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FEDERAL REGISTER

Vol. 81 Thursday,
No. 13 January 21, 2016

Pages 3289–3698

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 764

RIN 0560–AI33

Direct Farm Ownership Microloan

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is adding Direct Farm Ownership Microloan (DFOML) to the existing Direct Loan Program. The revisions to the Direct Loan Program regulations consist of application, eligibility, repayment terms, and security requirements to better serve the unique operating needs of small family farm operations. The existing Microloans (ML) in the Direct Loan Program already include MLs for operating loans (OL). DFOML is expected to make farm ownership loans (FOs) available and more attractive to small operators through reduced application requirements, more timely application processing, and added flexibility for Youth Loan (YL) borrowers in meeting the farm experience eligibility requirement.

DATES: *Effective date:* January 21, 2016.

Comment Date: We will consider comments we receive by April 20, 2016.

ADDRESSES: We invite you to submit comments on this final rule. In your comment, please specify RIN 0560–AI33 and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Director, Loan Making Division, Farm Loan Programs (FLP), FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0522, Washington, DC 20250–0522.

Comments will be available for inspection online at *http://www.regulations.gov* and in the Office of the Director, Loan Making Division, FSA, USDA, 1400 Independence Avenue SW., Stop 0522, Washington, DC 20250–0522, between 8 a.m. and 4:30 p.m., except holidays.

FOR FURTHER INFORMATION CONTACT: Russ Clanton; telephone: (202) 690–0214. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

FSA provides agricultural credit to the Nation's farmers and ranchers through the FO Program. The Consolidated Farm and Rural Development Act of 1972 (CONACT, Pub. L. 92–419), as amended, authorizes FSA's FO Program. The FO Program is designed to finance the farm ownership needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient farming experience; have an acceptable credit history; and have adequate collateral for the proposed loan. (See 7 CFR 764.101 and 764.152 for a full explanation of FO eligibility requirements.) FO funds may be used, among other purposes, to purchase a farm, enlarge an existing farm, construct new farm buildings or improve structures, pay closing costs, and promote soil and water conservation and protection. (See 7 CFR 764.151 for a complete list of FO funds uses.) Throughout this rule, any reference to ''farm'' or ''farmer'' also includes ''ranch'' or ''rancher,'' respectively; in this document, the word ''operator'' refers to farmers who operate a farm.

FSA has conducted a Direct ML Program for OLs since January 2013 and has made 16,842 MLs to farmers since inception and provided MLs totaling $66.1 million dollars in FY 2013, $98.3 million in FY 2014, and $209.4 million in FY 2015 and the first quarter of FY 2016 (loan amounts are as of January 13, 2016). The Direct ML Program has seen explosive growth and helped to fill a need for financing of small farm operations, many of them to beginning or underserved farmers. Following the success of the Direct ML Program for direct OLs, FSA has decided to expand the ML Program to add direct FOs to reach more beginning farmers and farmers with small farms.

FSA evaluated the unique needs of small farm operations and identified unintended barriers to applying for FOs of smaller loan amounts. FSA is simplifying the application process and adding flexibility for meeting loan eligibility in order to encourage their participation. FSA is creating the new DFOML application process within the existing FO Program framework, and will use existing FO appropriations to focus on the financing needs of small farm operations.

FSA is implementing the DFOML to provide credit in an aggregate amount not to exceed $50,000. The $50,000 limit for MLs is established as specified in section 5106 of the Agricultural Act of 2014 (Pub. L. 113–79, referred to as the 2014 Farm Bill), amending the CONACT (7 U.S.C. 1943), to set the limit of $50,000 for the total ML indebtedness outstanding at any one time to any single borrower. Therefore, eligible farmers cannot have more than $50,000 in direct ML debt in each of the direct FO and OL programs upon loan closing. It is intended that smaller loan amounts will help small operations, such as beginning farmers, truck farmers, niche-type operations, and those who have demonstrated financial and business experience through the successful repayment of a Youth Loan (YL). These farmers tend to have difficulty obtaining real estate financing from lenders who are unlikely to loan such small amounts, particularly to non-typical operations. FSA is providing credit to these farmers at reasonable rates and terms that are significant because financing costs have a greater impact on smaller startup operations, which typically have a tighter cash flow.

Similar to the OL ML, under 7 CFR 761.104(e) DFOML applicants can provide other forms of documentation, such as operator's sales receipts, financial statements, contracts, and tax returns. This change will be helpful for operations where past yields have little bearing on the projected plan, such as vegetable operators who plan short term and grow different crops to meet current demand; operators who produce crops using measures such as rows or partial rows versus acres; or operators who

grow crops that sell in volumes such as bunches. In some of these cases it will be impracticable, burdensome, and often irrelevant for the farmer to demonstrate accurate yields, especially if a variety of produce is harvested and then sold to the public only hours later. In such cases, past reliable history of income and expenses or cash receipts may be more useful in projecting the future production revenue of a field, greenhouse, or operation. Also, if an operator is changing the crop from year to year to meet changing market demands, then production for the past 2 or 3 years may not be applicable to the production model. This modification allows FSA to assist operations that otherwise may have difficulty meeting or documenting production and yield history and will provide sufficient information for a loan official to determine eligibility and feasibility.

Additionally, repayment terms are being modified for these smaller FOs to allow borrowers to more quickly build equity in their farm real estate according to their repayment ability. That, combined with the already established flexibility for the farmers to make loan payments when they sell their products, allows farmers to more efficiently manage their income and resources.

This rule modifies the FO eligibility requirements in 7 CFR 764.152 to allow farmers who have successfully repaid an FSA financed YL to use the term of that loan toward the 3 years farm management experience for a DFOML. Each year of the YL term can be applied toward meeting the requirement for 3 years of farm management experience.

The repayment terms of DFOML will differ from the regular FO Program; the maximum number of years for a borrower to pay back a DFOML is 25 years. For smaller real estate loans, there is not a large difference in the payment amount between the annual installments under DFOML's maximum 25-year amortization schedule and the regular FO's maximum 40 year amortization. However; the interest paid on a 40 year amortization is considerably larger than on the 25-year schedule. The borrowers will benefit from paying less total interest on the life of their loan. The average number of years for an FO to be outstanding is 13 years, with loans being either paid in full or refinanced with another lender within this timeframe. Some borrowers do remain with FSA for the duration of their FO term. The 25-year maximum is reasonable for assisting our borrowers to purchase land and to build equity in the property. The benefits will help small operations endure through the start-up years, demonstrate capacity, build equity, move up to FSA regular loan programs, and eventually graduate to commercial credit.

Our role in providing supervised credit is to help borrowers prepare for the transition to conventional credit. While a DFOML will reduce the paperwork burden on applicants and FSA staff, it will not reduce the amount of oversight provided by FSA to these farmers. In fact, as a result of streamlining the application process, FSA will have more time to work on cash flow analysis, provide borrower training and ready these borrowers for transition into commercial credit.

ML Application Requirements and Application Processing

This rule is revising 7 CFR 764.51 to add the requirements for the DFOML application. A complete DFOML application will consist of the following:

- A microloan application form (§ 764.51(b)(1));
- A balance sheet (§ 764.51(b)(9) and (d)(2)(ii));
- An operating plan (§ 764.51(b)(9));
- Applicable environmental information (§ 764.51(b)(7));
- Description of the applicant's farm training and experience (§ 764.51(b)(3));
- Verification of applicant's farm experience (§ 764.51(d)(2)(v));
- Documentation that credit cannot be obtained elsewhere (§ 764.51(b)(6));
- Documents with regard to the property or option to purchase agreement (§ 764.51(b)(10));
- The credit report fee (§ 764.51(b)(11)); and
- Verification of non-farm income for repayment (§ 764.51(d)(2)(iii)).
- In addition, if the applicant is an entity, the complete application will include entity and entity member information specified in § 764.51(b)(2).

The DFOML application form is the same one in use for applicants for Direct ML Program for OLs. This form is intended to capture most of the information needed to process an ML, including sections for the applicant to describe farm training and experience. It also reduces and simplifies the financial statement.

Environmental information will still be handled through the county office process, involving FSA staff and NRCS staff, as applicable. This will not change from the current process followed for regular FOs.

Verification of non-farm income will only be required if that income is necessary for a feasible plan and sufficient cash flow for debt repayment. This is a change from the existing FO application process, as income is always verified as specified in § 764.51(b)(8). If it is necessary to verify debt, debts will be verified through the credit bureau reporting system.

This information will be sufficient for a loan official to determine eligibility and feasibility. The DFOML includes an abbreviated loan assessment, Farm Business Plan credit presentation, and year-end analysis, which will better parallel components of a small operation. Additionally, since these real estate loans will be $50,000 or less, the appraisal requirement may be met by an authorized agency official's evaluation that establishes the value of the real estate. An acceptable evaluation for DFOML will include an identification of the location of the property; a description of the property, including any improvements and its current and projected use; confirmation that the property was physically inspected and the date of the inspection; description of the analysis performed and supporting information used to determine the property's market value; an effective date of the evaluation and signature of the preparer.

The reduced requirements will allow loan staff to focus on paperwork that is valuable in the analysis of these smaller operations, instead of reviewing the required forms and paperwork necessary with larger, more complex real estate loans. The lower loan limit helps mitigate much of the risk inherent with less documentation and non-typical agricultural operations.

For incomplete applications, FSA will follow existing direct loan processing procedures. Following current procedures, FSA will inform the applicant, through written correspondence, of any missing items needed to complete the application prior to established regulatory deadlines.

Eligibility

Since DFOMLs are FOs, applicants will be subject to existing FO eligibility requirements. However, FSA added flexibility for YL borrowers in meeting the managerial ability requirement. Current regulations in 7 CFR 764.152(d) require that an FO applicant show the ability to manage a farm operation; the applicant must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted. One of these three years can be substituted with the following experience:

- Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields,
- Significant business management experience, or

• Leadership or management experience while serving in any branch of the military.

As noted above, the current revisions add flexibility for farmers who have successfully repaid an FSA financed YL to use the term of that loan toward the 3 years farm management experience for a DFOML.

Except as noted in the rule, FO eligibility and feasibility criteria will remain consistent with existing programs in FLP, but the small loan amount will make the extensive paperwork requirements unnecessary. The farm operation will be required to project a positive cash flow, and servicing options will remain consistent with existing FLP options. The DFOML process will simply broaden the reach of FSA's FO Program by providing flexibility that allows FSA loan programs to be more attractive to small and beginning farmers.

This rule modifies the ML definition, in 7 CFR 761.2, to include FO uses of funds; the prior ML definition only addressed direct OLs. Additionally, this rule creates a distinction between MLs used for OL and FO purposes in areas in which the application process, eligibility, and security requirements differ.

FSA has considered several options in creating the DFOML and has weighed the underwriting risks against the opportunity to improve the FO Program. The underwriting risks will be limited due to the lower loan amounts and the smaller pool of applicants who are able to benefit from DFOML. The benefits to beginning and small farmers to apply for DFOML clearly outweigh any perceived risks or barriers.

Security Requirements

As specified in § 764.101(c) and (e), MLs are exempted from the requirements of obtaining 150 percent security and taking a lien on non-essential assets. As specified in § 764.155(b)(1), an ML made for FO purposes, may be secured only by the real estate being purchased or improved, as long as it meets the 100 percent security requirement. This is consistent with the security requirements in place for existing OL MLs.

Applicability of Other Regulatory Requirements

Other existing and applicable regulatory requirements pertaining to development of operating plans, loan processing and closing, use of loan funds, loan servicing, and environmental requirements not specifically amended by this rule will apply to MLs, like other FOs.

Miscellaneous Changes

In addition to the changes discussed above, this rule is making conforming minor changes to correct the ML limit to be consistently $50,000 and to otherwise add MLs to FOs in the regulations.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involved matters relating to loans and is therefore being published as a final rule. Although FSA is not required to provide the opportunity for comments on this rule, we are requesting public comments for 90 days to get input on the changes.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Most FO loans are established at the beginning of the calendar year, therefore, implementing this rule quickly will benefit beginning and small farms starting in 2016 instead of having to wait for 2017. Using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective when published in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by APA or any other law to publish a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because it is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that simplifying the application process and adding flexibility for meeting loan eligibility requirements to encourage small farm operation participation in its FO program explained in this rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental assessment or environmental impact statement on this rule.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial

assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule will not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), FSA described the Direct Farm Ownership Microloan (DFOML) information collection activities in the request for the renewal and revision of the 0260–0237, Direct Loan Making, notice published on 10/07/2015, 80 FR 60614–60615. FSA will be using the existing approval for the forms to begin the DFOML collection under the 0560–0237, Direct Loan Making. Therefore, no change to the information collection was required in this rule.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule would apply is:

10.407 Farm Ownership Loans.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture, Agricultural commodities, Livestock.

For reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Revise the definition of ''Microloan'' in § 761.2(b) to read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Microloan means a type of OL or FO of $50,000 or less made using a reduced loan application. Direct MLs are made under modified eligibility and security requirements.

* * * * *

PART 764—DIRECT LOAN MAKING

■ 3. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

■ 4. In § 764.1(b)(1), add the phrase ''ML and'' immediately after ''including''.

■ 5. Amend § 764.51 as follows:

■ a. In paragraph (c) introductory text, add the words ''for OL purposes'' immediately after ''request'';

■ b. Redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g); and

■ c. Add a new paragraph (d).

The addition reads as follows:

§ 764.51 Introduction.

* * * * *

(d) For an ML request for FO purposes, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay for any authorized purpose under the FO Program, which are specified in § 764.151; and

(ii) $50,000 or less and the applicant's total outstanding Agency FO debt at the time of loan closing will be $50,000 or less,

(2) The applicant must submit the following:

(i) Items specified in paragraphs (b)(1), (2), (3), (6), (7), (9), (10), and (11) of this section;

(ii) Financial and production records for the most recent production cycle, if available and practicable to project the cash flow of the operating cycle; and

(iv) Verification of all non-farm income relied upon for repayment; and

(v) Verification of applicant's farm experience;

(3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when necessary to make a determination on the loan application.

* * * * *

■ 6. Amend § 764.101 as follows:

■ a. In paragraph (i)(3), remove ''MLs'' and add the phrase ''MLs, made for OL purposes,'' in its place; and

■ b. Revise paragraph (i)(4).

The revision reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) *Alternatives for MLs made for OL purposes.* Applicants for MLs made for OL purposes, also may demonstrate managerial ability by one of the following:

* * * * *

■ 7. Revise § 764.107(a) to read as follows:

§ 764.107 General appraisal requirements.

(a) *Establishing value for real estate.* The value of real estate will be established by an appraisal completed in accordance with § 761.7 of this chapter, except that for MLs made for FO purposes, the appraisal requirement may be satisfied by an evaluation by an authorized agency official that establishes the value of the real estate.

* * * * *

■ 8. Amend § 764.152 as follows:

■ a. Redesignate paragraph (e) as paragraph (f); and

■ b. Add a new paragraph (e).

The addition reads as follows:

§ 764.152 Eligibility requirements.

* * * * *

(e) For an ML made for FO purposes, if an ML applicant has successfully repaid an FSA financed youth loan, the term of that loan may be used toward the 3 years of management experience required for a FO direct loan.

* * * * *

■ 9. Amend § 764.154 as follows:

■ a. In paragraph (b), remove the words ''The Agency'' and add the phrase ''Except for MLs made for FO purposes, the Agency'' in their place.

■ b. Add paragraph (b)(1) and add and reserve paragraph (b)(2).

The addition reads as follows:

§ 764.154 Rates and terms.

* * * * *

(b) * * *

(1) For MLs made for FO purposes the Agency schedules repayment of an FO based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 25 years from the date of the note.

(2) [Reserved]

* * * * *

■ 10. In § 764.155, add paragraph (b)(1) to read as follows; and add and reserve paragraph (b)(2).

§ 764.155 Security requirements.

* * * * *

(b) * * *

(1) An ML made for FO purposes, may be secured only by the real estate being purchased or improved, as long as its value is at least 100 percent of the loan amount.

(2) [Reserved]

* * * * *

■ 11. Amend § 764.203 as follows:

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

■ b. Add a new paragraph (c).

The addition reads as follows:

§ 764.203 Limitation.

* * * * *

(c) Downpayment loans made as an ML for FO purposes may not exceed $50,000.

* * * * *

§ 764.251 [Amended]

■ 12. In § 764.251(a) introductory text, add the phrase ''used for OL purposes'' immediately after ''ML''.

§ 764.255 [Amended]

■ 13. In § 764.255(c) introductory text, add ''used for OL purposes'' immediately after ''MLs''.

Val Dolcini,

Administrator, Farm Service Agency.

[FR Doc. 2016–01038 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–15–0033; FV15–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that implemented a recommendation from the Washington Apricot Marketing Committee (Committee) to decrease the assessment rate from $1.50 to $0.75 per ton of Washington apricots handled for the 2015–2016 and subsequent fiscal periods. The Committee locally administers the marketing order and is comprised of apricot producers and handlers operating within designated counties in Washington. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

DATES: Effective January 22, 2016.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 132 and Order No. 922, as amended (7 CFR 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

In an interim rule published in the **Federal Register** on August 19, 2015, and effective on August 20, 2015, (80 FR 50189, Doc. No. AMS–FV–15–0033, FV15–922–1 IR), § 922.235 was amended by decreasing the assessment rate for the 2015–2016 and subsequent fiscal periods from $1.50 to $0.75 per ton. The decrease in the per ton assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

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

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

There are approximately 100 apricot producers in the production area and approximately 17 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000 (13 CFR 121.201).

