Subject to 239.7304, the individuals authorized in 239.7303 may, in the course of conducting a covered procurement—

(a) Exclude a source that fails to meet qualification standards established in accordance with the requirements of 10 U.S.C. 2319, for the purpose of reducing supply chain risk in the acquisition of covered systems;

(b) Exclude a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order;

(c) Withhold consent for a contractor to subcontract with a particular source or direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract; and

(d) Limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out any of the actions authorized by paragraphs (a) through (c) of this section, and if such disclosures are so limited—

(1) No action undertaken by the individual authorized under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) The authorized individual shall—

(i) Notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(ii) Notify other Department of Defense components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(iii) Ensure the confidentiality of any such notifications.

239.7306 Solicitation provision and contract clause.

(a) Insert the provision at 252.239–7017, Notice of Supply Chain Risk, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that involve the development or delivery of any information technology whether acquired as a service or as a supply.

(b) Insert the clause at 252.239–7018, Supply Chain Risk, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that involve the development or delivery of any information technology whether acquired as a service or as a supply.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 9. Add new sections 244.201 and 244.201–1 to subpart 244.2 to read as follows:

244.201 Consent and advance notification requirements.

244.201–1 Consent requirements.

In all solicitations and contracts involving the development or delivery of any information technology, whether acquired as a service or as a supply, consider the need for a consent to subcontract requirement regarding supply chain risk (see subpart 239.73).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Add section 252.239–7017 to read as follows:

252.239–7017 Notice of supply chain risk.

As prescribed in 239.7306(a), use the following provision:

NOTICE OF SUPPLY CHAIN RISK (NOV 2013)

(a) *Definition. Supply chain risk,* as used in this provision, means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a national security system (as that term is defined at 44 U.S.C. 3542(b)) so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(b) In order to manage supply chain risk, the Government may use the authorities provided by section 806 of Public Law 111–383. In exercising these authorities, the Government may consider information, public and non-public, including all-source intelligence, relating to an offeror and its supply chain.

(c) If the Government exercises the authority provided in section 806 of Pub. L. 111–383 to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(End of provision)

■ 11. Add section 252.239–7018 to read as follows:

252.239–7018 Supply chain risk.

As prescribed in 239.7306(b), use the following clause:

SUPPLY CHAIN RISK (NOV 2013)

(a) *Definitions.* As used in this clause—

Information technology (see 40 U.S.C 11101(6)) means, in lieu of the definition at FAR 2.1, any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term ''information technology'' includes computers, ancillary equipment

(including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term ''information technology'' does not include any equipment acquired by a contractor incidental to a contract.

Supply chain risk means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a national security system (as that term is defined at 44 U.S.C. 3542(b)) so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(b) The Contractor shall maintain controls in the provision of supplies and services to the Government to minimize supply chain risk.

(c) In order to manage supply chain risk, the Government may use the authorities provided by section 806 of Public Law 111–383. In exercising these authorities, the Government may consider information, public and non-public, including all-source intelligence, relating to a Contractor's supply chain.

(d) If the Government exercises the authority provided in section 806 of Public Law 111–383 to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts involving the development or delivery of any information technology, whether acquired as a service or as a supply.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

RIN 0750–AG47

Defense Federal Acquisition Regulation Supplement: Safeguarding Unclassified Controlled Technical Information (DFARS Case 2011–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new subpart and associated contract clause to address requirements for safeguarding unclassified controlled technical information.

DATES: *Effective* November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6090; facsimile 571–372–6101.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 76 FR 38089 on June 29, 2011, to implement adequate security measures to safeguard unclassified DoD information within contractor information systems from unauthorized access and disclosure, and to prescribe reporting to DoD with regard to certain cyber intrusion events that affect DoD information resident on or transiting through contractor unclassified information systems. After comments were received on the proposed rule it was decided that the scope of the rule would be modified to reduce the categories of information covered. This final rule addresses safeguarding requirements that cover only unclassified controlled technical information and reporting the compromise of unclassified controlled technical information.

Controlled technical information is technical data, computer software, and any other technical information covered by DoD Directive 5230.24, Distribution Statements on Technical Documents, at *http://www.dtic.mil/whs/directives/corres/pdf/523024p.pdf*, and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure, at *http://www.dtic.mil/whs/directives/corres/pdf/523025p.pdf*.

Forty-nine respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Significant Changes From the Proposed Rule

- The final rule reflects changes to subpart 204.73, in lieu of 204.74 as stated in the proposed rule, to conform to the current DFARS baseline numbering sequence. Subpart 204.73 is now titled ''Safeguarding Unclassified Controlled Technical Information''.
- New definitions are included for: ''controlled technical information'', ''cyber incident'' and ''technical information''.
- These definitions published in the proposed rule are no longer included: ''authentication,'' ''clearing information,'' ''critical program information,'' ''cyber,'' ''data,'' ''DoD information,'' ''Government information,'' ''incident,'' ''information,'' ''information system,'' ''intrusion,'' ''nonpublic information,'' ''safeguarding,'' ''threat,'' and ''voice''.
- DFARS 204.7302 is modified to account for the reduced scope to limit the application of safeguarding controls to unclassified controlled technical information, which is marked in accordance with DoD Instruction 5230.24, Distribution Statements on Technical Documents.
- The ''procedures'' section, previously at DFARS 204.7403 in the proposed rule, is no longer included.
- DFARS 204.7303, Contract Clause, prescribes only one clause, 252.204–7012, Safeguarding of Unclassified Controlled Technical Information, which is a modification of the previously proposed ''Enhanced'' safeguarding clause. The previously proposed ''Basic'' safeguarding clause is removed and the proposed controls will be implemented through FAR case 2011–020, Basic Safeguarding of Contractor Information Systems.
- A list is added specifying the 13 pieces of information required for reporting.
- The time period a contractor must retain incident information to allow for DoD to request information necessary to conduct a damage assessment or decline interest is set at 90 days in the clause at 252.204–7012(d)(4)(iii).
- Additional information regarding DoD's damage assessment activities is added at 252.204–7012(d)(5).

B. Analysis of Public Comments

1. Align With Implementation of Executive Order on Controlled Unclassified Information

Comment: Numerous respondents indicated concerns that the proposed rule for DoD unclassified information was in advance of the Governmentwide guidance that the National Archives and Records Administration is developing for controlled unclassified information (CUI). Further, they suggested that DoD delay its efforts and instead pursue alignment with the Federal CUI policy effort, in order to avoid confusion and disconnects on information categories

and protections, and to prevent burdensome or duplicative costs to the contractors.