The National Agricultural Statistics Service reported that, in 2014, the Washington apricot total utilization of 8,500 tons (including both fresh and processed markets) sold for an average of $1,080 per ton. Consequently, the total farm-gate value in 2014 was approximately $9,180,000. Based on the number of producers in the production area (100), the 2014 average revenue from the sale of apricots is estimated at approximately $91,800 per producer. In addition, based on information from the USDA's Market News Service, 2014 f.o.b. prices for WA No. 1 apricots ranged from $20.00 to $26.00 per 24-pound loose-pack container, and from $22.00 to $30.00 for 2-layer tray-pack containers. Using average price and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than $7,000,000 worth of apricots on an annual basis. In view of the foregoing, it can be concluded that the majority of Washington apricots producers and handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate collected from handlers for the 2015–2016 and subsequent fiscal periods from $1.50 to $0.75 per ton of apricots handled. The Committee also unanimously recommended 2015–2016 fiscal period expenditures of $7,610. With a 2015 Washington apricot crop estimate of 5,800 fresh market tons, the Committee anticipates assessment income of approximately $4,350. Income derived from handler assessments, along with funds from the Committee's monetary reserve, will be adequate to cover budgeted expenses for the 2015–2016 fiscal period. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

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

In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 12, 2015, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Comments on the interim rule were required to be received on or before October 19, 2015. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-15-0033-0001*.

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

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (80 FR 50189, August 19, 2015) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 7 CFR part 922, which was published at 80 FR 50189 on August 19, 2015, is adopted as a final rule without change.

Dated: January 15, 2016.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–01137 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8433; Directorate Identifier 2015–NM–194–AD; Amendment 39–18366; AD 2016–01–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A319–113 and A319–114 airplanes; and Model A320–211 and A320–212 airplanes. This AD requires identifying affected engines, and doing a torque check of the forward engine

bolts on affected engines. This AD would also require, for any bolt rotation that is found, torqueing the bolt and eventually replacing the forward engine mount bolts, nuts, and washers, doing a fluorescent penetrant inspection and dimensional check of the affected bolt holes for local deformation and cracks, and doing corrective actions if necessary. This AD was prompted by an incorrect torque unit for the CFM56–5A engine forward mount fasteners that was inadvertently introduced into a certain Airbus airplane maintenance manual. We are issuing this AD to prevent loose bolts, which, if combined with induced maintenance damage, could lead to forward engine mount failure. An engine mount failure can result in an engine detachment and consequent reduced control of the airplane, damage to the airplane, and injury to persons on the ground.

DATES: This AD becomes effective February 5, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 5, 2016.

We must receive comments on this AD by March 7, 2016.

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

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

For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8433.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8433; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0229, dated November 27, 2015, (referred to after this as ''the MCAI''), to correct an unsafe condition for all Airbus Model A319–113 and A319–114 airplanes; and Model A320–211 and A320–212 airplanes. The MCAI states:

> A review of the maintenance instructions revealed that an incorrect torque value with wrong unit for the four forward engine mount pylon bolts was included in task 71–00–00–400–040–A01, ''Installation of the power plant with Engine Positioner TWW75E'', of the A320 family (CFMI) [CFM International] Aircraft Maintenance Manual (AMM), revision dated May 2013. It was determined that this AMM inconsistent torque unit affected the A319/A320 airplane equipped with CFM56–5A engines only.
>
> Subsequently, AMM task 71–00–00–400–040–A01 was corrected to include the correct values in the August 2015 revision. During the period between these two AMM revisions, incorrect torque values may have been applied.
>
> This condition, if not corrected, and if combined with induced maintenance damage, could lead to forward engine mount failure, possibly resulting in engine detachment and consequent reduced control of the airplane, damage to the airplane and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A71N010–15 * * *, to provide instructions to check the torque values of the forward engine mount bolts.
>
> For the reasons described above, this [EASA] AD requires identification of CFM56–5A engines that were installed by using the incorrect torque data, verifying the proper torque value of the all four forward engine mount pylon bolts and, depending on findings, accomplishment of corrective action(s) [*i.e.,* tightening the under-torqued bolts and replacement of bolts at the next engine change. The replacement includes a fluorescent penetrant inspection and dimensional check of the pylon bolt holes of the affected forward engine mount platform for local deformation and cracks and corrective actions, *i.e.,* replacing the forward platform].

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8433.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A71N010–15, dated September 30, 2015. The service information describes procedures for checking the current torque value for the forward engine bolts; torqueing the bolt; replacing the forward engine mount bolts, nuts, and washers; doing a fluorescent penetrant inspection and dimensional check of the pylon bolt holes of the affected forward engine mount platform for local deformation and cracks; and doing corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition, if not corrected, and if combined with induced maintenance damage, could lead to forward engine mount failure. A failed engine mount can result in engine detachment and consequent reduced control of the airplane, damage to the airplane, and injury to persons on the

ground. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8433; Directorate Identifier 2015–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

We estimate that this AD affects 126 airplanes of U.S. registry.

We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $53,550, or $425 per product.

In addition, we estimate that any necessary follow-on actions will take about 1 work-hour for a cost of $85 per product. We have no definitive costs for the engine mounting bolts, nuts, and washers, and no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–07 Airbus: Amendment 39–18366. Docket No. FAA–2015–8433; Directorate Identifier 2015–NM–194–AD.

(a) Effective Date

This AD becomes effective February 5, 2016.

(b) Affected ADs

None.

(c) Applicability

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

(1) Airbus Model A319–113 and A319–114 airplanes, all manufacturer serial numbers.

(2) Airbus Model A320–211 and A320–212 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Power Plant.

(e) Reason

This AD was prompted by an incorrect torque unit for the CFM56–5A engine forward mount fasteners that was inadvertently introduced into a certain Airbus airplane maintenance manual. We are issuing this AD to prevent loose bolts, which if combined with induced maintenance damage, could lead to forward engine mount failure. An engine mount failure can result in an engine detachment and consequent reduced control of the airplane, damage to the airplane, and injury to persons on the ground.

(f) Compliance

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

(g) Identification of Affected Engines and Torque Check

Within 2 months after the effective date of this AD, accomplish the actions required by paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) Identify each CFM56–5A engine that has been installed on the airplane as specified in A318/A319/A320/A321 Airplane Maintenance Manual (AMM) Task 71–00–00–400–040–A01, ''Installation of the Power Plant with Engine Positioner TWW–75E,'' of an AMM having a revision date between May 2013 and July 2015 (inclusive). A review of airplane maintenance records is acceptable in lieu of this determination if the date of the AMM revision used for the engine installation can be conclusively determined from that review.

(2) For each engine installation determined to be affected as required by paragraph (g)(1) of this AD, check the torque values applied on the forward engine mount bolts, in accordance with the instructions of paragraph 4.2.2 of Airbus Alert Operators Transmission (AOT) A71N010–15, dated September 30, 2015.

(h) On-Condition Actions

If, during the torque check required by paragraph (g)(2) of this AD, any bolt rotation is detected, accomplish the actions required by paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight, torque the affected bolt, in accordance with the instructions of paragraph 4.2.3.1 of Airbus AOT A71N010–15, dated September 30, 2015.

(2) During the next engine removal, replace the forward engine mount bolts, nuts, and washers; accomplish a fluorescent penetrant inspection and dimensional check of the pylon bolt holes of the affected forward engine mount platform for local deformation

and cracks; and do all applicable corrective actions; in accordance with the instructions of paragraph 4.2.3.2 of Airbus AOT A71N010–15, dated September 30, 2015. Do all applicable corrective actions before further flight.

(i) Parts Installation Limitation

As of the effective date of this AD, installation of a CFM56–5A engine on an airplane is permitted, provided that the installation is accomplished using the torque values for forward engine mount bolts specified in paragraph 4.2.3.1 of Airbus AOT A71N010–15, dated September 30, 2015.

Note 1 to paragraph (i) of this AD: Additional guidance for the re-torque can be found in Airbus A318/A319/A320/A321 AMM, Task 71–00–00–400–040–A01, ''Installation of the Power Plant with Engine Positioner TWW 75E,'' dated August 2015.

(j) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0229, dated November 27, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8433.

(m) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission (AOT) A71N010–15, dated September 30, 2015.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on December 28, 2015.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01110 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1987; Directorate Identifier 2014–NM–240–AD; Amendment 39–18377; AD 2016–01–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes. This AD was prompted by reports of cracked forward door members of the inboard main landing gear (MLG) doors. This AD requires repetitive inspections of the inboard MLG doors, repairs if necessary, and replacement of the inboard MLG doors. This AD also provides optional terminating action for the door replacement. We are issuing this AD to prevent loss of an MLG door during flight, which could result in damage to the airplane.

DATES: This AD becomes effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1987*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1987.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes. The NPRM published in the **Federal Register** on June 30, 2015 (80 FR 37200). The NPRM was prompted by reports of cracked forward door members of the inboard MLG doors. The NPRM proposed to require repetitive inspections of the inboard MLG doors, repairs if necessary, and replacement of the inboard MLG doors. The NPRM also proposed optional terminating action for the door replacement. We are issuing this AD to prevent loss of an MLG door during flight, which could result in damage to the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–42, dated December 12, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes. The MCAI states:

> Cases of inboard MLG doors with cracked door forward members were found. A cracked inboard MLG door forward member could result in door departure from the aeroplane. Loss of an MLG door during flight could result in damage to the aeroplane and injury to persons on the ground.
>
> This [Canadian] AD mandates the repetitive inspection [and corrective actions if necessary] and replacement of the inboard MLG doors.

The repetitive inspection is a detailed inspection for damage (including deformation, pulled or missing fasteners on the inner skins and outer skin, and cracks) on the inner skins, outer skin, and the forward member of the inboard MLG doors. Corrective actions include repairing, removing, or replacing the inboard MLG door.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1987-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (80 FR 37200, June 30, 2015) and the FAA's response to the comment.

Request To Revise Repair Instructions

Envoy Airlines requested that we revise the wording in paragraph (i)(1)(ii)(A) of the proposed AD (80 FR 37200, June 30, 2015) to clarify that removal of the MLG door is not required in all repair situations. Envoy Airlines stated that Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013, specifies that repairs can be accomplished with the door installed in some situations. Envoy Airlines suggested that the text ''Repair and reinstall the door'' in paragraph (i)(1)(ii)(A) of the proposed AD be reworded to specify ''repair the door.''

We agree with the commenter's request to revise the repair instructions. We have revised paragraph (i)(1)(ii)(A) of this AD by removing the instructions to reinstall the door.

Clarification of Actions

We have clarified the inspection area in paragraph (g) of this AD by specifying to inspect for damage on the inner skins, outer skin, and the forward member of the inboard MLG doors.

Paragraph (i)(1)(ii)(A) of the proposed AD (80 FR 37200, June 30, 2015) specifies to do a repair ''if repair of the inboard MLG is possible.'' We have revised paragraph (i)(1)(ii)(A) of this AD to clarify the repair is done if it is possible to repair the inboard MLG door in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013.

We have also revised paragraph (i)(1)(i) of this AD to specify that clarify that removed damaged doors cannot be reinstalled, unless the door is repaired prior to reinstallation and the actions specified in paragraph (l) of this AD are done.

We have also clarified the actions required by paragraphs (i)(1)(iii), (i)(2), (k)(1), and (k)(2)(i) of this AD by specifying that where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

We have also revised paragraph (m) of this AD to refer to the latest revision of Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014. The ''Pre SB Part Number'' column of Section M, Relationship Chart, of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, is the same as that in Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 37200, June 30, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 37200, June 30, 2015).

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Bombardier Modification Summary Package IS670528200033, Revision A–2, dated October 11, 2005. This service information describes procedures for enlarging the forward and aft hinge cutouts of the MLG inboard and outboard doors.
- Bombardier Service Bulletin 670BA–32–040, Revision D, dated July 2, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014. This service information describes procedures for increasing the clearances between the MLG fairing and the MLG doors.
- Bombardier Service Bulletin 670BA–32–040, Revision E, dated November 13, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014. This service information describes procedures for increasing the clearances between the MLG fairing and the MLG doors, and for enlarging the forward and aft hinge cutouts of the MLG inboard and outboard doors.
- Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013. This service information describes procedures for inspecting and repairing the inboard MLG door inner skins, outer skin, and the forward member.
- Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014; and Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014. This service information describes procedures for replacing the inboard MLG doors.

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

Costs of Compliance

We estimate that this AD affects 269 airplanes of U.S. registry.

We estimate that it will take about 16 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work hour. Required parts will cost about $31,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $8,704,840, or $32,360 per product.

In addition, we estimate that any necessary follow-on actions will take up to 44 work-hours and require parts costing up to $31,000, for a cost of up to $34,740 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1987;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–17 Bombardier, Inc.: Amendment 39–18377; Docket No. FAA–2015–1987; Directorate Identifier 2014–NM–240–AD.

(a) Effective Date

This AD becomes effective February 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, certificated in any category, serial numbers 10002 and subsequent, as identified in Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of cracked forward door members of the inboard main landing gear (MLG) doors. We are issuing this AD to prevent loss of an MLG door during flight, which could result in damage to the airplane.

(f) Compliance

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

(g) Repetitive Inspections

Within 660 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do a detailed inspection for damage (including deformation, pulled or missing fasteners on the inner skins and outer skin, and cracks) on the inner skins, outer skin, and the forward member of the inboard MLG doors, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013. Repeat the inspection thereafter at intervals not to exceed 660 flight hours or 12 months, whichever occurs first.

(h) Detailed Inspection Definition

For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Corrective Actions

(1) If any damage is found on any inner skin or outer skin of the inboard MLG door during any inspection required by paragraph (g) of this AD: Before further flight, do the actions specified in paragraph (i)(1)(i), (i)(1)(ii), or (i)(1)(iii) of this AD.

(i) Remove the damaged inboard MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013. A damaged inboard MLG door cannot be reinstalled, unless the repair specified in paragraph (i)(1)(ii) of this AD is done prior to reinstallation and the actions specified in paragraph (l) of this AD are done at the times specified in paragraph (l) of this AD.

(ii) Repair the door as specified in paragraph (i)(1)(ii)(A) or (i)(1)(ii)(B) of this AD, as applicable.

(A) If it is possible to repair the inboard MLG door in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013: Repair the door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013.

(B) If it is not possible to repair the inboard MLG door in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013: Repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(iii) Replace the inboard MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, except, where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) If any damage is found on the forward member of the inboard MLG door during any inspection required by paragraph (g) of this AD: Before further flight, replace the inboard MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, except, where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(j) Terminating Action

Within 6,600 flight hours or 36 months after the effective date of this AD, whichever occurs first, except as provided by paragraph (l) of this AD: Replace the inboard MLG doors, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014; except, where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(1) Doing the MLG door replacement required by the introductory text of paragraph (j) of this AD terminates the inspections required by paragraph (g) of this AD for that MLG door.

(2) Doing the MLG door replacement required by the introductory text of paragraph (j) of this AD does not terminate the actions required by AD 2010–23–19, Amendment 39–16508 (75 FR 68695, November 9, 2010).

(k) Optional Actions for Compliance With Paragraph (j) of This AD

Doing any of the actions specified in paragraph (k)(1), (k)(2), (k)(3), or (k)(4) of this AD is acceptable for compliance with the requirements of paragraph (j) of this AD.

(1) Replacement of the inboard MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, except, where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO; and enlargement of the forward and aft hinge cutouts, in accordance with the procedures specified in Bombardier Modification Summary Package IS670528200033, Revision A–2, dated October 11, 2005.

(2) Installation of an inboard MLG door assembly with a part number listed in the ''Post SB Part Number'' column of Section M, Relationship Chart, of Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014, in accordance with a method specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Do the installation in accordance with the Accomplishment instructions of Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014; or Bombardier Service Bulletin 670BA–32–043, Revision A dated November 13, 2014; except, where Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014, specifies to contact the manufacturer for certain instructions, this AD requires accomplishing those actions using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(ii) Do the installation using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(3) Doing the actions specified in ''PART C—Installation of the Inboard MLG Door Part Number CC670–10520–15 and Increase of the Clearance Between the Left MLG Inboard-Door and the MLG Fairing'' and ''PART D—Installation of the Inboard MLG Door Part Number CC670–10520–16 and Increase of the Clearance Between the Right MLG Inboard-Door and the MLG Fairing'' of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–040, Revision E, dated November 13, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014.

(4) Doing the actions specified in paragraphs (k)(4)(i) and (k)(4)(ii) of this AD.

(i) Doing the actions specified in ''PART C—Installation of the Inboard MLG Door Part Number CC670–10520–15 and Increase of the Clearance Between the Left MLG Inboard-Door and the MLG Fairing'' and ''PART D—Installation of the Inboard MLG Door Part Number CC670–10520–16 and Increase of the Clearance Between the Right MLG Inboard-Door and the MLG Fairing'' of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–040, Revision D, dated July 2, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014.

(ii) Enlargement of the forward and aft hinge cutouts specified in Bombardier Modification Summary Package IS670528200033, Revision A–2, dated October 11, 2005.

(l) Optional Delay of MLG Door Replacement

If an MLG door is removed, the replacement required by paragraph (j) of this AD can be delayed until the MLG door is reinstalled. When the removed MLG door is reinstalled, the actions required by paragraph (j) of this AD must be done at the time specified in paragraph (j) of this AD.

(m) Parts Installation Prohibition

Upon completion of the actions specified in paragraph (j) or (k) of this AD, no person may install an inboard MLG door assembly with a part number listed in the ''Pre SB Part Number'' column of Section M, Relationship Chart, of Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014; on any airplane.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(o) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(p) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–42, dated December 12, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1987-0002.*

(q) Material Incorporated by Reference

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

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

(i) Bombardier Modification Summary Package IS670528200033, Revision A–2, dated October 11, 2005.

(ii) Bombardier Service Bulletin 670BA–32–040, Revision D, dated July 2, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014.

(iii) Bombardier Service Bulletin 670BA–32–040, Revision E, dated November 13, 2014, including Appendix A, Revision A, dated July 2, 2014, and Appendix B, Revision B, dated July 2, 2014.

(iv) Bombardier Service Bulletin 670BA–32–042, Revision A, dated July 2, 2014, including Appendixes A and B, both dated November 5, 2013.

(v) Bombardier Service Bulletin 670BA–32–043, dated July 2, 2014.

(vi) Bombardier Service Bulletin 670BA–32–043, Revision A, dated November 13, 2014.

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

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

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

Issued in Renton, Washington, on January 6, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00630 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1045; Directorate Identifier 2014–NM–031–AD; Amendment 39–18372; AD 2016–01–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A310 and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This AD was prompted by a report of skin disbonding and damage found on the composite side panel of the rudder, located between the rudder core and skin of a previously repaired area. This AD requires an inspection for disbonding or damage of certain rudders, and related investigative actions and corrective actions if necessary. We are issuing this AD to detect and correct disbonding and damage of the rudder, which could result in reduced structural integrity of the rudder and consequent reduced controllability of the airplane.

DATES: This AD is effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-1045;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1045.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A310 and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes) series airplanes. The NPRM published in the **Federal Register** on January 23, 2015 (80 FR 3525).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0026, dated January 28, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A310 and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> A case of skin disbonding was reported on a composite side of a rudder installed on an A310 aeroplane.
>
> The investigation results revealed that this disbonding started from a skin panel area previously repaired in-service in accordance with the Structural Repair Manual (SRM).
>
> The initial damage has been identified as a disbonding between the core and the repaired area. This damage may not be visually detectable and likely propagates during normal operation due to the variation of pressure during ground-air-ground cycles.
>
> This condition, if not detected and corrected, could affect the structural integrity of the rudder, possibly resulting in reduced control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires a one-time thermography inspection of each repaired rudder or rudder whose maintenance records are incomplete and, depending on findings, accomplishment of applicable corrective and follow-up actions.

Related investigative actions include doing a pulse thermography inspection for disbonding or damage of the left- and right-hand rudder side shells; a core ventilation through the inner skin, an elasticity laminate checker or ultrasonic inspection around the identified repairs in the booster area, and around identified fluid ingress; and a Tap test inspection of the glass fiber reinforced plastic area to identify skin-to-core disbonding and on identified repairs. Corrective actions include repairing or replacing any disbonded or damaged rudder.

Depending on configuration and inspection results, the repetitive inspection intervals are 750 or 1,000 flight cycles, or 500 flight hours or 4 months, whichever occurs later.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1045-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 3525, January 23, 2015) and the FAA's response to each comment.

No Justification for Issuing NPRM (80 FR 3525, January 23, 2015)

FedEx stated that Airbus has not provided any data or analysis showing the de-validated SRM procedures in the proposed AD (80 FR 3525, January 23, 2015) as inadequate. FedEx noted that one finding on a Model A310 airplane with skin disbonding and damage found on the composite side panel of the

rudder caused the de-validation of all Model A300 and A310 airplanes with rudder side shell repairs, and mandatory inspections of all rudders repaired using the structural repair manual (SRM). FedEx added that a heavy burden is being placed on operators with very little justification from the manufacturer. FedEx stated that Airbus has not provided new validated SRM procedures, yet FedEx is being required to inspect all rudders without having any available, developed repairs; instead repairs would need to be done using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). FedEx does not agree with the de-validation of the SRM procedures and mandating inspections of the entire fleet of airplanes, based on one finding.

We infer that the commenter is asking for justification to support issuing this final rule. We acknowledge the commenter's concerns. However, the safety risk of undetected rudder skin disbonding that may not be detectable visually and could propagate during normal operation due to the variation of aerodynamic pressure during ground-air-ground cycles is sufficient to require the proposed actions. We also acknowledge that Airbus does not have new SRM procedures available, partially due to the unknown size and location of previously accomplished SRM repairs and the type of skin disbonding that may be identified that will result in each repair needing to be evaluated individually. Therefore, we have determined that inspections are necessary if an applicable SRM repair has been done, or if maintenance records are not available or are incomplete. The service information provides procedures for the detailed inspections; therefore, using a method approved by the FAA, EASA, or Airbus's EASA DOA is necessary only for repairs. We have determined it is necessary to proceed with issuing this final rule as proposed.

Request To Allow Using Future Revisions of the SRM for Rudder Repairs

FedEx asked that paragraph (i) of the proposed AD (80 FR 3525, January 23, 2015) be revised to allow a composite side shell panel repair on any rudder using future revisions of the SRM procedure identified in Figure A–GBBAA (Sheet 01 and 02) or Figure A–GBCAA (Sheet 02) of Airbus Service Bulletin A310–55–2051; or Figure A–GBBAA (Sheet 01, 02, or 03) or Figure A–GBCAA (Sheet 02 or 04) of Airbus Service Bulletin A300–55–6050. FedEx stated that when Airbus revalidates the SRM procedures, FedEx won't be able to use those procedures for the repair because it is not allowed per paragraph (i) of the proposed AD.

We do not agree with the request. Although we understand the FedEx concerns, allowing the use of later revisions of service documents in an AD is not allowed by the Office of the Federal Register's regulations. However, after the manufacturer validates a later revision of the SRM procedures that provides an acceptable level of safety we can evaluate the later revision of the SRM as an alternative method of compliance, in accordance with the procedures specified in paragraph (m)(1) of this AD. Paragraph (i) of this AD only prohibits the use of specific SRM procedures identified in that paragraph. We have not changed this AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 3525, January 23, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3525, January 23, 2015).

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletins A300–55–2051 and A310–55–6050, both Revision 01, both dated August 20, 2014. The service information describes procedures for inspecting the left- and right-hand rudder side shells for disbonding or damage, and related investigative actions and corrective actions if necessary. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 199 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $67,660, or $340 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

You may examine the AD docket on the Internet at: *http://www.regulations.gov/#!docketDetail;D=FAA-2014-1045*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–13 Airbus: Amendment 39–18372; Docket No. FAA–2014–1045; Directorate Identifier 2014–NM–031–AD.

(a) Effective Date

This AD is effective February 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; and Model A300 F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by a report of skin disbonding and damage found on the composite side panel of the rudder, located between the rudder core and skin of a previously repaired area. We are issuing this AD to detect and correct disbonding and damage of the rudder, which could result in reduced structural integrity of the rudder, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Rudder Assembly Identification

Within 4 months after the effective date of this AD: Check the applicable rudder maintenance records to determine if any composite side shell panel repair has been done since first installation of the rudder, and do the applicable actions specified in paragraph (g)(1) or (g)(2) of this AD at the time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable, except as provided by paragraph (j)(3) of this AD.

(1) If a repair is identified based on the maintenance records: Perform a rudder thermography inspection of the repaired area only for disbonding or damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable.

(2) If the rudder maintenance records are unavailable or incomplete: Perform a rudder thermography inspection of the complete side shell panels to identify and mark the repair locations for disbonding or damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable.

(h) Related Investigative Actions/Repair or Replace

If any disbonding or damage is found during any inspection required by paragraph (g)(1) or (g)(2) of this AD: Do the actions required by paragraphs (h)(1) and (h)(2) of this AD, as applicable.

(1) At the time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable, except as required by paragraph (j)(1) of this AD; do the applicable related investigative actions identified in Tables 3, 4A, 4B, 4C, 4D, and 5 of paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable, to determine the type and extent of the disbonding or damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable. Repeat the applicable inspection at the time specified in paragraph 1.E., ''Compliance'' of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable.

(2) Before further flight: Repair any disbonding or damage found during any inspection required by paragraph (h)(1) of this AD, or replace any affected rudder, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–55–6050, or A310–55–2051, both Revision 01, both dated August 20, 2014; as applicable, except as required by paragraph (j)(4) of this AD.

(i) Repair Using Structural Repair Manual (SRM) Procedure Not Allowed

As of the effective date of this AD, do not accomplish a composite side shell panel repair on any rudder using an SRM procedure identified in Figure A–GBBAA (Sheet 01 and 02) or Figure A–GBCAA (Sheet 02) of Airbus Service Bulletin A310–55–2051; or Figure A–GBBAA (Sheet 01, 02, or 03) or Figure A–GBCAA (Sheet 02 or 04) of Airbus Service Bulletin A300–55–6050; as applicable.

(j) Exceptions to Service Information

(1) Where Airbus Service Bulletins A300–55–6050; and A310–55–2051; both Revision 01, both dated August 20, 2014; specify a compliance time ''from original service bulletin issue date,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Airbus Service Bulletins A300–55–6050; and A310–55–2051 both Revision 01, both dated August 20, 2014; specify to contact Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(3) Airplanes on which a rudder is installed having a serial number that is not in the range HF–1005 through HF–1323, inclusive; HF–1325, HF–1327, HF–1329, HF–1331, HF–1332, HF–1340, TS–1324, TS–1326, TS–1328, TS–1330, TS–1333 through TS–1339, inclusive; TS–1341 through TS–1420, inclusive; or TS–2001 through TS–2197, inclusive; are not affected by the requirements of paragraphs (g) and (h) of this AD, provided that no repairs have been done in accordance with the applicable SRM specified in paragraph (i) of this AD on the composite side shell panel of that rudder since installation.

(4) The compliance time for the initial detailed inspection of the restored area for loose or lost tape identified in Tables 3 and 4 of paragraph 1.E., ''Compliance,'' of Airbus Service Bulletins A300–55–6050 and A310–55–2051, both Revision 01, both dated August 20, 2014; specifies ''within 500 FH or 4 months after closing holes.'' This AD requires this action within 500 flight hours or 4 months, whichever occurs later, after the holes are closed.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A300–55–6050, or A310–55–2051, both dated September 11, 2012; as applicable; which are not incorporated by reference in this AD.

(l) Parts Installation Limitations

As of the effective date of this AD, no person may install any affected rudder on any airplane, unless the actions required by paragraphs (g) and (h) of this AD have been accomplished.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested

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

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0026, dated January 28, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1045-0002*.

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

(o) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A300–55–6050, Revision 01, dated August 20, 2014.

(ii) Airbus Service Bulletin A310–55–2051, Revision 01, dated August 20, 2014.

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

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

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

Issued in Renton, Washington, on December 31, 2015.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00376 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0081; Directorate Identifier 2014–NM–170–AD; Amendment 39–18371; AD 2016–01–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports of fluid entry and accumulation in the aft equipment bay. This AD requires modifying the aft equipment bay. We are issuing this AD to prevent excessive quantities of flammable fluid accumulation in the aft equipment bay. Flammable fluid entry and accumulation in the aft equipment bay, in excessive quantities, could exceed safe levels maintained by the drainage and ventilation system.

DATES: This AD becomes effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0081;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0081.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on January 26, 2015 (80 FR 3924). The NPRM was prompted by reports of fluid entry and accumulation in the aft equipment bay. The NPRM proposed to require modifying the aft equipment bay. We are issuing this AD to prevent excessive quantities of flammable fluid accumulation in the aft equipment bay. Flammable fluid entry and accumulation in the aft equipment bay, in excessive quantities, could exceed safe levels maintained by the drainage and ventilation system.

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–25, dated August 7, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> There have been two reports of fluid entry and accumulation in the aft equipment bay. The leaked fluid in the first incident was fuel and the fluid in the second incident was test dye. Further investigation revealed that leaked fluid from the aft fuel tank drain entered the bay through the slot in the door latch mechanism.
>
> Flammable fluid entry and accumulation in the aft equipment bay, in excessive quantities, could exceed safe levels maintained by the drainage and ventilation system.
>
> Bombardier Inc. has issued several Service Bulletins (SB) to modify the Aft Equipment Bay by installing a cover to the door latch mechanism in order to reduce the risk of fuel entry into it. This [Canadian] AD mandates the incorporation of the applicable Bombardier Inc. SBs to rectify this problem.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0081-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 3924, January 26, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 3924, January 26, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3924, January 26, 2015).

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Bombardier Service Bulletin 700–1A11–52–019, dated March 29, 2012.
- Bombardier Service Bulletin 700–52–042, dated March 29, 2012.
- Bombardier Service Bulletin 700–52–5007, dated March 29, 2012.
- Bombardier Service Bulletin 700–52–6007, dated March 29, 2012.

The service information describes procedures for the modification of the aft equipment compartment door. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 60 airplanes of U.S. registry.

We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $720 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $84,000, or $1,400 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0081;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–12 Bombardier, Inc. Airplanes: Amendment 39–18371. Docket No. FAA–2015–0081; Directorate Identifier 2014–NM–170–AD.

(a) Effective Date

This AD becomes effective February 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9001 through 9476 inclusive and 9998.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of fluid entry and accumulation in the aft equipment bay. We are issuing this AD to prevent excessive quantities of flammable fluid accumulation in the aft equipment bay. Flammable fluid entry and accumulation in the aft equipment bay, in excessive quantities, could exceed safe levels maintained by the drainage and ventilation system.

(f) Compliance

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

(g) Modification

Within 24 months after the effective date of this AD, modify the aft equipment bay, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) through (g)(4) of this AD.

(1) For Model BD–700–1A10 airplanes, serial numbers 9002 through 9312 inclusive, 9314 through 9380 inclusive, and 9384 through 9429 inclusive: Bombardier Service Bulletin 700–52–042, dated March 29, 2012.

(2) For Model BD–700–1A10 airplanes, serial numbers 9381 and 9432 through 9476 inclusive: Bombardier Service Bulletin 700–52–6007, dated March 29, 2012.

(3) For Model BD–700–1A11 airplanes, serial numbers 9127 through 9383 inclusive, 9389 through 9400 inclusive, 9404 through 9431 inclusive, and 9998: Bombardier Service Bulletin 700–1A11–52–019, dated March 29, 2012.

(4) For Model BD–700–1A11 airplanes, serial numbers 9386, 9401, and 9445 through 9474 inclusive: Bombardier Service Bulletin 700–52–5007, dated March 29, 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–25, dated August 21, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0081-0002*.

(j) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–1A11–52–019, dated March 29, 2012.

(ii) Bombardier Service Bulletin 700–52–042, dated March 29, 2012.

(iii) Bombardier Service Bulletin 700–52–5007, dated March 29, 2012.

(iv) Bombardier Service Bulletin 700–52–6007, dated March 29, 2012.

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

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

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

Issued in Renton, Washington, on December 31, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00371 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0669; Directorate Identifier 2013–SW–038–AD; Amendment 39–18373; AD 2016–01–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Deutschland GmbH (AHD) (previously Eurocopter Deutschland GmbH) Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, C–1, and C–2 helicopters. This AD requires an initial and recurring inspection of the N2 control arm and, depending on the outcome of the inspection, repairing or replacing the N2 control arm. This AD was prompted by a report of a heavily corroded and broken N2 control arm. The actions of this AD are intended to detect corrosion, a crack, or a scratch in the N2 control arm, which could lead to failure of the N2 control arm, a drop in rotor speed, and subsequent loss of control of the helicopter.

DATES: This AD is effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of February 25, 2016.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–0669 or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Blyn, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *james.blyn@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On March 24, 2015, at 80 FR 15530, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to AHD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, C–1, and C–2 helicopters. The NPRM proposed to require repetitive visual inspections of the N2 control arm for corrosion, a crack, and a scratch. The NPRM also proposed to require repairing any N2 control arm with corrosion or a scratch less than 0.020 inch in depth and replacing any N2 control arm with exfoliation corrosion, a crack, or with corrosion or a scratch 0.020 inch or greater in depth. The proposed requirements were intended to detect corrosion, a crack, or a scratch in the N2 control arm, which could lead to failure of the N2 control arm, a drop in rotor

speed, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2013–0154, dated July 22, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Eurocopter Deutschland GmbH (now AHD) Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, C–1, and C–2 helicopters. EASA advises of an incident with a Model MBB–BK117 C–2 helicopter that dropped rotor speed (RPM) within the green range and could not be recovered to nominal value because of a heavily corroded and broken N2 control arm. EASA advises that under certain flight conditions and power demands, a broken N2 control arm can cause a significant and non-recoverable drop in RPM. As a result, EASA AD No. 2013–0154 requires an initial and repetitive inspection of the N2 control arm for corrosion, damage, and scratches, and depending on the outcome of the inspection, repairing or replacing the N2 control arm.

Since the NPRM was issued, the FAA Southwest Regional Office has relocated and a group email address has been established for requesting an FAA alternative method of compliance for a helicopter of foreign design. We have revised the contact information throughout this final rule to reflect the new address and new email address.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (80 FR 15530, March 24, 2015).

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for the minor editorial changes described above. These changes are consistent with the intent of the proposals in the NPRM (80 FR 15530, March 24, 2015) and will not increase the economic burden on any operator nor increase the scope of this AD.

Differences Between This AD and the EASA AD

The EASA AD allows a noncumulative tolerance of 3 months in the compliance time for the initial inspection on helicopters with less than 2 years from the date of first flight and for the repetitive inspections, and this AD does not.

Related Service Information Under 1 CFR Part 51

Eurocopter issued ASB MBB–BK117–60A–126 for Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, and ASB MBB–BK117 C–2–76A–005 for Model MBB–BK 117 C–2 helicopters, both Revision 0, and both dated June 24, 2013. The Eurocopter ASBs specify inspecting the N2 control arm for corrosion, damage, and scratches and, depending on the outcome of the inspection, either repairing or replacing the affected parts. The Eurocopter ASBs also specify performing the inspection with each 12 month inspection until the N2 inspection requirements are incorporated into the aircraft maintenance manual.