Response: To date, Federal CUI policy has not yet been promulgated for Federal Government agencies and it is unknown when Federal policy will be developed for industry as it relates to CUI. This rule has been rescoped to cover safeguarding unclassified controlled technical information, which DoD has determined to be of utmost importance and which DoD has existing authority to protect.

2. Deconflict With Other Policy Memos, DoD Instructions (DoDI) or DoD Directives (DoDD)

Comment: Respondents suggested that the rule conflicts with policies including DoDI/DoDD 5230.24/5230.25, DoD 5000 series, DoD 8570.01–M, Directives (DoDD), National Industrial Security Operating Manual (NISPOM), DoD Information Assurance Certification and Accreditation Process (DIACAP), and Federal Information Security Management Act (FISMA).

Response: The DFARS rule has been adjusted to use the marking framework established by DoDI 5230.24. DoD was unable to identify any other policy conflicts with this revised rule.

Comment: Several respondents suggested that the variety of National Institute of Standards and Technology (NIST) controls from several categories leads to a wide interpretation, which will be burdensome on personnel and there were suggestions that this hurts competition as less sophisticated firms are unable to enter the market. Another respondent suggested NIST controls should not be specified, and should be selectable by the program office. A respondent suggested that a list of controls is not sufficient and context/guidance is needed.

Response: The NIST security controls identified represent the minimum acceptable level of protection, though the clause allows for flexibility. If a control is not implemented, the contractor shall submit to the contracting officer a written explanation of how either the required security control identified is not applicable, or how an alternative control or protective measure is used to achieve equivalent protection.

Comment: Several respondents variously observed that some of the DFARS requirements are more stringent than the NISPOM.

Response: This rule has requirements to protect unclassified information stored and transmitted through unclassified networks and therefore does not align with the protection requirements in the NISPOM.

3. Policy Regarding Outsourcing, Cloud Computing, Reuse, Orphaned Works Etc.

Comment: A respondent requested clarification if use of outsourced information technology (IT) infrastructure, to include use of cloud computing, constitutes a release of information to the vendor that would be covered under the restriction on releasing information outside the Contractor's organization, and, if permitted, would the outsourced vendor be required to meet the safeguarding requirements specified in the clause.

Response: An Internet Service Provider (ISP) or cloud service provider constitutes a subcontractor in this context. The contractor is responsible for ensuring that the subcontractor complies with the requirements of this rule within the scope of this rule.

Comment: A respondent suggested the proposed rule constrains reuse of DoD information between contracts, and adds unnecessary additional DoD costs.

Response: The need-to-know requirement included in the proposed rule has been removed alleviating the concern for constraints on reuse of information. This rule is deemed necessary for the protection of unclassified controlled technical information and it is understood that implementing these controls may increase costs to DoD.

4. Consequence of Noncompliance

Comment: A number of respondents commented on the lack of oversight and certification of compliance with the NIST controls in the rule.

Response: The rule does not intend to change existing penalties or remedies for noncompliance with contract requirements.

5. Government Agency Responsible for Oversight

Comment: Two respondents suggested that the rule should identify how and by which entity audits or reviews of the safeguards will be conducted.

Response: The contract administration office is responsible for ensuring that the contractor has a process in place for meeting the required safeguarding standards. Audits or reviews will be conducted at the discretion of the contracting officer in accordance with the terms of the contract.

6. Need To Clearly Categorize, Identify, and Mark

Comment: Several respondents pointed out that DoD authority to define and mark CUI/FOUO (controlled unclassified information/for official use only) is poorly explained. FOUO is used as a catchall marking in DoD and managing this as a controlled designator is not practical. DoD is responsible for specifying a process for marking basic and enhanced criteria.

Response: The final rule has been scoped to only refer to unclassified controlled technical information. Items will be marked in accordance with DoDI 5230.24.

7. Allowable Costs Under Cost Accounting Standards (CAS)

Comment: One respondent asked if the cost associated with compliance to the DFARS changes is allowable under CAS.

Response: Cost Accounting Standards address measurement, allocation and assignment of costs. FAR 31 and DFARS 231, specifically FAR 31.201–2, address the allowability of costs. There is nothing in FAR 31 or DFARS 231 that would make costs of compliance with DFARS unallowable if the costs are incurred in accordance with FAR 31.201–2. While we cannot know in advance if a company will incur costs in accordance with FAR 31.201–2, there is nothing included in the final rule that would cause or compel a company to incur costs that would be in violation of FAR 31.201–2.

Comment: Several respondents stated that DoD needs to account for/provide funding for the additional costs of implementation.

Response: Implementation of this rule may increase contractor costs that would be accounted for through the normal course of business.

8. Applicability to Commercial Items

Comment: One respondent suggested that subcontracts for commercial items should be exempt from the unclassified data restrictions added in this rule. Several respondents suggested exempting all purchases of commercially available off-the-shelf products from the data controls added by this rule.

Response: The final rule is rescoped to focus on unclassified controlled technical information. Any unclassified controlled technical information that is shared with a contractor or subcontractor must be protected in accordance with the terms of the contract.

9. Threat Sharing

Comment: A number of respondents were concerned that if the DoD did not provide threat information to companies then they would be unable to determine adequate security for the controlled information.

Response: 32 CFR part 236 provides a voluntary framework for eligible companies to exchange cyber threat information with the Government. Threat information is not needed to determine adequate security; the select NIST 800–53 controls in clause 252.204–7012, or their equivalent as suggested by the contractor, are required for adequate security. In cases where the contractor has information (either obtained from DoD or any other source) that would suggest additional security is required to adequately protect technical information, they must take action to establish that additional security.

10. Sharing of Liability Between the Contractor and DoD

Comment: A number of respondents were concerned that the contractor will assume the full cost and liability burden for costs associated with compliance with the rule.

Response: In many cases, this contract requirement will be spread across and benefiting multiple contracts—costs associated with implementation will be allowable and chargeable to indirect cost pools. The Government does not intend to directly pay for the operating costs associated with the rule.

11. Concern for Creating Two Types of Unclassified (Basic and Enhanced)

Comment: A respondent indicated that, under the proposed rule, all Government unclassified information must be compartmentalized in order to effectively enforce need-to-know discipline. In addition, however, the proposed rule recognized two classes of information, one warranting ''basic'' protection and the second requiring ''enhanced'' protection. Further, the respondent indicated that the rule not only lacks clarity regarding identification and marking of the information to be protected, but also for designating the information as basic or enhanced. Additionally, the respondents recommended that uniform protocols need to be established, so documents can be sorted electronically into the proper categories.

Response: The final rule clarifies that contractors are required to protect one category of unclassified information, which was previously specified within the enhanced safeguarding clause. A proposed rule addressing ''basic'' safeguarding was published in the **Federal Register** on Friday, August 24, 2012 (FAR 2011–020).

12. Applicability to Foreign Contractors

Comment: One respondent was concerned about the impact of the rule on foreign contractors and on international information sharing agreements.

Response: The technical information covered by the rule is already subject to dissemination controls that existing agreements would have to have accounted for. This rule does not have an impact on those information sharing agreements. In addition, the reporting associated with the rule is specifically focused on the information that was lost, not the cyber forensic aspects of an incident.

13. Applicability to Universities

Comment: NIST SP 800–53 controls are inappropriate for academic settings and burdensome.

Response: Academic institutions dealing with unclassified controlled technical information are not exempt from the controls of this rule. The protection of the information is equally necessary, regardless of whether the contractor is a university or a business concern.

14. Scope (204.7400 Redesignated 204.7300)

Comment: The respondents recommend that this rule explicitly apply to systems containing controlled information and not the general information technology environment.

Response: The rule has been revised to apply to systems that have unclassified controlled technical information resident on or transiting through them.

Comment: Several respondents made suggestions on the scope of the proposed DFARS section 204.7400 including: university fundamental research should be exempt, the rule should apply only to new contracts, the safeguards should apply to Voice over Internet Protocol (VoIP), and the protected information should be more specific and limited.

DoD will not modify the Disclosure of Information clause at DFARS 252.204–7000 in this rule. The clause at 252.204–7012 has been revised to apply to all contracts expected to be dealing with controlled technical information. Implementation of the rule does not direct modification of existing contracts. The clause does not apply to voice information, because voice information does not fall within the definition of controlled technical information.

15. Definitions (204.7401 Redesignated 204.7301)

Comment: One respondent suggested adding the definition for ''intrusion'' at DFARS 204.7401 in addition to where it already exists in the clause proposed at 252.204–70XX or adding a pointer to refer to the clause for definitions.

Response: The definition of ''intrusion'' has been deleted because the term is no longer used in the case.

16. Policy (204.7402 Redesignated 204.7302)

Comment: Two respondents stated that the phrase ''adequate security'' and ''certain cyber incidents'' are too vague and need clarification. Another respondent stated that the enhanced safeguarding requirements in the clause 252.204–70YY are too stringent for unclassified information and compliance would be a substantial burden.

Response: The term ''adequate security'' is modified from the proposed rule to provide clarity. The final rule lays out the policy and definitions for the terms ''adequate security'' and ''cyber incident''. The criteria for reporting a cyber incident is established within the clause at 252.204–7012. DoD has determined that unclassified controlled technical information is vital to national security and must be protected.

17. Procedures

Comment: Two respondents noted that DFARS 204.7403 in the proposed rule references procedures at PGI 204.74 that were not published with the proposed rule.

Response: The ''procedures'' section is not included in the final rule. For future reference, when there is PGI associated with a proposed rule, it is available at *https://www.acq.osd.mil/dpap/dars/* under ''Publication Notices''.

18. Contract Clauses (204.7404 Redesignated 204.7303)

Comment: Several respondents recommended making changes to the DFARS clause prescriptions. Two respondents stated that use of ''will potentially have unclassified DoD information'' is vague and will result in usage errors. Two respondents recommended an exemption for fundamental research contracts; two others recommended an exemption for small businesses. One respondent stated that it is not clear if the use of 252.204–70YY negates the need for 252.204–70XX.

Response: The purpose of this rule is to protect the noted category of

unclassified information, as evidenced by inclusion whenever such information would potentially be present; the best means of addressing the identified potential for usage errors is to include the clause in all contracts. The clause at DFARS 252.204–7012 is now prescribed to go in all contracts and solicitations and the additional safeguarding measures will only apply when unclassified controlled technical information is present. This change does not affect the burden placed on contractors to identify which information must be protected. The contractor's size classification is not a sufficient reason to allow a contractor to fail to protect technical information as required by clause DFARS 252.204–7012. The basic clause previously at DFARS 252.204–70XX has been removed and will be handled as a FAR rule under FAR case 2011–020. The clause previously referred to in the proposed rule as 252.204–70YY, Enhanced Safeguarding of Unclassified DoD Information, is now at DFARS 252.204–7012. Use of this clause will not negate the use of any other clauses.

19. Clarify the Disclosure of Information Clause (252.204–7000)

Comment: A number of respondents submitted comments regarding the proposed changes to clause 252.204–7000, Disclosure of Information.

Response: This final rule does not include any changes to the clause at 252.204–7000, Disclosure of Information.

20. Clarify the Basic Clause (Proposed 252.204–70XX)

Comment: Sixteen respondents commented on concerns with the basic clause ranging from definitions, lack of specificity, and implementation issues to scope and cost burden.

Response: The basic clause, at 252.204–70XX in the proposed rule, is not included in this final rule. A basic safeguarding requirement is being developed in FAR case 2011–020.

21. Clarify the Enhanced Clause Definitions

Comment: Eight respondents commented that the definitions for ''information technology,'' ''DoD information systems,'' ''incident,'' ''intrusion,'' ''voice information,'' ''DoD information,'' ''non-public information,'' ''adequate security,'' and ''critical program information'' are too broad.

Response: Many of the definitions used in this document are from DoD standards or regulations. The definitions for ''critical program information'', ''DoD information'', ''incident'', ''intrusion'' and ''nonpublic information'' were removed as they were no longer necessary due to other revisions. The term ''adequate security'' is revised for clarity and consistency.

22. Safeguarding Requirements and Procedures

Comment: Four respondents requested clarification on whether DoD is requiring contractors to perform and document a specific analysis to determine if additional controls are reasonably required, or is just reconfirming that the safeguarding standards may be augmented with additional controls. They also requested clarification regarding whether a formal risk assessment is warranted by this provision, and if so, whether it will be a qualitative assessment (OCTAVE) or quantitative assessment (NIST SP–800–30). There is concern as to whether the risk assessment and proposed enhanced security measures of one contractor will be shared with other contractors or those within the Defense Industrial Base Working Group.

Response: The rule does not require a specific analysis to determine if additional controls are required. The intent is to require that if the contractor is aware, based on an already assessed risk or vulnerability that the specified controls are inadequate, then the contractor must implement additional controls to mitigate the specific shortcoming.

Comment: A respondent questioned the provision that requires contractors with systems that do not meet the specified controls in the table to prepare a written determination that explains why the control(s) is not necessary, but only to provide the written determination to the contracting officer upon request, and suggested wording to be changed to require the determination to be included as part of their proposal.

Response: The rule has been revised to require a written explanation when the contractor intends to deviate from the specified controls. Alternative or superior safeguarding controls will not be considered as a source selection criteria.