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

Costs of Compliance

We estimate that this AD affects 441 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. Inspecting the N2 control arm requires about one work-hour for an estimated cost of $85 per helicopter and $37,485 for the U.S. fleet per inspection cycle. Repairing the N2 control arm requires about four work-hours for an estimated labor cost of $340. Replacing the N2 control arm requires about three work-hours for an estimated labor cost of $255. Parts to replace the N2 control arm for Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters cost about $2,743 for a total estimated cost of $2,998. Parts to replace the N2 control arm for a Model MBB–BK 117 C–2 helicopter cost about $4,500 for a total estimated cost of $4,755.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–14 Airbus Helicopters Deutschland GmbH (AHD) (Previously

Eurocopter Deutschland GmbH): Amendment 39–18373; Docket No. FAA–2015–0669; Directorate Identifier 2013–SW–038–AD.

(a) Applicability

This AD applies to AHD Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, C–1, and C–2 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as corrosion, a crack, or a scratch on an N2 control arm. This condition could lead to failure of the N2 control arm, resulting in a reduction in rotor speed and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 25, 2016.

(d) Compliance

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

(e) Required Actions

For helicopters that have not reached 2 years from the date of first flight, within 1 year or before reaching 2 years from the date of first flight, whichever occurs first; and for helicopters that have reached or exceeded 2 years from the date of first flight, within 50 hours TIS:

(1) Visually inspect each N2 control arm for corrosion, a crack, and a scratch as depicted in Figure 1 of Eurocopter Alert Service Bulletin (ASB) MBB–BK117–60A–126 or ASB MBB–BK117 C–2–76A–005, both Revision 0, and both dated June 24, 2013, as applicable to your model helicopter.

(i) If an N2 control arm has corrosion or a scratch less than 0.5 millimeter (mm) (0.020 inch) in depth, before further flight, remove the corrosion and repair the scratch.

(ii) If an N2 control arm has any exfoliation corrosion, a crack, or has corrosion or a scratch 0.5 mm (0.020 inch) or greater in depth, before further flight, replace the N2 control arm.

(2) Thereafter, perform the requirements in paragraph (e)(1) of this AD at intervals not to exceed 12 months.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2013–0154, dated July 22, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–0669.

(h) Subject

Joint Aircraft Service Component (JASC) Code: Engine Controls, 7600.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin (ASB) MBB–BK117–60A–126, Revision 0, dated June 24, 2013.

(ii) Eurocopter ASB MBB–BK117 C–2–76A–005, Revision 0, dated June 24, 2013.

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

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

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

Issued in Fort Worth, Texas, on January 6, 2016.

Bruce E. Cain,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00658 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1935; Directorate Identifier 2014–SW–008–AD; Amendment 39–18374; AD 2016–01–15]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. This AD requires visually inspecting certain subfloor frames for a crack. This AD was prompted by reports of cracks on in-service helicopters. The actions of this AD are intended to detect or prevent a crack in the subfloor frame, which could result in failure of the pilot and co-pilot pedal support frame and subsequent loss of control of the helicopter.

DATES: This AD is effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of February 25, 2016.

ADDRESSES: For service information identified in this rule, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1935 or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *robert.grant@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On June 5, 2015, at 80 FR 32072, the **Federal Register** published our notice of proposed rulemaking (NPRM), which

proposed to amend 14 CFR part 39 by adding an AD that would apply to Agusta Model AB139 and AW139 helicopters, serial number (S/N) 31005 through 31517 (except S/N 31007, 31415, 31431, 31491, 31500, 31508, and 31516) and S/N 41001 through 41356 (except S/N 41355). The NPRM proposed to require visually inspecting certain subfloor frames for a crack. The proposed requirements were intended to detect or prevent a crack in the subfloor frame, which could result in failure of the pilot and co-pilot pedal support frame and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2014–0048, dated March 4, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Agusta Model AB139 and AW139 helicopters with a S/N 31005 through 31517 (except S/N 31007, 31415, 31431, 31491, 31500, 31508, and 31516) and S/N 41001 through 41356 (except S/N 41355). EASA advises that cracks have been reported in the subfloor frame at station (STA) 2105 on in-service helicopters. This condition, if not detected and corrected, could lead to failure of the pedals supporting the frame, which in turn could lead to the pedals being inoperative and subsequent loss of control of the helicopter, EASA advises.

The EASA AD requires repetitive inspections of the subfloor frame at STA 2105 for a crack. The EASA AD also requires installation of frame reinforcements before further flight if there is a crack or within 1,200 flight hours if there is no crack. The EASA AD provides that installation of the frame reinforcements constitutes terminating action for the repetitive inspections required by the AD.

Since the NPRM was issued, the FAA Southwest Regional Office has relocated and a group email address has been established for requesting an FAA Alternative Method of Compliance (AMOC) for a helicopter of foreign design. This AD contains the current physical address of the FAA Southwest Regional Office and the new email address for requesting an AMOC.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (80 FR 32072, June 5, 2015).

FAA's Determination

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

Differences Between This AD and the EASA AD

The EASA AD requires conducting the initial inspection within 30 flight hours or 2 months, whichever occurs first, and thereafter, at intervals not to exceed 300 flight hours or 6 months, whichever occurs first. This AD requires conducting the initial inspection within 30 hours time-in-service (TIS), and thereafter, at intervals not to exceed 300 hours TIS.

Related Service Information Under 1 CFR Part 51

We reviewed AgustaWestland Bolletino Tecnico No. 139–311, Revision B, dated June 4, 2014 (BT), for certain serial-numbered Agusta Model AB139 and AW139 helicopters. The BT calls for visual inspections of the subfloor frames within 30 flight hours or two months, whichever occurs first, and thereafter at intervals of 300 flight hours or 6 months, whichever comes first, until frame reinforcements are installed to prevent future failures. The BT also specifies installing the frame reinforcements immediately if a crack is found and within 1,200 flight hours if a crack is not found. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 102 U.S.-registered helicopters and that labor costs average $85 a work hour. Based on these estimates, we expect the following costs:

- The visual inspection requires 2 work-hours for a labor cost of $170 per helicopter. No parts are needed, so the cost totals $170 per helicopter, $17,340 for the U.S. fleet.
- If there are no cracks, installing the frame reinforcements requires 240 work-hours for a labor cost of $20,400 and $2,274 for parts. The total cost is $22,674 per helicopter.
- If there is a crack, installing the frame reinforcements requires 240 work-hours for a labor cost of $20,400 and $3,401 for parts. The total cost is $23,801 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–15 Agusta S.p.A.: Amendment 39–18374; Docket No. FAA–2015–1935; Directorate Identifier 2014–SW–008–AD.

(a) Applicability

This AD applies to Agusta S.p.A. Model AB139 and AW139 helicopters, serial number (S/N) 31005 through 31517 (except S/N 31007, 31415, 31431, 31491, 31500, 31508, and 31516) and S/N 41001 through 41356 (except S/N 41355), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a subfloor frame. This condition could result in failure of the pilot and co-pilot pedal support frame and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 25, 2016.

(d) Compliance

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

(e) Required Actions

(1) Within 30 hours time-in-service (TIS) and thereafter at intervals not to exceed 300 hours TIS, using a light, inspect all visible surfaces of the left hand subfloor frame, right hand subfloor frame, and middle subfloor frame at station (STA) 2105 for a crack as shown in Figures 10 through 13 of AgustaWestland Bollettino Tecnico No. 139–311, Revision B, dated June 4, 2014 (BT 139–311).

(2) If there is a crack, before further flight, install frame STA 2105 retromod part number (P/N) 3G5306P47211 by following the Compliance Instructions, Part II, paragraphs 7 through 7.10. of BT 139–311.

(3) If there are no cracks, within 1200 hours TIS, install frame STA 2105 retromod P/N 3G5306P47211 by following the Compliance Instructions, Part II, paragraphs 7 through 7.10. of BT 139–311.

(4) Installing frame STA 2105 retromod P/N 3G5306P47211 terminates the repetitive inspection requirements in paragraph (e)(1) of this AD.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

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

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

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2014–0048, dated March 4, 2014. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–1935.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5300, Fuselage Structure (General).

(j) Material Incorporated by Reference

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

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

(i) AgustaWestland Bollettino Tecnico No. 139–311, Revision B, dated June 4, 2014.

(ii) Reserved.

(3) For Agusta S.p.A. service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.*

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

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

Issued in Fort Worth, Texas, on January 6, 2016.

Bruce E. Cain,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00659 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0577; Directorate Identifier 2013–SW–042–AD; Amendment 39–18375; AD 2015–12–09 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising airworthiness directive (AD) 2015–12–09 for Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters. AD 2015–12–09 required inspecting certain washers for movement and making the appropriate repairs if the washers move. As published, AD 2015–12–09 referenced an incorrect date for the service information in the Credit for Previous Actions section. This AD corrects the error while retaining the requirements of AD 2015–12–09. These actions are intended to prevent loss of concerned control axis and subsequent loss of control of the helicopter.

DATES: This AD is effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of July 23, 2015 (80 FR 34831, June 18, 2015).

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0577; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any

incorporated-by-reference information, the economic evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Wilbanks, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *matt.wilbanks@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On July 24, 2015, we issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2015–12–09, Amendment 39–18184 (80 FR 34831, June 18, 2015), which applied to Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters. The NPRM published in the **Federal Register** on August 3, 2015 (80 FR 45900). The NPRM was prompted by the discovery of an incorrectly dated Alert Service Bulletin (ASB) in the Credit for Previous Actions section of AD 2015–12–09. The NPRM proposed to retain the actions required by AD 2015–12–09 and correct the ASB date and revise other information throughout the AD.

AD 2015–12–09 was prompted by AD No. 2013–0176, dated August 7, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Deutschland GmbH Model EC 135 P1 (CDS), EC 135 P1 (CPDS), EC 135 P2+, EC 135 P2 (CPDS), EC 135 T1 (CDS), EC 135 T1 (CPDS), EC 135 T2+, EC 135 T2 (CPDS), EC 635 P2+, EC 635 T1 (CPDS), EC 635 T2+, and MBB–BK 117 C–2 helicopters. EASA advises that during installation work on a helicopter, it was discovered that it was not possible to install attachment hardware on a threaded blind borehole between the Smart Electro Mechanical Actuator (SEMA) and the control rod without play. EASA advises that this condition, if not detected and corrected, could lead to loss of the concerned control axis, possibly resulting in loss of helicopter control. For these reasons, EASA AD No. 2013–0176 requires a one-time inspection of the affected SEMA attachment hardware to detect improper connection and play and, depending on the findings, replacement of the affected hardware. After the issuance of EASA AD No. 2013–0176, Eurocopter Deutschland GmbH changed its name to Airbus Helicopters Deutschland GmbH.

When AD 2015–12–09 was published, an incorrect reference to the date of Eurocopter ASB EC135–22A–015, Revision 0, dated May 13, 2008, appeared in the text of the rule. Specifically, AD 2015–12–09 includes the following under paragraph (f), Credit for Previous Actions: ''If you performed the actions in Eurocopter Alert Service Bulletin EC135–22A–015, Revision 0, dated May 13, 2018, or Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 0, May 13, 2008, before the effective date of this AD, you met the requirements of this AD.'' As published, the reference to May 13, 2018, is incorrect. The correct date for Eurocopter ASB EC135–22A–015, Revision 0, is May 13, 2008.

Accordingly, we are revising AD 2015–12–09 to correct the date for Eurocopter ASB EC135–22A–015, Revision 0. Further, we updated the physical address of the FAA Southwest Regional Office throughout this AD and the email address for requesting an Alternative Method of Compliance (AMOC). We did not change any other part of the preamble or regulatory information. The final rule is reprinted in its entirety for the convenience of affected operators.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (80 FR 45900, August 3, 2015).

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

Eurocopter reported in ASBs EC135–22A–015, Revision 1, dated January 28, 2013, and MBB BK117 C–2–22A–009, Revision 1, dated August 3, 2009, that it was discovered during the installation work on a helicopter that it was not possible to establish attachment hardware on a threaded blind borehole between the SEMA and the control rod without play. The ASBs state that ''unfavourable adding of the tolerances'' of the individual attachment hardware elements caused the screw to push against the bottom of the threaded blind borehole on the SEMA, preventing any clamping force on the screw head. The ASBs call for inspecting the SEMA attachment hardware connected to their respective control rods for play and making the proper adjustments to eliminate any play. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 385 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting for movement of the washers requires 1.5 work-hours for a labor cost of $128 per helicopter and $49,280 for the U.S. fleet.
- Replacing the screws and related work requires an additional 0.5 work-hours for a labor cost of $43. Screws cost $4 each while washers cost $10 each. We estimate the cost at $79 per repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–12–09, Amendment 39–18184 (80 FR 34831, June 18, 2015), and adding the following new AD:

2015–12–09 R1 Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH) (Airbus Helicopters): Amendment 39–18375; Docket No. FAA–2014–0577; Directorate Identifier 2013–SW–042–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, EC135T2+, and MBB–BK 117 C–2 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as loose attachment hardware between the Smart Electro Mechanical Actuator (SEMA) and a control rod. This condition could result in loss of the control axis and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 25, 2016.

(d) Compliance

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

(e) Required Actions

(1) Within 50 hours time-in-service (TIS), for Model EC135P1, EC135T1, EC135P2, EC135T2, EC135P2+, and EC135T2+ helicopters, do the following:

(i) Using Figure 1 and Figure 2 of Eurocopter Alert Service Bulletin EC135–22A–015, Revision 1, dated January 28, 2013 (ASB EC135–22A–015) as reference, inspect the attachment hardware between the SEMA and the longitudinal actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, part number (P/N) EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(ii) Using Figure 1 and Figure 2 of ASB EC135–22A–015 as reference, inspect the attachment hardware between the SEMA and the lateral actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(iii) Using Figure 1, Figure 3, and Figure 4 of ASB EC135–22A–015 as reference, inspect the attachment hardware between the SEMA and the yaw actuator control rod to determine whether any of the washers can be moved.

(A) If no washer can be moved, no further action is needed.

(B) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm.

(2) Within 50 hours TIS, for Model MBB BK117 C–2 helicopters, using Figure 1 of Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 1, dated August 3, 2009, as reference, inspect the attachment hardware between the Yaw-SEMA and the Yaw-SEMA control rod to determine whether any of the washers can be moved.

(i) If no washer can be moved, no further action is needed.

(ii) If a washer can be moved, replace the four screws and install two additional washers, P/N EN2139–05016, to connect the SEMA with the control rod. Torque-tighten each screw to 5–6 Nm and apply polyurethane lacquer onto the attachment hardware.

(f) Affected ADs

This AD revises AD 2015–12–09, Amendment 39–18184 (80 FR 34831, June 18, 2015).

(g) Credit for Previous Actions

If you performed the actions in Eurocopter Alert Service Bulletin EC135–22A–015, Revision 0, dated May 13, 2008, or Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 0, May 13, 2008, before the effective date of this AD, you met the requirements of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2013–0176, dated August 7, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA 2014–0577.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2213, Flight Controller.

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 23, 2015, (80 FR 34831, June 18, 2015).

(i) Eurocopter Alert Service Bulletin EC135–22A–015, Revision 1, dated January 28, 2013.

(ii) Eurocopter Alert Service Bulletin MBB BK117 C–2–22A–009, Revision 1, dated August 3, 2009.

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

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

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

Issued in Fort Worth, Texas, on January 6, 2016.

Bruce E. Cain,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00664 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0447; Directorate Identifier 2014–NM–019–AD; Amendment 39–18368; AD 2016–01–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD was prompted by a report of several cracks found on the forward passenger airstair door step assembly. This AD requires an inspection to determine the serial number of the airstair door step assembly, and if necessary, an electronic tap test, reidentification of the airstair door step assembly, and replacement of the airstair door step assembly. We are issuing this AD to detect and correct cracks in the forward passenger airstair door step assembly; such cracking could propagate and result in the structural failure of the steps and impede the evacuation of passengers in the event of an emergency egress situation.

DATES: This AD becomes effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0447;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0447.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7306; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on July 17, 2014 (79 FR 41661). The NPRM was prompted by a report of several cracks found on the forward passenger airstair door step assembly. The NPRM proposed to require an inspection to determine the serial number of the airstair door step assembly, and if necessary, an electronic tap test, reidentification of the airstair door step assembly, and replacement of the airstair door step assembly. We are issuing this AD to detect and correct cracks in the forward passenger airstair door step assembly; such cracking could propagate and result in the structural failure of the steps and impede the evacuation of passengers in the event of an emergency egress situation.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–20R1, dated December 30, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There has been one in-service report of several cracks being found on the forward passenger airstair door step assembly between the steps and the sidewall panels. The investigation revealed that the application of potting compound may have been omitted during the bonding at the joint of the airstair door steps and the sidewalls. The omission of potting compound could cause the bonding sealant to crack. The cracks, if not detected, could propagate to result in the structural failure of the steps.
>
> In the event of an emergency egress situation, the failure of the airstair step assembly could impede the evacuation of passengers.
>
> This [Canadian] AD mandates the replacement of the affected forward passenger airstair step assembly with a new or reworked step assembly.
>
> Revision 1 of this [Canadian] AD provides additional instructions for performing an electronic tap test of the airstair step assembly if the Serial Number (S/N) of the airstair step assembly cannot be found.

Required actions include an inspection to determine the serial number of the airstair door step assembly, and if necessary, an electronic tap test and reidentification and replacement of the assembly. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0447-0004*.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 41661, July 17, 2014) and the FAA's response to each comment.

Request To Refer to Latest Service Information

Republic Airlines and Horizon Air requested that we revise the NPRM (79 FR 41661, July 17, 2014) to refer to the latest service information.

We agree with the request. The revised service information, Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, provides minor wording changes but does not change the procedures or add any airplanes. We have revised paragraphs (g) and (h) in this AD to refer to the new service information, and added Bombardier Service Bulletin 84–52–77, Revision B, dated October 31, 2013, to paragraph (i) of this AD, to provide credit for previous actions done before the effective date of this AD.