23. DoD Information Requiring Enhanced Safeguarding

Comment: Respondents stated that enhanced safeguards would need to be applied to all systems. Comments also indicated that DFARS should not apply to International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) and information ''bearing current and prior designations indicating controlled access and dissemination.'' ITAR and EAR are regulated by Departments of State and Commerce; other categories of information in the DFARS are already protected by other regulations. ''Critical Program Information'' is poorly defined.

Response: The rule has been revised so the safeguarding requirements only apply to systems that have unclassified controlled technical information resident on or transiting through them. The rule has also been revised to specify that contractors must protect controlled technical information. Additionally, the rule ensures that there are no conflicts with existing regulations. The term ''critical program information'' was not included in the final rule.

Comment: A respondent noted a person communicating information requiring enhanced safeguarding would need to ensure that the recipient of that information also had a system with enhanced safeguarding, which would be challenging.

Response: The contractor has an obligation to ensure that any recipient of information requiring enhanced safeguarding is authorized to receive the information, and that it be transferred with the appropriate security. It is the responsibility of the authorized recipient to safeguard that information appropriately subject to contractual requirements.

24. Enhanced Safeguarding Requirements

Comment: The safeguarding controls must flow down to each subcontractor. All systems in the network would be required to meet enhanced safeguarding, increasing costs. Clarify that enhanced safeguarding only applies to systems where DoD information resides.

Response: The enhanced safeguarding requirement only applies to systems that may have unclassified controlled technical information resident on or transiting through them.

Comment: Several respondents noted the effort and resources required of a security program that is NIST SP 800–53 compliant and the imposition of controls that are not risk based. The respondents requested that DoD consider the financial burden of applying such a security infrastructure that is more appropriate to classified than unclassified information or to more than DoD information.

Response: The rule does not require adoption of a NIST compliant security program. The rule uses the NIST SP 800–53 catalog of security controls as a reference to describe the specific security capabilities that a contractor's system should provide for enhanced safeguarding. The rule has been

modified to apply only to specified controlled technical information.

Comment: A respondent recommended substantial expansion of the NIST controls listed in the table.

Response: The substantial increase in specified controls is not warranted for the sensitivity of the information being protected. Additional controls can be added to any contract when the additional security is required, but broadly applying these additional controls is not justified or practical.

Comment: A respondent noted that the enhanced safeguarding provisions appear to expand export controls and preclude use of the fundamental research exclusion.

Response: The rule does not expand export controls and does not imply any restriction on fundamental research exclusions.

Comment: A respondent noted that there is no explicit statement that this same level of safeguarding is required for subcontractors and recommends the rule specify that the prime contractor flow down the same safeguarding requirement to each level of subcontractor.

Response: Under 252.204–7012 (g) the prime contractor is required to include the substance of this clause in all subcontracts, and each subcontractor must flow the clause down to the next tier.

Comment: Several respondents stated that the requirements for enhanced safeguarding will require contractors to implement a Common Access Card (CAC)-like public key infrastructure (PKI) system on their unclassified networks, citing NIST 800–53 controls AU–10(5) and SC–13(4), or the requirement requiring use of DoD-approved identity authentication credentials for authentication to DoD information systems.

Response: There is no requirement for contractors to implement a PKI system on their unclassified networks processing DoD information. The NIST controls cited merely require that when using cryptography that the cryptographic algorithm meets NIST Federal Information Processing standards, or note that digital signatures can be used to ensure non-repudiation. None of the controls require PKI. If a contractor desires access to a DoD information system (one operated by or on behalf of DoD), then the authentication credentials must meet DoD standards, which typically requires a DoD-approved PKI certificate. This has been a long-standing requirement, but does not imply that the contractor system must implement PKI.

Comment: A respondent noted that the supplementary information section of the proposed rule mentions encryption of data at rest, yet the cited NIST 800–53 for protection of data at rest (SC–28) does not require encryption.

Response: The background information has been aligned in the final rule.

Comment: A respondent recommends requiring compliance with FISMA to ensure that other important FISMA requirements are met.

Response: FISMA applies only to Federal Government information and information systems or systems (or information operated or maintained by contractors on the Government's behalf). FISMA does not does not apply to the contractor information systems addressed under this rule.

Comment: A respondent comments that the rule does not establish a clear link between the sensitivity of the information and the required level of identity assurance and suggests a set of categories for identity assurance that should be incorporated into the rule.

Response: Based on information covered by the rule, the level of identity assurance (AC or Access Control controls) specified in the clause are considered the minimum requirements.

Comment: A respondent notes that Defense Security Service requires that companies under a Foreign Ownership, Control, or Influence (FOCI)-mitigation agreement comply with certain NIST SP 800–53 requirements, the majority of which are required under this rule, leading to confusion, redundancy and wasted resources.

Response: If a company is already compliant with the NIST 800–53 controls for systems that may have unclassified controlled technical information resident on or transiting through them, then they will meet the requirements of this rule.

Comment: A respondent notes that the proposed rule is silent on prohibiting access to non-US persons, and questions whether companies (particularly those with a FOCI mitigation plan) can assume that foreign nationals and entities with a business need to know may access unclassified information unless otherwise subject to export control laws or expressly prohibited by the Government agency.

Response: This rule has no impact on existing information sharing restrictions.

25. Other Requirements

Comment: One respondent was concerned about conflicting obligations under provisions of the proposed rule and recommended that participants in the Defense Industrial Base (DIB) Cyber security/information assurance (CS/IA) program be exempt from complying with the proposed rule in order to prevent the imposition of conflicting obligations.

Response: The final rule and the DIB CS/IA program Framework Agreement are mutually supportive means for safeguarding DoD information on DIB unclassified information systems. The DIB CS/IA program is voluntary and is executed under a bilateral agreement between an eligible DIB company and DoD. The DFARS language establishes contractor requirements executed under a DoD contract.

26. Cyber Incident Reporting

Comment: Eleven respondents commented on the requirement to report incidents within 72 hours of detection. In addition, the DFARS requires indefinite retention of forensics data for the Government and the criteria for damage assessments are broad and unclear. The respondents would like to review and comment on report content or forms prior to publication and suggested that DoD look at DSS NISPOM reporting as an option/model.

Response: The rule has been revised to clarify the reporting requirements and the timeframe for retaining data (90 days) of the potentially compromised data to support a damage assessment if the Government chooses to perform one.

27. Protection of Reported Information

Comment: One respondent requests the Government address how contractor incident reporting information will be protected and how it will be used. The respondent also proposed that the sharing of files and images be voluntary as it is in the Framework Agreement.

Response: Retaining files and images is an important element of the damage assessment process and is required by this rule. DoD will protect incident reporting information and any files or images in accordance with applicable statutes and regulations.

28. Third Party Information

Comment: Two respondents are concerned about exposure of third-party information in data provided by companies to the Government. One respondent recommended the deletion of the following: ''Absent written permission, the third-party information owner may have the right to pursue legal action against the Contractor (or its subcontractors) with access to the nonpublic information for breach or unauthorized disclosure.''

Response: The third party information subparagraph has been removed because support contractors working for the DoD are required to sign non-disclosure agreements. DoD personnel are bound by regulation and statute to protect proprietary information and information furnished in confidence.

29. Subcontracts

Comment: Three respondents note that the proposed rule requires the DFARS to apply to all subcontractors that may potentially have DoD information. In addition, notifications are required through the prime contractor. Potential issues exist with proprietary information and unauthorized disclosure of third party information.

Response: The rule requires that prime contractors report when unclassified controlled technical information has potentially been compromised regardless of whether the incident occurred on a prime contractor's information system or on a subcontractor's information system.

30. Provide a Safe Harbor for Reported Incidents

Comment: One respondent suggested that the rule provide explicit safe harbor in the event of a reported incident.

Response: The rule states in DFARS 204.7302(b)(2) that ''A cyber incident that is properly reported by the contractor shall not, by itself, be interpreted under this clause as evidence that the contractor has failed to provide adequate information safeguards . . .'' The Government does not intend to provide any safe harbor statements.

31. Paperwork Burden

Comment: A number of respondents stated in various qualitative terms that the costs of compliance with the rule would be too large.

Response: The controls in the rule are taken from NIST 800–53 which closely parallels the ISO 27002 standard. As such, the controls represent mainstream industry practices. While there is cost associated with implementing information assurance controls, the use of industry practices provides assurance the costs are reasonable.

Comment: Some respondents opined that few small businesses have the basic infrastructure in place to comply and that implementation of controls would represent a larger percentage of overhead for small businesses than for large.

Response: The contractor's size classification is not a sufficient reason to allow a contractor to fail to protect technical information as required by clause 252.204–7012. The contractor at a minimum must institute the NIST (SP) 800–53 security controls identified in the table at 252.204–7012. If a control is not implemented, the contractor shall submit to the contracting officer a written explanation of how the required security control identified in the table at 252.204–7012 is not applicable, or how an alternative control or protective measure is used to achieve equivalent protection.

Comment: Some respondents stated that the value of controls cannot be measured and that the benefits will not offset the costs.

Response: The purpose of the rule is to reduce the compromise of information. It is difficult to put a price on information and it is generally not calculated in any information protection regime. The benefits of particular controls are also difficult to quantify and further complicated by the 'arms race' dynamic of information protection. It is not possible to determine the exact point at which benefits equal costs. Nevertheless, that does not preclude taking action to protect information and accrue the associated costs.

Comment: One respondent provided an incident reporting rate of approximately 70 reports per company per year, with each report taking approximately 5 hours of company time to complete. This is in contrast to the proposed rule estimate of 0.5 incidents per company per year with a 1 hour burden per response.

Response: Since the burden estimates were estimated for the proposed rule, more data has become available, in particular from voluntary reporting by defense industrial base companies to the Defense Cyber Crime Center. Data from this voluntary program suggests five reports per company per year with a 3.5 hour burden per response. Accordingly, DoD is revising its estimate upward to five reports per company per year with a 3.5 hour burden per response.

Comment: One respondent provided a cost estimate for an appliance to capture images of auditable events of $25,000.

Response: To lower the cost of data collection in the revised rule, DoD must request the data within 90 days. Without this request, there is no obligation to retain data beyond 90 days. Image capture equates to copying the hard drive of an affected machine. The cost of media with sufficient capability to capture a hard drive image of an affected machine is in the range of $100. Assuming an average across all businesses of 12 incidents per year affecting an average of one machine and a 90 day retention period results in the ability to capture and store 3 images. 3 × $100 = $300.

32. Regulatory Flexibility Analysis

Comment: Several respondents stated that this rule will be financially burdensome for small businesses to the point that they will not be able to participate. Two respondents stated that the numbers used in the Initial Regulatory Flexibility Analysis grossly underestimate the number of businesses the rule will affect and the cost as a percentage of revenue that will be required to meet the requirements of the new rule. One respondent suggested that a gradually phased-in approach to implement these safeguards would ease the significant financial burden they impose.

Response: This final rule was drafted with the aim of minimizing the burden of compliance on contractors while implementing the necessary safeguarding requirements.

33. Need for a Public Meeting

Comment: Several respondents suggested that DoD further engage the industry stakeholders, including a suggestion to schedule a public meeting to discuss the rule.

Response: Another public meeting will be considered prior to any future rules dealing with the safeguarding of information.

34. Drafting Recommendations

Comment: One respondent recommends changing all instances of ''unclassified Government information'' to ''DoD information''. Several respondents submitted lists of typos and errors in the proposed rule **Federal Register** notice.

Response: These comments have been taken into account when drafting this final rule. The final rule uses the term ''unclassified controlled technical information.''

35. Out of Scope

Comment: Three respondents made comments that had no relation to the subject rule.

C. Other Changes

The final rule adds a new subpart at 204.73, Safeguarding Unclassified Controlled Technical Information, to conform to the current DFARS baseline. The proposed rule had anticipated adding the new subpart at 204.74.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of this rule is for DoD to avoid compromise of unclassified computer networks on which DoD controlled technical information is resident on or transiting through contractor information systems, and to prevent the exfiltration of controlled technical information on such systems. The benefit of tracking and reporting DoD information compromises is to—

- Assess the impact of compromise;
- Facilitate information sharing and collaboration; and
- Standardize procedures for tracking and reporting compromise of information.

Several respondents stated that this rule will be financially burdensome for small businesses, two respondents stated that the numbers used in the Initial Regulatory Flexibility Analysis grossly underestimate the number of businesses the rule will affect and the cost as a percentage of revenue that will be required to meet the requirements of the new rule, and one respondent suggested that a gradually phased-in approach to implement these safeguards would ease the significant financial burden they impose.

No changes were made to the final rule as a result of these comments. The estimated burden in the final regulatory flexibility analysis has been reduced because the scope of the rule was modified to reduce the categories of information covered and only addresses safeguarding requirements that cover the unclassified controlled technical information and reporting the compromise of unclassified controlled technical information. The final rule is drafted with the aim of minimizing the burden of compliance on contractors while implementing the necessary safeguarding requirements.