Request To Allow Records Review

Horizon Air requested that we revise paragraph (g) of the proposed AD (79 FR 41661, July 17, 2014) to allow a review of aircraft records, in addition to a physical inspection, as a way to determine the serial number of the airstair door step assembly.

We disagree with the request. A review of aircraft records may provide an appropriate means to determine serial numbers. For the airstair door step assembly, however, we understand that operators may remove and exchange the

assemblies within their fleet for repair, and replace them relatively quickly to minimize airplane downtime. In these cases, there may be a lag between the removal and replacement action and updating the records typically used to conduct a records review. In coordination with TCCA, we have determined that airplane records may not reliably reflect the serial numbers of all airstair door step assemblies present on the affected airplanes. However, under the provisions of paragraph (j)(1) of this AD, we will consider requests for approval of an alternative method of compliance for determining serial numbers, if sufficient data are submitted to substantiate that the new method would provide an acceptable level of safety. We have not changed this final rule regarding this issue.

Request To Allow Maintenance Manual Tasks for Airstair Replacement

Horizon Air requested that we revise paragraph (g)(1)(ii) of the proposed AD (79 FR 41661, July 17, 2014), which would conditionally require replacing the airstair door step assembly in accordance with Bombardier Service Bulletin 84–52–77, Revision B, dated October 31, 2013. For this action, Horizon Air requested that we also allow the replacement to be done using maintenance manual tasks 52–11–01–000–801 and 52–11–01–400–801. Horizon Air stated that the service information specified in the NPRM does not include any actions beyond those specified in the maintenance manual tasks.

We disagree with the request. Part 3, ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, does, in fact, specify additional tasks not included in the maintenance manual tasks referenced by the commenter. The additional tasks include verification of the serial number of the new airstair door step assembly before installation, and adjustment and a functional check of the new door. We have not changed this AD regarding this issue.

Request To Limit Requirements to Steps That Correct the Unsafe Condition

Horizon Air requested that we revise the NPRM (79 FR 41661, July 17, 2014) to require only the section of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, that directly corrects the unsafe condition: paragraph 3.B., ''Procedure.'' Horizon Air stated that the unsafe condition is not directly corrected by accomplishment of the actions specified in paragraph 3.A., ''Job Set-up,'' and paragraph 3.C., ''Close Out,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014. Horizon Air added that incorporating the Job Set-up and Close Out as a requirement of the AD would restrict an operator's ability to perform other maintenance in conjunction with the incorporation of the service information.

We agree with the request and the commenter's rationale. We have revised paragraph (g) of this AD accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 41661, July 17, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 41661, July 17, 2014).

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

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014. The service information describes procedures for determining the airstair door step assembly serial number, doing an electronic tap test, and reidentifying and replacing the assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,460, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take up to 9 work-hours and require parts costing $206,175, for a cost of $206,940 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0447*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone

800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–09 Bombardier, Inc.: Amendment 39–18368. Docket No. FAA–2014–0447; Directorate Identifier 2014–NM–019–AD.

(a) Effective Date

This AD becomes effective February 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by a report of several cracks found on the forward passenger airstair door step assembly. We are issuing this AD to detect and correct cracks in the forward passenger airstair door step assembly, which could propagate and result in the structural failure of the steps and impede the evacuation of passengers in the event of an emergency egress situation.

(f) Compliance

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

(g) Inspection, Electronic Tap Test, Reidentification, and Replacement of the Airstair Door Step Assembly

For airplanes having serial numbers 4001 through 4393: Within 320 days after the effective date of this AD, do an inspection to determine the serial number of the airstair door step assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(1) If the serial number of the airstair door step assembly cannot be found, or if the serial number is illegible: Before further flight, do an electronic tap test to determine the existence of epoxy compound, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(i) If the existence of epoxy compound is confirmed, before further flight, reidentify the airstair door step assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(ii) If the existence of epoxy compound is not confirmed: Within 6,000 flight hours after the effective date of this AD, replace the airstair door step assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(2) If the serial number of the airstair door step assembly is in the affected range specified in paragraph 1.A., ''Effectivity,'' of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014: Within 6,000 flight hours after the effective date of this AD, replace the airstair door step assembly, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane an airstair door step assembly with part number 85217008–001 containing a serial number in the affected range specified in paragraph 1.A., ''Effectivity,'' of Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, and with the attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD if the serial number is known, and if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–52–77, Revision A, dated April 24, 2013; or Bombardier Service Bulletin 84–52–77, Revision B, dated October 31, 2013. This service information is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–20R1, dated December 30, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0447-0004.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(5) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–52–77, Revision C, dated June 5, 2014, including Appendix A, which is undated, and attached Short Brothers Service Bulletin D8400–52–0011, Revision C, dated February 26, 2014.

(ii) Reserved.

(3) For Bombardier service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) For Short Brothers service information identified in this AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast, BT3 9DZ Northern Ireland;

telephone +44(0)2890–462469; fax +44(0)2890 468444; email *michael.mulholland@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on January 4, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00378 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1422; Directorate Identifier 2014–NM–125–AD; Amendment 39–18370; AD 2016–01–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 98–18–26, for certain Airbus Model A320 series airplanes. AD 98–18–26 required repetitive inspections to detect fatigue cracking of the front spar vertical stringers on the wings; and repair, if necessary. This new AD requires repetitive high frequency eddy current (HFEC) inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on frame 36, a rototest inspection for cracking of the fastener holes of the front spar vertical stringers on frame 36, and repair if necessary. This AD was prompted by reports that indicate new repetitive inspections having new thresholds and intervals are needed and that additional work is needed to accomplish the inspections on airplanes on which a previous modification has been accomplished. We are issuing this AD to detect and correct fatigue cracking of the front spar vertical stringers on the wings, which could result in the reduced structural integrity of the airframe.

DATES: This AD becomes effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1422*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket Number FAA–2015–1422.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 98–18–26, Amendment 39–10742 (63 FR 47423, September 8, 1998). AD 98–18–26 applied to certain Airbus Model A320 series airplanes. The NPRM published in the **Federal Register** on June 5, 2015 (80 FR 32063).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0069, dated March 19, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Airbus Model A320–211, –212, and –231 airplanes. The MCAI states:

During center fuselage certification full scale fatigue test, cracks were found on the front vertical stringer at frame 36. Analysis of these findings indicated that a number of in-service aeroplanes could be similarly affected.

This condition, if not detected and corrected, could lead to crack propagation and consequent deterioration of the structural integrity of the aeroplane.

To address this potential unsafe condition, [Directorate General for Civil Aviation] DGAC France AD 97–311–105 [which corresponds to FAA AD 98–18–26, Amendment 39–10742 (63 FR 47423, September 8, 1998)] was issued to require repetitive [HFEC] inspections [for cracking] in accordance with the instruction of Airbus Service Bulletin (SB) A320–57–1016. At the same time, the modification provided by Airbus SB A320–57–1017 was considered to be terminating action for the repetitive inspections required by DGAC France AD 97–311–105.

Since that [DGAC] AD was issued, and following new analysis, modification per Airbus SB A320–57–1017 is no longer considered to be terminating action for the repetitive inspections as required by DGAC France AD 97–311–105.

Aeroplanes with [manufacturer serial number] MSN 0080 up to 0155 inclusive have been delivered with the addition of a 5 [millimeter] mm thick light alloy shim under the heads of 2 fasteners at the top end of the front spar vertical stringers (Airbus modification 21290P1546, which is the production line equivalent to in-service modification through Airbus SB A320–57–1017). From MSN 0156 and higher, all aeroplanes are delivered with vertical stiffeners of the forward wing spar upper end with stiffener cap thickness increased from 4 to 6 mm (Airbus modification 21290P1547).

Prompted by these findings, Airbus issued SB A320–57–1178 to introduce new repetitive inspections with new thresholds and intervals.

For the reasons described above, DGAC France AD 97–311–105 is superseded and this [EASA] AD requires the repetitive inspections at new thresholds and intervals.

After EASA issued [proposed airworthiness directive] PAD 14–021, it was discovered that additional work [HFEC inspections for cracking of the radius of spar vertical stringers and horizontal beam in the center fuselage of frame 36, and a rototest inspection for cracking of the fastener holes of the spar vertical stringers radius on Frame 36 and repair if necessary], to be included in Revision 01 of Airbus SB A320–57–1178, is required to accomplish the inspections. This Final [EASA] AD has been amended accordingly.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1422-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 32063, June 5, 2015) and the FAA's response to the comments.

Requests for Clarification of Certain Requirements

Delta Airlines (DAL) asked that we move the repetitive inspection intervals from paragraph (g) of the proposed AD (80 FR 32063, June 5, 2015), and create a new paragraph (i) with the repetitive inspection intervals. DAL stated that having the inspection method and the repetitive inspection intervals in one paragraph, as well as a separate paragraph for the initial inspection is cumbersome.

We do not agree with the requested changes. We re-examined the structure of the regulatory text of this AD, and have determined that the specified language as proposed is clear and aligns with the MCAI. Therefore, we have not changed this AD in this regard.

DAL also asked that we add sub-steps to requirements in the proposed AD (80 FR 32063, June 5, 2015), to clarify the inspection requirements specified in Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014.

We do not agree. Our goal in referring to the Accomplishment Instructions of the service information is to ensure that operators follow the details in the inspection steps shown therein. DAL has the option of creating task cards if it makes accomplishing the sub-steps easier, provided the cards meet the intent of the AD. We have not changed this AD in this regard.

Additionally, DAL asked that Appendix 01 of Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, be removed from the service bulletin identification in the NPRM (80 FR 32063, June 5, 2015), because Appendix 01 has Gantt Chart information that should not be highlighted as a regulatory requirement for compliance.

We do not agree. The information in Appendix 01 of Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, may be helpful to operators that want to determine the number of work hours necessary to accomplish specific actions. Moreover, Appendix 01 does not contain a requirement for compliance. We have not changed this AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 32063, June 5, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 32063, June 5, 2015).

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, including Appendix 01, dated May 28, 2014. The service information describes procedures for inspecting the radius of the front spar vertical stringers and the horizontal floor beam on frame 36 for cracking. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 17 airplanes of U.S. registry.

We also estimate that it will take about 24 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $34,680, or $2,040 per product.

In addition, we estimate that any necessary follow-on actions will take about 49 work-hours and require parts costing $1,210, for a cost of $5,375 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1422*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–18–26, Amendment 39–10742 (63 FR 47423, September 8, 1998), and adding the following new AD:

2016–01–11 Airbus: Amendment 39–18370. Docket No. FAA–2015–1422; Directorate Identifier 2014–NM–125–AD.

(a) Effective Date

This AD becomes effective February 25, 2016.

(b) Affected ADs

This AD replaces AD 98–18–26, Amendment 39–10742 (63 FR 47423, September 8, 1998).

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, manufacturer serial numbers (MSN) 0001 through 0155 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by cracks found on the front vertical stringer at frame 36. This AD was also prompted by reports that indicate new repetitive inspections having new thresholds and intervals are needed and that additional work is needed to accomplish the inspections on airplanes on which a previous modification has been accomplished. We are issuing this AD to detect and correct fatigue cracking of the front spar vertical stringers on the wings, which could result in the reduced structural integrity of the airframe.

(f) Compliance

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

(g) Inspections

Within the applicable compliance times specified in paragraphs (h)(1) through (h)(4) of this AD, do a high frequency eddy current (HFEC) inspection for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on frame 36, and do a rototest inspection for cracking of the fastener holes of the front spar vertical stringers on frame 36, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, including Appendix 01, dated May 28, 2014. Repeat the inspections thereafter at the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) For Configuration 1 airplanes identified in paragraph (h)(1) of this AD: At intervals not to exceed 8,800 flight cycles or 17,700 flight hours, whichever occurs first.

(2) For Configuration 2, 3, and 4 airplanes identified in paragraphs (h)(2) through (h)(4) of this AD: At intervals not to exceed 24,900 flight cycles or 49,800 flight hours, whichever occurs first.

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

Do the initial inspections required by paragraph (g) of this AD within the applicable compliance times specified in paragraphs (h)(1) through (h)(4) of this AD.

(1) For Configuration 1 airplanes, having MSNs 0001 through MSN 0079 inclusive, on which the modification specified by Airbus Service Bulletin A320–57–1017, dated September 3, 1991; or Airbus Service Bulletin A320–57–1017, Revision 01, dated March 17, 1997, has not been accomplished: Inspect at the later of the times specified by paragraphs (h)(1)(i) through (h)(1)(iii) of this AD.

(i) Inspect at the later of the times specified by paragraphs (h)(1)(i)(A) and (h)(1)(i)(B) of this AD.

(A) Prior to the accumulation of 24,000 flight cycles or 48,000 flight hours, whichever occurs first since airplane first flight.

(B) Within 60 days after the effective date of this AD.

(ii) Inspect within 8,800 flight cycles or 17,700 flight hours, whichever occurs first, since the last inspection specified in Airbus Service Bulletin A320–57–1016 was accomplished.

(iii) Inspect within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD, without exceeding 14,000 flight cycles after the last inspection specified in Airbus Service Bulletin A320–57–1016 was accomplished.

(2) For Configuration 2 airplanes, having MSNs 0001 through 0079 inclusive, on which the actions specified by Airbus Service Bulletin A320–57–1016, have not been done prior to accomplishing the actions specified by Airbus Service Bulletin A320–57–1017, dated September 3, 1991; or Airbus Service Bulletin A320–57–1017, Revision 01, dated March 17, 1997: Inspect at the later of the times specified by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Within 8,800 flight cycles or 17,700 flight hours, whichever occurs first, since the modification specified in Airbus Service Bulletin A320–57–1017, dated September 3, 1991; or Airbus Service Bulletin A320–57–1017, Revision 01, dated December 6, 1995, was accomplished.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

(3) For Configuration 3 airplanes, having MSNs 0001 through 0079 inclusive, on which the actions specified by Airbus Service Bulletin A320–57–1016, have been done prior to accomplishing the actions specified by Airbus Service Bulletin A320–57–1017, dated September 3, 1991; or Airbus Service Bulletin A320–57–1017, Revision 01, dated March 17, 1997: Inspect at the later of the times specified by paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) Within 24,900 flight cycles or 49,800 flight hours, whichever occurs first, since the modification specified in Airbus Service Bulletin A320–57–1017, dated September 3, 1991; or Airbus Service Bulletin A320–57–1017, Revision 01, dated March 17, 1997, was accomplished.

(ii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first, after the effective date of this AD.

(4) For Configuration 4 airplanes, having MSNs 0080 through 0155 inclusive: Inspect at the later of the times specified in paragraphs (h)(4)(i) or (h)(4)(ii) of this AD.

(i) Prior to the accumulation of 54,300 flight cycles or 108,600 flight hours, whichever occurs first since airplane first flight.

(ii) Within 60 days after the effective date of this AD.

(i) Repair

If any crack is detected during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0069, dated March 19, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1422.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 25, 2016.

(i) Airbus Service Bulletin A320–57–1178, Revision 01, dated May 28, 2014, including Appendix 01, dated May 28, 2014.

(ii) Reserved.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on December 31, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00373 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1998; Directorate Identifier 2014–SW–035–AD; Amendment 39–18379; AD 2016–01–19]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for MD Helicopters Inc. (MDHI) Model 500N and 600N helicopters with certain rotating cone assemblies installed. This AD requires establishing a life limit of 10,000 hours time-in-service (TIS) on these rotating cone assemblies. This AD was prompted by the determination that MDHI created rotating cone assemblies with new dash numbers but incorrectly failed to identify them as life-limited parts. The actions are intended to prevent operation of rotating cone assemblies past their life limits, failure of the rotating cone assemblies, loss of directional control, and subsequent loss of control of the helicopter.

DATES: This AD is effective February 25, 2016.

ADDRESSES: For service information identified in this final rule, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1998; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Galib Abumeri, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5324; email *Galib.Abumeri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 9, 2015, at 80 FR 32508, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to MDHI Model 500N helicopters with a rotating cone assembly part number (P/N) 500N3740–81 installed, and Model 600N helicopters with a rotating cone assembly P/N 500N3740–71 installed. The NPRM proposed to require establishing a life limit of 10,000 hours TIS on these rotating cone assemblies. Although these parts have a life limit of 10,000 hours TIS, they were incorrectly omitted from the Airworthiness Limitation Section of the Rotorcraft Maintenance Manual. Some of the affected parts were sold as spares, while others were installed on new helicopters in production. The proposed requirements were intended to prevent operation of rotating cone assemblies past their life limits, failure of the rotating cone assemblies, loss of directional control, and subsequent loss of control of the helicopter.

Since the NPRM was issued, the FAA Southwest Regional Office has relocated. This AD includes the current physical address of the FAA Southwest Regional Office.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (80 FR 32508, June 9, 2015).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

MDHI issued Service Bulletin SB500N–046 and SB600N–054 (SB) as a single bulletin on July 9, 2012. The SB calls for a one-time inspection within 100 flight hours to determine the rotating cone assembly's part number on MDHI Model 500N and 600N helicopters. The SB then states the need to correct the component record for certain rotating cone assemblies.

The SB also specifies determining the rotating cone assembly's total service time since new and recording this on the component record. MDHI reports that failure to comply with the SB may result in an aircraft exceeding the life limit of the rotating cone assembly and that this could lead to component failure and loss of directional control of the helicopter.

Differences Between This AD and the Service Information

The SB calls for inspecting the rotating cone assembly to determine its P/N. We make no requirement about how to determine the P/N. The compliance time for the SB is within 100 flight hours, while this AD requires compliance within 1 year or by the next annual inspection, whichever comes later.