This final rule requires information assurance planning, including reporting of information compromise for DoD contractors that handle DoD unclassified controlled technical information. This requirement flows down to subcontracts. DoD believes that most information passed down the supply chain will not require special handling and recognizes that most large contractors handling sensitive information already have sophisticated information assurance programs and can take credit for existing controls with minimal additional cost. However, most small businesses have less sophisticated programs and will realize costs meeting the additional requirements.

Based on figures from the Defense Technical Information Center it is estimated that 6,555 contractors would be handling unclassified controlled technical information and therefore affected by this rule. Of the 6,555 contractors it is estimated that less than half of them are small entities. For the affected small entities a reasonable rule of thumb is that information technology security costs are approximately 0.5% of total revenues. Because there are economies of scale when it comes to information security, larger businesses generally pay only a fraction of that amount.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB has cleared this information collection under OMB Control Number 0704–0478, titled: Defense Federal Acquisition Regulation Supplement; Safeguarding Unclassified Controlled Technical Information.

List of Subjects in 48 CFR Parts 204, 212 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Add subpart 204.73 to read as follows:

Subpart 204.73—Safeguarding Unclassified Controlled Technical Information

Sec.
204.7300 Scope.
204.7301 Definitions.
204.7302 Policy.
204.7303 Contract clause.

Subpart 204.73—Safeguarding Unclassified Controlled Technical Information

204.7300 Scope.

(a) This subpart applies to contracts and subcontracts requiring safeguarding of unclassified controlled technical information resident on or transiting through contractor unclassified information systems.

(b) This subpart does not abrogate any existing contractor physical, personnel, or general administrative security operations governing the protection of unclassified DoD information, nor does it impact requirements of the National Industrial Security Program.

204.7301 Definitions.

As used in this subpart—

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information is to be marked with one of the distribution statements B through F, in accordance with DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Cyber incident means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system and/or the information residing therein.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227–7013, Rights in Technical Data—Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and

computer software executable code and source code.

204.7302 Policy.

(a) DoD and its contractors and subcontractors will provide adequate security to safeguard unclassified controlled technical information on their unclassified information systems from unauthorized access and disclosure.

(b) When safeguarding is applied to controlled technical information resident on or transiting contractor unclassified information systems—

(1) Contractors must report to DoD certain cyber incidents that affect unclassified controlled technical information resident on or transiting contractor unclassified information systems. Detailed reporting criteria and requirements are set forth in the clause at 252.204–7012, Safeguarding of Unclassified Controlled Technical Information.

(2) A cyber incident that is properly reported by the contractor shall not, by itself, be interpreted under this clause as evidence that the contractor has failed to provide adequate information safeguards for unclassified controlled technical information, or has otherwise failed to meet the requirements of the clause at 252.204–7012. When a cyber incident is reported, the contracting officer shall consult with a security manager of the requiring activity prior to assessing contractor compliance. The contracting officer shall consider such cyber incidents in the context of an overall assessment of the contractor's compliance with the requirements of the clause at 252.204–7012.

204.7303 Contract clause.

Use the clause at 252.204–7012, Safeguarding of Unclassified Controlled Technical Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.301 is amended by—

■ a. Redesignating paragraphs (f)(vi) through (lxvii) as (vii) through (lxviii); and

■ b. Adding new paragraph (f)(vi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(vi) Use the clause at 252.204–7012, Safeguarding of Unclassified Controlled Technical Information, as prescribed in 204.7303.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.204–7012 to read as follows:

252.204–7012 Safeguarding of unclassified controlled technical information.

As prescribed in 204.7303, use the following clause: SAFEGUARDING OF UNCLASSIFIED CONTROLLED TECHNICAL INFORMATION (NOV 2013)

(a) *Definitions.* As used in this clause—

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Attribution information means information that identifies the Contractor, whether directly or indirectly, by the grouping of information that can be traced back to the Contractor (e.g., program description or facility locations).

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor information system means an information system belonging to, or operated by or for, the Contractor.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information is to be marked with one of the distribution statements B-through-F, in accordance with DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Cyber incident means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system and/or the information residing therein.

Exfiltration means any unauthorized release of data from within an information system. This includes copying the data through covert network channels or the copying of data to unauthorized media.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227–7013, Rights in Technical Data—Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Safeguarding requirements and procedures for unclassified controlled technical information.* The Contractor shall provide adequate security to safeguard unclassified controlled technical information from compromise. To provide adequate security, the Contractor shall—

(1) Implement information systems security in its project, enterprise, or company-wide unclassified information technology system(s) that may have unclassified controlled technical information resident on or transiting through them. The information systems security program shall implement, at a minimum—

(i) The specified National Institute of Standards and Technology (NIST) Special Publication (SP) 800–53 security controls identified in the following table; or

(ii) If a NIST control is not implemented, the Contractor shall submit to the Contracting Officer a written explanation of how—

(A) The required security control identified in the following table is not applicable; or

(B) An alternative control or protective measure is used to achieve equivalent protection.

(2) Apply other information systems security requirements when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

Table 1—Minimum Security Controls for Safeguarding

Minimum required security controls for unclassified controlled technical information requiring safeguarding in accordance with paragraph (d) of this clause. (A description of the security controls is in the NIST SP 800–53, ''Security and Privacy Controls for Federal Information Systems and Organizations'' (*http://csrc.nist.gov/publications/PubsSPs.html*).)

BILLING CODE 5001–06–P

Access Control	Audit & Accountability	Identification and Authentication	Media Protection	System & Comm Protection
AC-2	AU-2	IA-2	MP-4	SC-2
AC-3(4)	AU-3	IA-4	MP-6	SC-4
AC-4	AU-6(1)	IA-5(1)		SC-7
			Physical and Environmental Protection	
AC-6	AU-7			SC-8(1)
		Incident Response		
AC-7	AU-8		PE-2	SC-13
AC-11(1)	AU-9	IR-2	PE-3	
AC-17(2)		IR-4	PE-5	SC-15
	Configuration Management			
AC-18(1)		IR-5		SC-28
			Program Management	
AC-19	CM-2	IR-6		
				System & Information Integrity
AC-20(1)	CM-6		PM-10	
AC-20(2)	CM-7	Maintenance		SI-2
AC-22	CM-8	MA-4(6)	Risk Assessment	SI-3
		MA-5	RA-5	SI-4
Awareness & Training	Contingency Planning			
AT-2	CP-9	MA-6		

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Legend:

AC: Access Control
AT: Awareness and Training MP:
AU: Auditing and Accountability
CM: Configuration Management
CP: Contingency Planning
IA: Identification and Authentication
IR: Incident Response
MA: Maintenance
MP: Media Protection
PE: Physical & Environmental Protection
PM: Program Management
RA: Risk Assessment
SC: System & Communications Protection
SI: System & Information Integrity

(c) *Other requirements.* This clause does not relieve the Contractor of the requirements specified by applicable statutes or other Federal and DoD safeguarding requirements for Controlled Unclassified Information as established by Executive Order 13556, as well as regulations and guidance established pursuant thereto.

(d) *Cyber incident and compromise reporting.*

(1) *Reporting requirement.* The Contractor shall report as much of the following information as can be obtained to the Department of Defense via (*http://dibnet.dod.mil/*) within 72 hours of discovery of any cyber incident, as described in paragraph (d)(2) of this clause, that affects unclassified controlled technical information resident on or transiting through the Contractor's unclassified information systems:

(i) Data Universal Numbering System (DUNS).

(ii) Contract numbers affected unless all contracts by the company are affected.

(iii) Facility CAGE code if the location of the event is different than the prime Contractor location.

(iv) Point of contact if different than the POC recorded in the System for Award Management (address, position, telephone, email).

(v) Contracting Officer point of contact (address, position, telephone, email).

(vi) Contract clearance level.

(vii) Name of subcontractor and CAGE code if this was an incident on a subcontractor network.

(viii) DoD programs, platforms or systems involved.

(ix) Location(s) of compromise.

(x) Date incident discovered.

(xi) Type of compromise (e.g., unauthorized access, inadvertent release, other).

(xii) Description of technical information compromised.

(xiii) Any additional information relevant to the information compromise.

(2) *Reportable cyber incidents.* Reportable cyber incidents include the following:

(i) A cyber incident involving possible exfiltration, manipulation, or other loss or compromise of any unclassified controlled technical information resident on or transiting through Contractor's, or its subcontractors', unclassified information systems.

(ii) Any other activities not included in paragraph (d)(2)(i) of this clause that allow unauthorized access to the Contractor's unclassified information system on which unclassified controlled technical information is resident on or transiting.

(3) *Other reporting requirements.* This reporting in no way abrogates the Contractor's responsibility for additional safeguarding and cyber incident reporting requirements pertaining to its unclassified information systems under other clauses that may apply to its contract, or as a result of other U.S. Government legislative and regulatory requirements that may apply (e.g., as cited in paragraph (c) of this clause).

(4) *Contractor actions to support DoD damage assessment.* In response to the reported cyber incident, the Contractor shall—

(i) Conduct further review of its unclassified network for evidence of compromise resulting from a cyber incident to include, but is not limited to, identifying compromised computers, servers, specific data and users accounts. This includes analyzing information systems that were part of the compromise, as well as other information systems on the network that were accessed as a result of the compromise;

(ii) Review the data accessed during the cyber incident to identify specific unclassified controlled technical information associated with DoD programs, systems or contracts, including military programs, systems and technology; and

(iii) Preserve and protect images of known affected information systems and all relevant monitoring/packet capture data for at least 90 days from the cyber incident to allow DoD to request information or decline interest.

(5) *DoD damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor point of contact identified in the incident report at (d)(1) of this clause provide all of the damage assessment information gathered in accordance with paragraph (d)(4) of this clause. The Contractor shall comply with damage assessment information requests. The requirement to share files and images exists unless there are legal restrictions that limit a company's ability to share digital media. The Contractor shall inform the Contracting Officer of the source, nature, and prescription of such limitations and the authority responsible.

(e) *Protection of reported information.* Except to the extent that such information is lawfully publicly available without restrictions, the Government will protect information reported or otherwise provided to DoD under this clause in accordance with applicable statutes, regulations, and policies. The Contractor shall identify and mark attribution information reported or otherwise provided to the DoD. The Government may use information, including attribution information and disclose it only to authorized persons for purposes and activities consistent with this clause.

(f) Nothing in this clause limits the Government's ability to conduct law enforcement or counterintelligence activities, or other lawful activities in the interest of homeland security and national security. The results of the activities described in this clause may be used to support an investigation and prosecution of any person or entity, including those attempting to infiltrate or compromise information on a contractor information system in violation of any statute.

(g) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts, including subcontracts for commercial items.

(End of clause)

[FR Doc. 2013–27313 Filed 11–15–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AI12

Defense Federal Acquisition Regulation Supplement: Removal of DFARS Coverage on Contractors Performing Private Security Functions (DFARS Case 2013–D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove coverage on contractors performing private security functions that is now covered in the FAR.

DATES: *Effective* November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 571–372–6098.

SUPPLEMENTARY INFORMATION:

I. Background

DoD implemented section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110–181), as amended by section 853 of the NDAA for FY 2009 (Pub. L. 110–417) and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111–383), at DFARS section 225.370 and the clause at 252.225–7039, both entitled ''Contractors Performing Private Security Functions.'' The DFARS interim rule was published at 76 FR 52133, effective August 19, 2011, and the final rule was published at 77 FR 35883 on June 15, 2012.

These same statutory provisions were subsequently implemented in the FAR at 25.302 and 52.225–26, both entitled ''Contractors Performing Private Security Functions Outside the United States,'' in FAC 2005–067, issued June 21, 2013. The FAR changes regarding private security contractors were effective on July 22, 2013 (see 78 FR 37670). Therefore, there is no need to retain the duplicative DFARS coverage applicable solely to DoD.

This final rule removes DFARS 225.370 and the clause at 252.225–7039, effective upon publication. In all applicable cases (see FAR 25.302–3, Applicability), the FAR shall be used.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because DFARS 225.370 and the clause at 252.225–7039 are duplicative of the FAR. Using the FAR clause instead of the DFARS clause should, in effect, be transparent to contractors because the requirements are the same for both clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS 225.370 and 252.225–7039, currently approved under OMB Control Number 0704–0460, titled Synchronized Predeployment and Operational Tracker (SPOT) System, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The information collection requirements associated with OMB 0704–0460 are broader than those applicable only to private security contractors, and the majority of the 0704–0460 requirements (i.e., those not associated with private security contractors) will continue to apply to DoD contractors under the clause at DFARS 252.225–7040. The information collection requirements associated with contractor employees performing private security functions will continue to apply to DoD contracts in accordance with the clause at FAR 52.225–26 (which cites to OMB 0704–0460). The information collection requirements for private security contractors under contracts with non-DoD agencies are addressed under a separate information collection, 9000–0180. There is no net impact of this final rule on the information collection requirements for OMB 0704–0460.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.370 [Removed]

■ 2. Remove section 225.370.

252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7039 [Removed and Reserved]

■ 3. Remove and reserve section 252.225–7039.