Costs of Compliance

We estimate that this AD affects 8 helicopters of U.S. Registry and that labor costs average $85 a work hour. We estimate that creating a component history card and revising the appropriate records takes 1 work-hour. No parts are needed for a total cost of $85 per helicopter and $680 for the U.S. fleet.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–01–19 MD Helicopters Inc.: Amendment 39–18379; Docket No. FAA–2015–1998; Directorate Identifier 2014–SW–035–AD.

(a) Applicability

This AD applies to MD Helicopters Inc. (MDHI) Model 500N with a rotating cone assembly part number (P/N) 500N3740–81 installed, and Model 600N helicopters with a rotating cone assembly P/N 500N3740–71 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a rotating cone assembly remaining in service beyond its fatigue life. This condition could result in failure of the rotating cone assembly and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective February 25, 2016.

(d) Compliance

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

(e) Required Actions

(1) Within 1 year or at the next annual inspection, whichever comes later:

(i) Create a component history card or equivalent record for each rotating cone assembly, P/N 500N3740–81 and P/N 500N3740–71, and record a life limit of 10,000 hours time-in-service (TIS).

(ii) Revise the Airworthiness Limitations Section of the applicable maintenance manual or Instructions for Continued Airworthiness by establishing a new retirement life of 10,000 hours TIS for each rotating cone assembly, P/N 500N3740–81 and P/N 500N3740–71, by making pen-and-ink changes or by inserting a copy of this AD into the Airworthiness Limitations Section of the maintenance manual or the Instructions for Continued Airworthiness.

(iii) Remove from service any rotating cone assembly, P/N 500N3740–81 and P/N 500N3740–71, that has 10,000 or more hours TIS.

(2) Do not install a rotating cone assembly, P/N 500N3740–81 or P/N 500N3740–71, on any helicopter unless you have complied with the requirements of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Galib Abumeri, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5324; email *9-ANM-LAACO–AMOC-REQUESTS@faa.gov*.

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

(g) Additional Information

MD Helicopters Inc. Service Bulletin SB500N–046/SB600N–054, dated July 9, 2012, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft Tail Boom.

Issued in Fort Worth, Texas, on January 8, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00945 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2967; Directorate Identifier 2014–NM–072–AD; Amendment 39–18376; AD 2016–01–16]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2002–23–20, for certain Dassault Aviation Model FALCON 900EX and MYSTERE-FALCON 900 airplanes. AD 2002–23–20 required repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair if necessary; repetitive replacement of the inboard flap jackscrews with new or reconditioned jackscrews; and repetitive measurement of the screw/nut play of the jackscrews on the inboard and outboard flaps to detect discrepancies, and corrective action if necessary. AD 2002–23–20 also required a revision of the airplane flight manual. Since we issued AD 2002–23–20, the maintenance manual has been revised. This AD requires revising the maintenance or inspection program, as applicable, to include the maintenance tasks and airworthiness limitations

specified in the Airworthiness Limitations section of the airplane maintenance manual. This AD also removes the Model FALCON 900EX airplanes from the applicability. We are issuing this AD to prevent reduced structural integrity of the airplane.

DATES: This AD becomes effective February 25, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 25, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docket Detail;015-2967*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2967.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579). AD 2002–23–20 applied to certain Dassault Aviation Model FALCON 900EX and MYSTERE–FALCON 900 airplanes.

The NPRM published in the **Federal Register** on August 3, 2015 (80 FR 45902). The NPRM was prompted by a revision to the maintenance manual. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to include the maintenance tasks and airworthiness limitations specified in the Airworthiness Limitations section of the airplane maintenance manual. The NPRM also proposed to remove the Model FALCON 900EX airplanes from the applicability of the existing AD. We are issuing this AD to prevent reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0053, dated March 4, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all MYSTERE-FALCON 900 airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the Mystère -Falcon 900 type design are included in Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA). EASA issued AD 2008–0221 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0221_Corrected.pdf/AD_2008-0221_1*] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F900 AMM chapter 5–40 referenced DGT 113873 at revision 16.
>
> Since that [EASA] AD was issued, Dassault Aviation issued revision 20 of F900 AMM chapter 5–40 which contains new or more restrictive maintenance requirements and/or airworthiness limitations and introduces, among others, the following changes:
>
> —Tasks renumbering;
> —Introduction of a Corrosion Prevention Control Program (CPCP);
> —Upgrade of screwjack of flap actuators from the older to the latest –3 version;
> —Revised Time Between Overhaul for screwjack of flap actuators –3 version;
> —Revised interval for checking the screw/nut play on screwjack of flap actuators –3 version;
> —Removal of calendar limit for checking the screw/nut play on screwjack of external flap actuators –1 and –2 versions;
> —Removal of service life limit for screwjack of flap actuators;
> —Test of flap asymmetry protection system. Compliance with this test is required by [a certain AD] * * *, but F900 AMM chapter 5–40 at revision 20 introduces an extended inspection interval;
> —Inspection procedures of fuselage and wings;
> —Check of overpressure tightness on pressurization control regulating valves. Compliance with this check is required by EASA AD 2008–0072 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0072.pdf/AD_2008-0072_1*] [which corresponds to FAA AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010], but F900 AMM chapter 5–40 at revision 20 introduces an extended inspection interval;
> —Check of overpressure relief valve vacuum supply lines.
>
> The maintenance tasks and airworthiness limitations, as specified in the F900 AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the F900 type design. Failure to comply with AMM chapter 5–40 at revision 20 may result in an unsafe condition [reduced structural integrity of the airplane].
>
> For the reasons described above, this [EASA] AD requires the implementation of the maintenance tasks and airworthiness limitations, as specified in the Dassault Aviation F900 AMM chapter 5–40 DGT 113873 at revision 20.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!document Detail;D=FAA-2015-2967-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 45902, August 3, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 45902, August 3, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 45902, August 3, 2015).

Related Service Information Under 1 CFR Part 51

Dassault Aviation issued Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual. This service information describes procedures, maintenance tasks, and airworthiness limitations specified in the Airworthiness Limitations section of the AMM. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 112 airplanes of U.S. registry. We estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $9,520, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-2967*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579); and adding the following new AD:

2016–01–16 Dassault Aviation: Amendment 39–18376. Docket No. FAA–2015–2967; Directorate Identifier 2014–NM–072–AD.

(a) Effective Date

This AD becomes effective February 25, 2016.

(b) Affected ADs

This AD replaces AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); corrected May 4, 2010 (75 FR 23579). This AD also affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010).

(c) Applicability

This AD applies to all DASSAULT AVIATION Model MYSTERE-FALCON 900 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by our determination of the need for a revision to the airplane airworthiness limitations to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual, is within the applicable times specified in the maintenance manual or within 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) Terminating Action

Accomplishing paragraph (g) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010), for DASSAULT AVIATION Model MYSTERE-FALCON 900 airplanes.

(i) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0053, dated March 4, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2967.

(l) Material Incorporated by Reference

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

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

(i) Chapter 5–40, Airworthiness Limitations, Revision 20, dated October 2012, of the Dassault Aviation Falcon 900 Maintenance Manual.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

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

Issued in Renton, Washington, on January 6, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00629 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1074; Airspace Docket No. 14–ASW–10]

Amendment of Class E Airspace; El Paso, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at El Paso, TX. Closure of West Texas Airport has made this action necessary for continued safety and management within the National Airspace System. Additionally, the geographic coordinates for El Paso International Airport and Biggs Army Airfield (AAF), are adjusted correctly noted in the Rule section of this document. This does not affect the boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

On June 18, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to remove Class E airspace extending upward from 700 feet above the surface at West Texas Airport, El Paso, TX, as the airport is now closed (80 FR 34855) Docket No. FAA–2014–1074. Additionally, the FAA identified an error in the geographical coordinates for El Paso International Airport, would be changed from (lat. 31°50′59″ N., long. 106°22′40″ W.) in the proposal to (lat. 31°48′26″ N., long. 106°22′35″ W.) (80 FR 34855). The FAA found the NPRM incorrectly listed the geographic coordinates for Biggs AAF and El Paso International Airport under the Proposal section, but was correctly noted in the airspace designation. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class E airspace extending upward from 700 feet above the surface at West Texas Airport, El Paso, TX. This action is necessary due to the closure of the airport; therefore controlled airspace is no longer needed. Also, the geographic coordinates for El Paso International Airport, are changed to (lat. 31°48′26″ N., long. 106°22′35″ W.), and the coordinates for Biggs AAF are changed to (lat. 31°50′58″ N., long. 106°22′48″ W.), to coincide with the FAAs aeronautical data base.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 El Paso, TX [Amended]

Biggs AAF, (Fort Bliss)
(Lat. 31°50′58″ N., long. 106°22′48″ W.).
El Paso International Airport, TX
(Lat. 31°48′26″ N., long. 106°22′35″ W.)
El Paso VORTAC
(Lat. 31°48′57″ N., long. 106°16′55″ W.).

Class E airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Biggs AAF, and within a 8.4-mile radius of El Paso International Airport, and within 2 miles each side of the 050° bearing from El Paso International Airport extending from the 8.4-mile radius to 13 miles northeast of the airport, and within 1.6 miles each side of the 093° radial of the El Paso VORTAC extending from the 8.4-mile radius to 7.3 miles east of the VORTAC.

Issued in Fort Worth, TX, on January 7, 2016.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–00879 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 516

[Docket No. FDA–2015–N–0002]

Conditional Approval of a New Animal Drug No Longer in Effect; Masitinib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect that the conditional approval of an application for masitinib mesylate tablets, a new animal drug for a minor use, is no longer in effect.

DATES: This rule is effective January 21, 2016.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect that application 141–308 for conditional approval of KINAVET–CA1 (masitinib mesylate) Tablets, a new animal drug for a minor use sponsored by AB Science, 3 Avenue George V, 75008 Paris, France, is no longer in effect.

Elsewhere in this issue of the **Federal Register,** FDA gave notice that conditional approval of this drug, by operation of law, was no longer in effect as of December 15, 2015.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 516 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''AB Science'' and in the table in paragraph (c)(2), remove the entry for ''052913''.

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for 21 CFR part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

§ 516.1318 [Removed]

■ 4. Remove § 516.1318.

Dated: January 14, 2016.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2016–01100 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. FDA–2015–N–4328]

Medical Devices; Ear, Nose, and Throat Devices; Classification of the Tympanic Membrane Contact Hearing Aid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the tympanic membrane contact hearing aid into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the tympanic membrane contact hearing aid's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective January 21, 2016. The classification was applicable on September 29, 2015.

FOR FURTHER INFORMATION CONTACT: Cherish Giusto, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2432, Silver Spring, MD 20993–0002, 301–796–9679, *cherish.giusto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i), to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of ''low-moderate risk'' or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On January 5, 2015, EarLens Corporation submitted a request for classification of the EarLens™ Contact Hearing Device under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 29, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 874.3315.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for a tympanic membrane contact hearing aid will need to comply with the special controls named in this final administrative order.

The device is assigned the generic name tympanic membrane contact hearing aid, and it is identified as a prescription device that compensates for impaired hearing. Amplified sound is transmitted by vibrating the tympanic membrane through a transducer that is in direct contact with the tympanic membrane.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks:

TABLE 1—TYMPANIC MEMBRANE CONTACT HEARING AID RISKS AND MITIGATION MEASURES

Identified risks	Mitigation methods
Adverse Tissue Reactions	Biocompatibility. Labeling.
Electromagnetic Incompatibility	Non-Clinical Performance Testing. Labeling.
MRI Incompatibility	Labeling.
Overheating of Ear Canal or Skin	Non-Clinical Performance Testing. Clinical Performance Testing.

TABLE 1—TYMPANIC MEMBRANE CONTACT HEARING AID RISKS AND MITIGATION MEASURES—Continued

Identified risks	Mitigation methods
	Labeling.
Damage to Eyes from Direct Laser Exposure [1]	Labeling.
Trauma/Damage to the Ear Canal, Tympanic Membrane, or Middle Ear System	Non-Clinical Performance Testing.
	Clinical Performance Testing.
	Training.
	Labeling.
Residual Hearing Loss	Non-Clinical Performance Testing.
	Clinical Performance Testing.
	Labeling.
Ear Infections	Clinical Performance Testing.
	Labeling.
Vertigo or Tinnitus	Clinical Performance Testing.
	Labeling.
Dampening of Residual Hearing When the Device is Turned Off	Clinical Performance Testing.
	Labeling.

[1] A tympanic membrane contact hearing aid may contain a Class 1 laser product in its removable external component, which users will remove from their ear when the device is not in use (for example, to sleep or bathe). When being handled off of the ear, it is possible that the user could look directly at the laser. Thus, there is a risk of "damage to eyes from direct laser exposure." As mitigation, the user should be warned in labeling not to look directly into the laser or aim it at their eyes.

FDA believes that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of the safety and effectiveness.

Tympanic membrane contact hearing aids are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device; see 21 CFR 801.109 (*Prescription devices*).

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the tympanic membrane contact hearing aid they intend to market.

II. Environmental Impact, No Significant Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov*. FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. DEN150002: De novo Request per 513(f)(2) from EarLens Corporation, dated January 5, 2015.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

■ 1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 874.3315 to subpart D to read as follows:

§ 874.3315 Tympanic membrane contact hearing aid.

(a) *Identification.* A tympanic membrane contact hearing aid is a prescription device that compensates for impaired hearing. Amplified sound is transmitted by vibrating the tympanic membrane through a transducer that is in direct contact with the tympanic membrane.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient contacting components must be demonstrated to be biocompatible.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use, and must include:

(i) Mechanical integrity testing;

(ii) Electrical and thermal safety testing;

(iii) Software verification, validation, and hazard analysis;

(iv) Reliability testing consistent with expected device life;

(v) Electromagnetic compatibility testing; and

(vi) Validation testing of device output and mechanical force applied to the tympanic membrane in a clinically appropriate model.

(3) Clinical performance testing must characterize any adverse events observed during clinical use, and

demonstrate that the device performs as intended under anticipated conditions of use.

(4) Professional training must include the ear impression procedure, correct placement, fitting, monitoring, care, and maintenance of the device.

(5) Labeling must include the following:

(i) A detailed summary of the adverse events and effectiveness outcomes from the clinical performance testing;

(ii) Detailed instructions on how to fit the device to the patient;

(iii) Instructions for periodic cleaning of any reusable components;

(iv) Information related to electromagnetic compatibility; and

(v) Patient labeling that includes:

(A) A patient card that identifies if a patient has been fitted with any non-self- removable components of the device and provides relevant information in cases of emergency;

(B) Information on how to correctly use and maintain the device;

(C) The potential risks and benefits associated with the use of the device; and

(D) Alternative treatments.

Dated: January 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01090 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2015–0004; T.D. TTB–132; Ref: Notice No. 148]

RIN 1513–AC11

Establishment of the Los Olivos District Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 22,820-acre ''Los Olivos District'' viticultural area in Santa Barbara County, California. The viticultural area is located within the Santa Ynez Valley viticultural area and the larger, multicounty Central Coast viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Los Olivos District Petition

TTB received a petition from C. Frederic Brander, owner and winemaker of the Brander Vineyard, proposing the establishment of the ''Los Olivos District'' AVA in Santa Barbara County, California. There are 12 bonded wineries and approximately 47 commercially producing vineyards covering a total of 1,120 acres within the proposed AVA. The proposed Los Olivos District AVA shares its western boundary with the eastern boundary of the Ballard Canyon AVA (27 CFR 9.230) and its eastern boundary with the western boundary of the Happy Canyon of Santa Barbara AVA (27 CR 9.217), but it does not overlap either of these AVAs. It is located within the Santa Ynez Valley viticultural area and the larger, multicounty Central Coast viticultural area.

According to the petition, the distinguishing features of the proposed Los Olivos District AVA include its topography, soils, and climate. The proposed AVA is located on a broad alluvial terrace plain of the Santa Ynez

River. The topography of the proposed AVA is relatively uniform, with nearly flat terrain that gently slopes southward toward the Santa Ynez River. The lack of steeply sloped hills reduces the risk of erosion and facilitates mechanical tiling and harvesting in the vineyards. Additionally, the open terrain allows vineyards throughout the proposed AVA to receive uniform amounts of sunlight, rainfall, and temperature-moderating fog because there are no significant hills or mountains within the proposed AVA to block the rainfall and fog or to shade the vineyards. By contrast, the regions surrounding the proposed Los Olivos District all have higher elevations and steep, rugged terrain.

Over 95 percent of the soils within the proposed Los Olivos District AVA are from the Positas–Ballard–Santa Ynez soil association and are derived from alluvium, including Orcutt sand and terrace deposits. The soils are moderately to well drained gravelly fine sandy loams and clay loams with low to moderate fertility. The soils within the proposed AVA drain quickly enough to reduce the risk of root disease but do not drain so excessively as to require frequent irrigation. Soil nutrient levels within the proposed AVA are adequate to produce healthy vines and fruit without promoting excessive growth. By contrast, the majority of soils in the surrounding regions are not from the Positas–Ballard–Santa Ynez soil association and are generally less fertile and drain faster.

Within the Central Coast AVA, where the proposed Los Olivos District AVA is located, temperatures are affected by cooling marine fog. However, the proposed Los Olivos District AVA is located about 30 miles inland from the Pacific Ocean, so much of the marine fog has diminished by the time it reaches the proposed AVA in the late afternoon. The thin fog within the proposed AVA allows the daytime temperatures to rise higher and the nighttime temperatures to drop lower than in the regions farther to the west, where heavy fog is present throughout the day. The region to the east receives even less fog than the proposed AVA, so daytime temperatures rise higher and nighttime temperatures drop lower. The warm daytime temperatures within the proposed AVA encourage fruit maturation and sugar production, and the cool nighttime temperatures minimize acid loss.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 148 in the **Federal Register** on March 3, 2015 (80 FR 11355), proposing to establish the Los Olivos District AVA. In the document, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The document also compared the distinguishing features of the proposed AVA to the surrounding areas. In Notice No. 148, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, TTB solicited comments on whether the geographic features of the proposed Los Olivos District are so distinguishable from the established Santa Ynez Valley AVA and the Central Coast AVA that the proposed AVA should not be part of either established AVA. The comment period closed on May 4, 2015.

In response to Notice No. 148, TTB received 76 comments, all of which supported the establishment of the Los Olivos District AVA, with many citing to its distinct topography, climate, and soils. The comments did not raise any new issues concerning the proposed AVA. TTB received no comments opposing the establishment of the Los Olivos District AVA. TTB also did not receive any comments in response to its question of whether the proposed Los Olivos District AVA is so distinguishable from the established Santa Ynez Valley AVA or the established Central Coast AVA that the proposed AVA should not be part of either established AVA.

TTB Determination

After careful review of the petition and the comment received in response to Notice No. 148, TTB finds that the evidence provided by the petitioner supports the establishment of the Los Olivos District AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Los Olivos District'' AVA in Santa Barbara County, California, effective 30 days from the publication date of this document.

TTB has also determined that the Los Olivos District AVA will remain part of both the established Santa Ynez Valley AVA and the established Central Coast AVA. As discussed in Notice No. 148, the Los Olivos District AVA receives some of the marine breezes and fog that are the primary characteristics of both the Santa Ynez Valley AVA and the Central Coast AVA. However, due to its central location within the Santa Ynez Valley AVA, the Los Olivos District AVA receives less marine air and heavy fog than the western portion of the Santa Ynez Valley AVA, which is closer to the Pacific Ocean, and it receives more cooling breezes and fog than the eastern portion. The topography of the Los Olivos District AVA is also more uniform than that of the Santa Ynez Valley AVA, which has mountains and canyons as well as flatter terrain. Additionally, due to its smaller size, the Los Olivos District AVA is more uniform in its geographical and climatic characteristics than the much larger, multicounty Central Coast AVA.

Boundary Description

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, ''Los Olivos District,'' is recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name ''Los Olivos District'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. In Notice No. 148, TTB proposed to recognize ''Los Olivos,'' standing alone, as a term of viticultural significance. However TTB is not designating ''Los Olivos,''

standing alone, as a term of viticultural significance in this final rule. We make this change in light of new information concerning the current use of ''Los Olivos'' on wine labels.

The approval of the Los Olivos District AVA does not affect any existing AVA, and this approval does not affect any bottlers using ''Central Coast'' or ''Santa Ynez Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Central Coast or Santa Ynez Valley AVAs. The establishment of the Los Olivos District AVA allows vintners to use ''Los Olivos District,'' ''Santa Ynez Valley,'' and ''Central Coast'' as appellations of origin for wines made from grapes grown within the Los Olivos District AVA, if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.253 to subpart C to read as follows:

§ 9.253 Los Olivos District.

(a) *Name.* The name of the viticultural area described in this section is ''Los Olivos District''. For purposes of part 4 of this chapter, ''Los Olivos District'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Los Olivos District viticultural area are titled:

(1) Los Olivos, CA, 1995;
(2) Zaca Creek, Calif., 1959;
(3) Solvang, CA, 1995; and
(4) Santa Ynez, CA, 1995.

(c) *Boundary.* The Los Olivos District viticultural area is located in Santa Barbara County, California. The boundary of the Los Olivos District viticultural area is as described below:

(1) The beginning point is on the Los Olivos map at the intersection of Foxen Canyon Road with California State Road 154 (known locally as San Marcos Pass Road/Chumash Highway), section 23, T7N/R31W.

(2) From the beginning point, proceed southwesterly in a straight line approximately 0.3 mile, crossing onto the Zaca Creek map, to the intersection of Ballard Canyon Road and an unnamed, unimproved road known locally as Los Olivos Meadows Drive, T7N/R31W; then

(3) Proceed south-southeasterly in a straight line approximately 1 mile, crossing onto the Los Olivos map, to a marked, unnamed structure within a circular-shaped 920-foot contour line in the southwest corner of section 26, T7N/R31W; then

(4) Proceed south-southwesterly in a straight line approximately 1.25 miles, crossing onto the Zaca Creek map, to the point marked by the ''Ball'' 801-foot elevation control point, T6N/R31W; then

(5) Proceed south-southwesterly in a straight line approximately 1.45 miles, crossing onto the Solvang map, to a marked, unnamed 775-foot peak, T6N/R31W; then

(6) Proceed south-southwesterly in a straight line approximately 0.55 mile to a marked communication tower located within the 760-foot contour line, T6N/R31W; then

(7) Proceed south-southeasterly in a straight line approximately 0.6 mile to the intersection of Chalk Hill Road with an unnamed creek descending from Adobe Canyon, northwest of the unnamed road known locally as Fredensborg Canyon Road, T6N/R31W; then

(8) Proceed southwesterly (downstream) along the creek approximately 1 mile to the creek's intersection with the Santa Ynez River, T6N/R31W; then

(9) Proceed easterly (upstream) along the Santa Ynez River approximately 8 miles, crossing onto the Santa Ynez map, to the river's intersection with State Highway 154, T6N/R30W; then

(10) Proceed north-northwest in a straight line approximately 1.2 miles to the marked 924-foot elevation point, T6R/R30W; then

(11) Proceed north-northwest in a straight line 1.2 miles to the ''Y'' in an unimproved road 0.1 mile south of the 800-foot contour line, west of Happy Canyon Road, T6R/R30W; then

(12) Proceed north-northwest in a straight line for 0.5 mile, crossing onto the Los Olivos map, and continuing approximately 2.3 miles to the third intersection of the line with the 1,000-foot contour line northwest of BM 812, T7N/R30W; then

(13) Proceed westerly along the meandering 1,000-foot contour line to the contour line's intersection with an unnamed, unimproved road, an unnamed light-duty road, and the northern boundary line of section 23, T7N/R31W; then

(14) Proceed northerly, then westerly, along the unnamed, unimproved road to Figueroa Mountain Road, near the marked 895-foot elevation, T7N/R31W; then

(15) Proceed north on Figueroa Mountain Road approximately 400 feet to the 920-foot contour line, T7N/R31W; then

(16) Proceed initially south, then northwesterly along the meandering 920-foot contour line, crossing onto the Zaca Creek map, to Foxen Canyon Road, T7N/R31W; then

(17) Proceed southeasterly on Foxen Canyon Road approximately 1.7 miles, crossing onto the Los Olivos map, returning to the beginning point.

Signed: December 9, 2015.

John J. Manfreda,

Administrator.

Approved: January 14, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–01155 Filed 1–20–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560 and Appendix A to Chapter V

Iranian Transactions and Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Iranian Transactions and Sanctions Regulations (ITSR) to implement certain United States Government (USG) commitments under the Joint Comprehensive Plan of Action (JCPOA) reached on July 14, 2015 between the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union (EU), and Iran. In particular, OFAC is adding to the ITSR general licenses authorizing the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs and carpets and related transactions to implement the USG commitment set out in section 5.1.3 of Annex II and section 17.5 of Annex V of the JCPOA. In addition, to reflect the USG's implementation of its commitment set out in section 4 of Annex II and section 17.4 of Annex V of the JCPOA to terminate Executive Order 13622 of July 30, 2012, OFAC is removing regulatory provisions that implemented the blocking sanctions in sections 5 and 6 of Executive Order 13622. OFAC is also making certain technical and conforming changes to its regulations to reflect the implementation of the USG commitment set out in section 4.8.1 of Annex II and section 17.3 of Annex V of the JCPOA to remove the individuals and entities set forth in Attachment 3 to Annex II of the JCPOA from OFAC's Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and/or the Non-SDN Iran Sanctions Act List, as appropriate, on Implementation Day of the JCPOA.

DATES: *Effective:* January 21, 2016

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

On July 14, 2015, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union (EU), and Iran reached a Joint Comprehensive Plan of Action (JCPOA) to ensure that Iran's nuclear program is exclusively peaceful. The JCPOA provides that the United States Government (USG) will undertake the sanctions-related commitments described in sections 17.1 to 17.4 of Annex V of the JCPOA once the International Atomic Energy Agency (IAEA) has verified that Iran has implemented key nuclear-related commitments described in the JCPOA. The date for this sanctions lifting is referred to as ''Implementation Day'' in the JCPOA. In addition, the JCPOA provides that, on Implementation Day, the USG will license certain activities involving Iran as described in section 5 of Annex II and section 17.5 of Annex V of the JCPOA. OFAC is now amending the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), to implement the USG's commitment pursuant to the JCPOA to license the importation into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar, and to make certain technical and conforming changes to reflect the implementation of other USG JCPOA commitments on Implementation Day, as set forth below.

Importation of Certain Foodstuffs and Carpets

To implement the USG commitment set out in section 5.1.3 of Annex II and section 17.5 of Annex V of the JCPOA to license the importation into the United States of Iranian-origin carpets and foodstuffs, including pistachios and caviar, OFAC is adding § 560.534 to the ITSR to authorize by general license the importation into the United States of, and dealings in, certain Iranian-origin foodstuffs and carpets from Iran or a third country. OFAC's publication of this general license as an amendment to the ITSR fulfills the requirements of section 103(d)(2)(A) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, as amended, (Pub. L. 111–195) (22 U.S.C. 8501–8551) (CISADA). In addition, to fulfill the requirements of section 103(d)(2)(B) of CISADA, the Secretary of State is submitting to the appropriate congressional committees a certification in writing that it is in the national interest of the United States to provide an exception to the prohibition on the importation of Iranian-origin goods to the extent required to implement the sanctions commitment described in section 5.1.3 of Annex II of the JCPOA and a report describing the reasons for this exception.

Section 560.534(a) authorizes the importation into the United States of Iranian-origin foodstuffs intended for human consumption that are classified under chapters 2–23 of the Harmonized Tariff Schedule of the United States (HTS). Items that are classified in chapters 2–23 of the HTS that are not foodstuffs intended for human consumption are not authorized for importation into the United States by this section. This section also authorizes the importation into the United States of Iranian-origin carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or heading 9706.00.0060 of the HTS. Items that are classified under heading 9706.00.0060 (''Antiques of an age exceeding one hundred years/Other'') that are not carpets and other textile wall coverings or carpets used as wall hangings are not authorized for importation into the United States by this section.

Section 560.534(b) authorizes U.S. persons, wherever located, to engage in transactions or dealings in or related to such Iranian-origin foodstuffs and carpets, provided that such transactions or dealings do not involve or relate to goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211 of the ITSR, other than services described in § 560.405 (''Transactions ordinarily incident to a licensed transaction authorized'') and transfers of funds described in § 560.516 (''Transfers of funds involving Iran''). Section 560.534(c) clarifies that § 560.534(a)–(b) does not authorize the importation into the United States of goods that are under seizure or detention by the Department of Homeland Security, or of goods for which forfeiture proceedings have commenced or of goods that have been forfeited to the U.S. Government.

Section 560.534(d) clarifies that nothing in § 560.534 authorizes the debiting or crediting of Iranian accounts, as defined in § 560.320.

Transactions ordinarily incident to the transactions authorized in § 560.534 and necessary to give effect thereto also are authorized as set forth in § 560.405. OFAC is amending § 560.405 by inserting new paragraph (f), which clarifies that the scope of authorized incidental transactions does not include letter of credit services relating to transactions authorized in § 560.534. Those letter of credit services that are authorized are set forth separately in paragraphs (a) and (b) of § 560.535, which OFAC is also adding to the ITSR. Please see §§ 560.405(b) and 560.516 regarding transfers of funds in connection with licensed activities. Brokering services relating to transactions authorized by this final rule also are authorized. See § 560.535(c).

Executive Order 13622

On July 30, 2012, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 13622. Section 5 of E.O. 13622 blocked ''all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of'' any U.S. person, including any foreign branch, of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO), or the Central Bank of Iran, or the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran. Section 6 of E.O. 13622 provided that subsection 5(a) of E.O. 13622, among other specified provisions, shall not apply with respect to any person for conducting or facilitating a transaction involving a natural gas development and pipeline project initiated prior to July 31, 2012, to bring gas from Azerbaijan to Europe and Turkey in furtherance of a production sharing agreement or license awarded by a sovereign government other than the Government of Iran. On December 26, 2012, OFAC published a final rule in the **Federal Register** (77 FR 75845) that, *inter alia,* implemented sections 5 and 6 of E.O. 13622 by amending § 560.211 of the ITSR to add paragraph (c)(2) and a corresponding note.

Pursuant to its Implementation Day commitment set out in section 4 of Annex II and section 17.4 of Annex V of the JCPOA, the United States Government has revoked E.O. 13622. Accordingly, OFAC is amending § 560.211 of the ITSR by removing paragraph (c)(2) and the Note to paragraph (c)(2), which implemented sections 5 and 6 of E.O. 13622, respectively.

Technical and Conforming Changes

OFAC is also making certain technical and conforming changes to 31 CFR chapter V to reflect the implementation of the USG commitment set out in section 4.8.1 of Annex II and section 17.3 of Annex V of the JCPOA. Pursuant to that commitment, on Implementation Day, OFAC is removing individuals and entities identified in Attachment 3 to Annex II of the JCPOA from the Specially Designated Nationals and Blocked Persons List (SDN List), the Foreign Sanctions Evaders List, and/or the Non-SDN Iran Sanctions Act List, as appropriate. The individuals and entities being removed from the SDN List include persons that OFAC has previously identified as blocked pursuant to E.O. 13599 of February 5, 2012 (''Blocking Property of the Government Iran and Iranian Financial Institutions'') because they meet the definition of the terms ''Government of Iran'' or ''Iranian financial institution.'' These individuals and entities are marked with an asterisk in Attachment 3 to Annex II of the JCPOA. Non-U.S. persons will no longer be subject to secondary sanctions, including under relevant provisions of the Iran Freedom and Counter-Proliferation Act of 2012 and other applicable authorities, for engaging in transactions or activities with these individuals and entities, provided that the transactions do not include conduct that remains sanctionable or individuals or entities that remain on the SDN List. However, these individuals and entities being removed from the SDN List remain persons whose property and interests in property that are in the U.S., or that are or come within the possession or control of any U.S. person, are blocked pursuant to E.O. 13599. While OFAC is removing these persons from the SDN List on Implementation Day, they will now be included on a ''List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599'' (E.O. 13599 List), which OFAC is making available on its Web site: *www.treasury.gov/resource-center/sanctions/Programs/Pages/13599_list.aspx.* To reflect these changes, OFAC is revising notes in §§ 560.211 and 560.304 of the ITSR, adding a new note to § 560.324 of the ITSR, and revising a note to appendix A to 31 CFR chapter V.

Public Participation

Because the amendment of the ITSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560 and Appendix A to Chapter V

Administrative practice and procedure, Banks, Banking, Carpet, Foodstuffs, Iran, Letters of credit.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V as follows:

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 1. The authority citation for part 560 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Public Law 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Public Law 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Public Law 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13628, 77 FR 62139, 3 CFR, 2012 Comp., p. 314.

Subpart B—Prohibitions

■ 2. Amend § 560.211 by removing the word ''or'' from the end of paragraph (c)(1), removing and reserving paragraph (c)(2), removing the note to paragraph (c)(2), and revising notes 1 and 2 to paragraphs (a) through (c) to read as follows:

§ 560.211 Prohibited transactions involving blocked property.

* * * * *

Note 1 to paragraphs (a) through (c) of § 560.211: The names of persons identified by the Office of Foreign Assets Control (OFAC) as blocked solely pursuant to Executive Order 13599 of February 5, 2012 (''Blocking Property of the Government Iran and Iranian Financial Institutions'') (E.O. 13599) because they meet the definition of the terms ''Government of Iran'' or ''Iranian financial institution,'' whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into the ''List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599'') (E.O. 13599 List). The E.O. 13599 List is accessible through the following page on OFAC's Web site: *www.treasury.gov/resource-center/sanctions/Programs/Pages/13599_list.aspx.* The names of persons identified as blocked or designated for blocking pursuant to both this part and one or more other parts of this chapter are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[IRAN]'' as well as the relevant identifier(s) for the other sanctions program(s) pursuant to which the persons' property and interests in property are blocked. The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* Additional information pertaining to the E.O. 13599 List and the SDN List can be found in appendix A to this chapter. *See* § 560.425 concerning entities that may not be listed on the E.O. 13599 List or on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section. E.O. 13599 blocks the property and interests in property of the Government of Iran and Iranian financial institutions as defined in §§ 560.304 and 560.324, respectively. The property and interests in property of persons falling within the definition of the terms *Government of Iran* and *Iranian financial institution* are blocked pursuant to this section regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the E.O. 13599 List or the SDN List.

Note 2 to paragraphs (a) through (c) of § 560.211: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the E.O. 13599 List or the SDN List, as appropriate, with the identifier ''[BPI–IRAN].''

* * * * *

Subpart C—General Definitions

■ 3. Amend § 560.304 by revising Note 1 to § 560.304 to read as follows:

§ 560.304 Government of Iran.

* * * * *

Note 1 to § 560.304: The names of persons that the Office of Foreign Assets Control (OFAC) has determined fall within this definition are published in the **Federal Register** and incorporated into one of two lists maintained by OFAC. First, the names of persons identified as blocked solely pursuant to Executive Order 13599 of February 5, 2012 (''Blocking Property of the Government Iran and Iranian Financial Institutions'') (E.O. 13599) and § 560.211 because they meet the definition of the term ''Government of Iran'' are incorporated into the ''List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599'') (E.O. 13599 List). The E.O. 13599 List is accessible through the following page on OFAC's Web site: *www.treasury.gov/resource-center/sanctions/Programs/Pages/13599_list.aspx.* Second, the names of persons identified as blocked pursuant to E.O. 13599 and § 560.211 who are also blocked pursuant to one or more other parts of this chapter are incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[IRAN]'' as well as the relevant identifier(s) for the other sanctions program(s) pursuant to which the persons' property and interests in property are blocked. The SDN List is accessible through the following page on the OFAC's Web site: *www.treasury.gov/sdn.* However, the property and interests in property of persons falling within the definition of the term *Government of Iran* are blocked pursuant to § 560.211 regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the E.O. 13599 List or the SDN List.