[FR Doc. 2013–27314 Filed 11–15–13; 8:45 am]

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Federal Register

Vol. 78, No. 222

Monday, November 18, 2013

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Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
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Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65515–65868 1
65869–66248 4
66249–66620 5
66621–66824 6
66825–66994 7
66995–67288 8
67289–67924 12
67925–68324 13
68325–68686 14
68687–68980 15
68981–69284 18

CFR PARTS AFFECTED DURING NOVEMBER

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.

1 CFR

Proposed Rules:
51 69006

3 CFR

Proclamations:
9047 66605
9048 66607
9049 66609
9050 66611
9051 66613
9052 66615
9053 66617
9054 66619
9055 67287
9056 68325

Executive Orders:
13653 66819

Administrative Orders:
Notices:
Notice of October 30, 2013 65867
Notice of November 7, 2013 67289
Notice of November 12, 2013 68323

5 CFR

733 66825
850 68981

Proposed Rules:
1201 67076

6 CFR

1001 66995
1002 66995
1003 66995

7 CFR

27 68983
271 65515
274 65515
761 65523
762 65523
765 65523
766 65523
772 65523

Proposed Rules:
245 65890
905 67977
1211 .....67979, 68298
3550 65582

9 CFR

94 68327
317 66826
318 66826
320 66826
327 66826
331 66826
381 66826
412 66826
424 66826

10 CFR

430 68331
770 67295

Proposed Rules:
2 66660
40 .....67224, 67225
50 68774
51 .....65903, 66858
55 68774
70 .....67224, 67225
72 .....67224, 67225
74 .....67224, 67225
150 .....67224, 67225
429 .....66202, 67319
430 66202
431 66202

12 CFR

204 66249
652 65541
1005 66251
1024 68343
1267 67004
1269 67004
1270 67004

Proposed Rules:
380 66661
702 65583
1006 67848

14 CFR

21 68687
25 .....67291, 68985, 68986
34 65554
39 .....65869, 65871, 66252, 66254, 66258, 67009, 67011, 67013, 67015, 67018, 67020, 67022, 68345, 68347, 68352, 68355, 68357, 68360, 68688, 68691, 68693, 68697
45 65554
61 66261
71 .....65554, 65555, 65556, 67024, 67292, 67293, 67294, 67295, 67296, 67297, 67298, 67299, 68699
91 68360
95 68699
97 .....68702, 68704
121 67800
382 .....67882, 67918
399 67882

Proposed Rules:
25 .....66317, 67077, 67320, 67321, 67323, 68775
39 .....66666, 66668, 66859, 66861
71 .....67324, 68777
121 67983
135 66865
1260 .....68375, 68376

1273 68375
1274 ..... 68375, 68376

15 CFR

30 67927

16 CFR

1 65557
254 68987
801 68705
1500 66840

17 CFR

1 68506
3 68506
15 69178
17 69178
18 69178
20 69178
22 68506
23 66621
30 68506
140 68506
190 66621
200 67468
240 67468
249 67468
Proposed Rules:
150 68946
170 ..... 67078, 67985
200 66428
227 66428
232 66428
239 66428
240 66428
249 66428
300 66318

20 CFR

404 66638
416 66638

21 CFR

73 68713
510 66263
520 66263
522 66263
558 66263
886 68714
1240 66841
1308 68716
Proposed Rules:
Ch. I 65588
16 69006
20 65904
112 69006
310 65904
314 ..... 65904, 67985
600 65904
601 67985
1308 65923

22 CFR

41 ..... 66814, 68992
230 66841
502 67025

24 CFR

50 68719
55 68719
58 68719
Proposed Rules:
214 66670

25 CFR

151 67928
Proposed Rules:
226 65589

26 CFR

1 ..... 66639, 68735
54 68240
Proposed Rules:
1 ..... 68779, 68780
300 65932

29 CFR

1910 ..... 66641, 66642
1926 ..... 66641, 66642
2590 68240
4022 68739
Proposed Rules:
1904 ..... 67254, 68782
1910 65932
1926 65932
1952 ..... 67254, 68782

30 CFR

Proposed Rules:
75 68783
936 66671

33 CFR

100 ..... 66844, 67026, 68995
110 67300
117 ..... 65873, 65874, 66265, 66266, 67027, 67938
151 67027
155 67027
160 67027
165 ..... 65874, 66267, 66269, 67028, 68995
Proposed Rules:
97 68784
100 69007
117 ..... 67084, 67999
140 67326
141 67326
142 67326
143 67326
144 67326
145 67326
146 67326
147 67326
160 68784
165 ..... 67086, 68002

34 CFR

Ch. III 66271
668 65768
674 65768
682 65768
685 65768
Proposed Rules:
Ch. VI 66865

36 CFR

1191 67303

37 CFR

384 66276
385 67938

38 CFR

17 68364

39 CFR

3010 67951

40 CFR

9 66279
19 66643
52 ..... 65559, 65875, 65877, 66280, 66648, 66845, 67036, 67307, 67952, 68365, 68367, 68997
81 66845
98 68162
180 ..... 65561, 65565, 66649, 66651, 67038, 67042, 67048, 68741
300 66283
372 66848
721 ..... 65570, 66279
Proposed Rules:
52 ..... 65590, 65593, 66320, 67090, 67327, 68005, 68377, 68378
63 ..... 66108, 66321
98 66674
300 66325

42 CFR

433 66852

44 CFR

64 ..... 65882, 68999, 69001
206 66852

45 CFR

146 68240
147 68240
153 66653
155 66653
156 66653
157 66653
158 66653
170 65884
Proposed Rules:
1613 65933

46 CFR

Proposed Rules:
97 68784

47 CFR

1 ..... 66287, 66288
22 66288
25 67309
27 ..... 66288, 66298
64 67956
69 67053
73 ..... 66288, 67310
74 66288
Proposed Rules:
Ch. I 65601
4 69018
64 68005
73 68384
90 65594

48 CFR

204 69273
208 69268
212 ..... 69268, 69273
215 69268
225 69282
233 69268
239 69268
244 69268
252 ..... 69288, 69273, 69283
Proposed Rules:
927 66865
952 66865
970 66865

49 CFR

27 67882
571 68748
575 66655
Proposed Rules:
26 68016
173 66326
174 66326
178 66326
179 66326
180 66326

50 CFR

10 65844
17 68370
20 65573
21 ..... 65576, 65578, 65844
223 66140
224 66140
300 ..... 65887, 69002
622 ..... 68372, 68373
635 68757
648 ..... 65888, 66857
660 68764
679 68374
Proposed Rules:
17 ..... 65936, 65938, 68660
21 ..... 65953, 65955
100 66885
223 ..... 66675, 69033
224 ..... 66675, 69033
226 65959
242 66885
635 66327
648 66887
679 ..... 65602, 68390

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 15, 2013

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