* * * * *

■ 4. Section 560.324 is amended by adding Notes 1 and 2 to § 560.324 to read as follows:

§ 560.324 Iranian financial institution.

* * * * *

Note 1 to § 560.324: The names of persons that the Office of Foreign Assets Control (OFAC) has determined fall within this definition are published in the **Federal Register** and incorporated into one of two lists maintained by the OFAC. First, the names of persons identified as blocked solely pursuant to Executive Order 13599 of February 5, 2012 (''Blocking Property of the Government Iran and Iranian Financial Institutions'') (E.O. 13599) and § 560.211 because they meet the definition of the term ''Iranian financial institution'' are incorporated into the ''List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599'') (E.O. 13599 List). The E.O. 13599 List is accessible through the following page on OFAC's Web site: *www.treasury.gov/resource-center/sanctions/Programs/Pages/13599_list.aspx.* Second, the names of persons identified as blocked pursuant to E.O. 13599 and § 560.211 who are also blocked pursuant to one or more other parts of this chapter are incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[IRAN]'' as well as the relevant identifier(s) for the other sanctions program(s) pursuant to which the persons' property and interests in property are blocked. The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* However, the property and interests in property of persons falling within the definition of the term *Iranian financial institution* are blocked pursuant to § 560.211 regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the E.O. 13599 List or the SDN List.

Note 2 to § 560.324: Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of OFAC's determination that they fall within the definition of the term *Iranian financial institution.*

Subpart D—Interpretations

■ 5. Amend § 560.405 by removing the word ''and'' at the end of paragraph (d), removing the period at the end of paragraph (e) and adding ''; and'' in its place, and adding paragraph (f) to read as follows:

§ 560.405 Transactions ordinarily incident to a licensed transaction authorized.

* * * * *

(f) Letter of credit services relating to transactions authorized in § 560.534. See § 560.535(a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 6. Add § 560.534 to subpart E to read as follows:

§ 560.534 Importation into the United States of, and dealings in, certain foodstuffs and carpets authorized.

(a) The importation into the United States, from Iran or a third country, of the following goods of Iranian origin is authorized:

(1) Foodstuffs intended for human consumption that are classified under chapters 2–23 of the Harmonized Tariff Schedule of the United States;

(2) Carpets and other textile floor coverings and carpets used as wall hangings that are classified under chapter 57 or heading 9706.00.0060 of the Harmonized Tariff Schedule of the United States.

(b) United States persons, wherever located, are authorized to engage in transactions or dealings in or related to the categories of Iranian-origin goods described in paragraph (a) of this section, provided that the transaction or dealing does not involve or relate to goods, technology, or services for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211, other than services described in § 560.405 (''Transactions ordinarily incident to a licensed transaction authorized'') and transfers of funds described in § 560.516 (''Transfers of funds involving Iran'').

(c) This general license does not authorize the importation into the United States of goods that are under seizure or detention by the Department of Homeland Security, as of January 21, 2016, pursuant to Customs regulations or other applicable provisions of law, until any applicable penalties, charges, duties, or other conditions are satisfied. This general license does not authorize the importation into the United States of goods for which forfeiture proceedings have commenced or of goods that have been forfeited to the U.S. Government, other than through U.S. Customs and Border Protection disposition, including by selling at auction.

(d) *Iranian accounts.* Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

■ 7. Add § 560.535 to subpart E to read as follows:

§ 560.535 Letters of credit and brokering services relating to certain foodstuffs and carpets.

(a) *Purchases from Iran or the Government of Iran or certain other blocked persons.* United States depository institutions are authorized to issue letters of credit in favor of a beneficiary in Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211 to pay for purchases from Iran or the Government of Iran of the categories of Iranian-origin goods described in § 560.534(a), provided that such letters of credit are not advised, negotiated, paid, or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(b) *Transactions or dealings in Iranian-origin goods located in third countries, other than purchases from the Government of Iran or certain other blocked persons.* United States depository institutions are authorized to issue, advise, negotiate, or confirm letters of credit to pay for transactions in or related to Iranian-origin goods described in § 560.534(a) and located in a third-country, other than purchases from the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211, provided that such letters of credit are not issued, advised, negotiated, paid, or confirmed by the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(c) *Brokering.* United States persons, wherever located, are authorized to act as brokers for the purchase or sale of the categories of Iranian-origin goods described in § 560.534(a), provided that the goods are not for exportation, reexportation, sale, or supply, directly or indirectly, to Iran, the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211.

(d) *Iranian accounts.* Nothing in this section authorizes debits or credits to Iranian accounts, as defined in § 560.320.

Note to § 560.535: See §§ 560.304 and 560.313 for information relating to individuals and entities that are included within the definition of the term *Government of Iran* and § 560.324 regarding entities included within the definition of the term *Iranian financial institution.* See § 560.516 for information relating to authorized transfers to Iran by U.S. depository institutions relating to licensed transactions.

Appendix A to Chapter V—[Amended]

■ 8. The authority citation for appendix A to chapter V is revised to read as follows:

Authority: 3 U.S.C. 301; 8 U.S.C. 1182, 1189; 18 U.S.C. 2339 B; 21 U.S.C. 1901–1908; 22 U.S.C. 287 c; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Public Law 110–286, 122 Stat. 2632 (50 U.S.C. 1701 note); Public Law 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Public Law 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Public Law 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); Public Law 112–208, 126 Stat. 1502; Public Law 113–278, 128 Stat. 3011 (50 U.S.C. 1701 note).

■ 9. Revise note 8 to appendix A to chapter V to read as follows:

Appendix A to Chapter V—Information Pertaining to the Specially Designated Nationals and Blocked Persons List

* * * * *

8. The SDN List includes the names of persons determined to be the Government of Iran, an Iranian financial institution, or any other person whose property and interests in property are blocked pursuant to § 560.211 of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR), only when the property and interests in property of such persons are also blocked pursuant to one or more other parts of this chapter. The SDN List entries for such persons include the identifier ''[IRAN]'' as well as the relevant identifier(s) for the other sanctions program(s) pursuant to which the persons' property and interests in property are blocked. The names of persons identified as blocked solely pursuant to Executive Order 13599 of February 5, 2012 (''Blocking Property of the Government Iran and Iranian Financial Institutions'') (E.O. 13599) and § 560.211 of the ITSR because they meet the definition of the terms *Government of Iran* or *Iranian financial institution* under the ITSR are incorporated into the ''List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599'' (E.O. 13599 List). The E.O. 13599 List is accessible through the following page on the Office of Foreign Assets Control's Web site: *www.treasury.gov/resource-center/sanctions/Programs/Pages/13599_list.aspx.* U.S. persons are advised to review 31 CFR part 560 prior to engaging in transactions involving persons included on the E.O. 13599 List or the SDN List with the identifier ''[IRAN].'' Moreover, the prohibitions set forth in the ITSR, and the compliance obligations, with respect to persons who fall within the definition of the terms *Government of Iran* or *Iranian financial institution* set forth in §§ 560.304 and 560.324 of the ITSR, respectively, apply regardless of whether such persons are identified on the E.O. 13599 List or the SDN List.

* * * * *

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–01227 Filed 1–19–16; 4:15 pm]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0019]

Security Zones; Annual Events in the Captain of the Port Detroit Zone–North American International Auto Show, Detroit River, Detroit MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone associated with the North American International Auto

Show, Detroit River, Detroit, MI. This security zone is intended to restrict vessels from a portion of the Detroit River in order to ensure the safety and security of participants, visitors, and public officials at the North American International Auto Show (NAIAS), which is being held at Cobo Hall in downtown Detroit, MI. Vessels in close proximity to the security zone will be subject to increased monitoring and boarding during the enforcement of the security zone. No person or vessel may enter the security zone while it is being enforced without permission of the Captain of the Port Detroit.

DATES: The security zone regulation described in 33 CFR 165.915(a)(3) is effective without actual notice from January 21, 2016 through 11:59 p.m. on January 24, 2016. For purposes of enforcement, actual notice will be used from 8 a.m. on January 11, 2016 through January 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LCDR Nicholas Seniuk, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; telephone (313) 568–9508; email *Nicholas.C.Seniuk@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the *North American International Auto Show, Detroit River, Detroit, MI* security zone listed in 33 CFR 165.915(a)(3). This security zone includes all waters of the Detroit River encompassed by a line beginning at a point of origin on land adjacent to the west end of Joe Louis Arena at 42°19.44′ N., 083°03.11′ W.; then extending offshore approximately 150 yards to 42°19.39′ N., 083°03.07′ W.; then proceeding upriver approximately 2000 yards to a point at 42°19.72′ N., 083°01.88′ W.; then proceeding onshore to a point on land adjacent the Tricentennial State Park at 42°19.79′ N., 083°01.90′ W.; then proceeding downriver along the shoreline to connect back to the point of origin. All coordinates are North American Datum 1983.

All persons and vessels shall comply with the instructions of the Captain of the Port Detroit or his designated on-scene representative, who may be contacted via VHF Channel 16.

Under the provisions of 33 CFR 165.33, no person or vessel may enter or remain in this security zone without the permission of the Captain of the Port Detroit. Each person and vessel in this security zone shall obey any direction or order of the Captain of the Port Detroit. The Captain of the Port Detroit may take possession and control of any vessel in this security zone. The Captain of the Port Detroit may remove any person, vessel, article, or thing from this security zone. No person may board, or take or place any article or thing on board any vessel in this security zone without the permission of the Captain of Port Detroit. No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the Captain of the Port Detroit.

Vessels that wish to transit through this security zone shall request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals may be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of 33 CFR 165.915 and 5 U.S.C. 552(a). If the Captain of the Port determines that this security zone need not be enforced for the full duration stated in this document; he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: January 8, 2016.

Raymond Negron,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2016–01190 Filed 1–20–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0464; FRL–9939–78–Region 5]

Air Plan Approval; Wisconsin; Wisconsin State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of state implementation plan (SIP) submissions from Wisconsin regarding the state board requirements under section 128 of the Clean Air Act (CAA). EPA is also approving elements of SIP submissions from Wisconsin regarding the infrastructure requirements of section 110, relating to state boards for the 1997 ozone, 1997 fine particulate ($PM_{2.5}$), 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The proposed rulemaking associated with this final action was published on September 11, 2015, and EPA received no comments during the comment period, which ended on October 13, 2015.

DATES: This final rule is effective on February 22, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0464. 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov*.

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

I. What is the background of these SIP submissions?
II. What guidance is EPA using to evaluate these SIP submissions?
III. What is the result of EPA's review of these SIP submissions?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

This rulemaking addresses submissions from the Wisconsin Department of Natural Resources (WDNR) dated July 2, 2015. These

submissions are intended to address CAA requirements relating to the state board requirements under section 128, as well as infrastructure requirements of section 110, relating to state boards for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

The requirement for states to make infrastructure SIP submissions arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA. This specific rulemaking is only taking action on the CAA 110(a)(2)(E)(ii) element of these infrastructure SIP requirements, which is the only infrastructure SIP element addressed in WDNR's submittal dated July 2, 2015.

II. What guidance is EPA using to evaluate these SIP submissions?

EPA's guidance for these submissions is highlighted in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ [1] National Ambient Air Quality Standards'' (2007 Guidance). Further guidance is provided in a September 13, 2013, document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)'' (2013 Guidance).

[1] $PM_{2.5}$ refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as ''fine'' particles.

III. What is the result of EPA's review of these SIP submissions?

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. WDNR provided notice of a public comment period on May 9, 2015, held a public hearing at WDNR State Headquarters on June 9, 2015, and closed the public comment period on June 11, 2015. No comments were received.

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 128 and 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable.

On September 11, 2015 (80 FR 54744), EPA published a proposed rule that would approve these submissions into Wisconsin's SIP. This proposed rule contained a detailed evaluation of how Wisconsin's submissions satisfy certain requirements under CAA sections 110 and 128. No comments were received. Therefore, EPA is finalizing this rule as proposed.

IV. What action is EPA taking?

EPA is taking final action to incorporate *Wis. Stats.* 15.05, 19.45(2), and 19.46 into Wisconsin's SIP. EPA is further approving these submissions as meeting CAA obligations under section 128, as well as 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

V. Incorporation by Reference

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

VI. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 23, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(134) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(134) On July 2, 2015, the Wisconsin Department of Natural Resources submitted a request to revise the State Implementation Plan to satisfy the state board requirements under section 128 of the Clean Air Act.

(i) Incorporation by reference.

(A) Wisconsin Statutes, section 15.05 Secretaries, as revised by 2013 Wisconsin Act 20, enacted on June 30, 2013. (A copy of 2013 Wisconsin Act 20 is attached to section 15.05 to verify the enactment date.)

(B) Wisconsin Statutes, section 19.45(2), as revised by 1989 Wisconsin Act 338, enacted on April 27, 1990. (A copy of 1989 Wisconsin Act 338 is attached to section 19.45(2) to verify the enactment date.)

(C) Wisconsin Statutes, section 19.46 Conflict of interest prohibited; exception, as revised by 2007 Wisconsin Act 1, enacted on February 2, 2007. (A copy of 2007 Wisconsin Act 1 is attached to section 19.46 to verify the enactment date.)

■ 3. Section 52.2591 is amended by adding paragraph (j) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(j) Approval—In a July 2, 2015, submission, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

[FR Doc. 2016–01015 Filed 1–20–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 15

[Docket No. USCG–2015–0758]

RIN 1625–AC25

Offshore Supply Vessels, Towing Vessel, and Barge Engine Rating Watches

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On October 26, 2015, the Coast Guard published a direct final rule, which notified the public of our intent to amend merchant mariner manning regulations to align them with statutory changes made by the Howard Coble Coast Guard and Maritime Transportation Act of 2014. The Act allows oilers serving on certain offshore support vessels, towing vessels, and barges to be divided into at least two watches. The change would increase the sea service credit affected mariners are permitted to earn for each 12-hour period of work from one day to one and a half days. The rule will go into effect as scheduled.

DATES: The effective date of the direct final rule published at 80 FR 65165 on October 26, 2015 is confirmed as January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Marine Personnel Qualifications Division (CG–OES–1), Coast Guard; email *Davis.J.Breyer@uscg.mil,* telephone (202) 372–1445.

SUPPLEMENTARY INFORMATION: We received two comments in response to the direct final rule (DFR). The two comments we received were either not adverse or separable from and not within the scope of the rulemaking.

One commenter supported the rule and thanked the Coast Guard for its prompt action. Another commenter titled its comment as ''adverse'' and requested that the Coast Guard withdraw the DFR. The commenter agreed that ''the Coast Guard is obliged to align Coast Guard regulations with the statutes'' and did not oppose the changes to the regulation. The commenter argued, rather, that the Coast Guard should delay the rulemaking indefinitely and seek new legislation from Congress that limits every merchant mariner to serving a uniform maximum of 12 hours in a 24 hour period, except in an emergency.

The DFR conforms Coast Guard regulations to existing law, under which affected mariners may earn one and a half days sea service credit for each 12-hour period of work. The commenter did not oppose granting such mariners such credit for time worked. Instead, the commenter took issue with the absence of *statutory* restrictions on *the length of time certain mariners may be required to work.* The commenter advocated that the Coast Guard delay updating the regulations and request that Congress amend the statute further.

The DFR stated that ''we may adopt, as final, those parts of this rule on which no adverse comment was received.'' 80 FR 65166. The commenter's requests are separable from the rule and raises issues well outside the scope of the rule. The rule will therefore go into effect as scheduled.

Dated: January 14, 2016.

J.G. Lantz,

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

[FR Doc. 2016–01101 Filed 1–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket No. 160108022–6022–01]

RIN 0660–AA31

Implementing Certain Provisions of the Spectrum Pipeline Act With Respect to the Duties of the Technical Panel

AGENCY: National Telecommunications and Information Administration.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) amends its regulations with respect to the duties of the Technical Panel to include the new responsibility for review and approval of plans submitted by federal entities that request funding from the Spectrum Relocation Fund for the purposes set forth in Section 1005(a)(2) of the Spectrum Pipeline Act of 2015.

DATES: The final rule becomes effective on January 21, 2016.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA, (202) 482–1816 or *mbrown@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002 or *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.,* as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(l), 928) and the Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Pub. L. 114–74, 129 Stat. 621 (Nov. 5, 2015) (47 U.S.C. 923, 928).

I. Background

The Commercial Spectrum Enhancement Act of 2004 (CSEA) established the Spectrum Relocation Fund from which agencies could recover relocation costs in order to facilitate clearing of the eligible frequency bands auctioned by the Federal Communications Commission.[1] The Middle Class Job Creation and Tax Relief Act of 2012 (Tax Relief Act) amended the CSEA to permit federal entities to recover costs for sharing of spectrum and to receive additional reimbursement of expenses for planning for auction participation, use of alternative technologies, replacement equipment, and research and analysis of potential spectrum sharing solutions.[2] The Tax Relief Act also required NTIA to establish a Technical Panel to review and approve federal entities' transition plans to facilitate the relocation of, and sharing of spectrum with, U.S. Government stations in spectrum bands reallocated from federal use to non-federal use or shared use.[3]

The Spectrum Pipeline Act of 2015 modified the CSEA by, among other things, appropriating $500,000,000 from the Spectrum Relocation Fund on the date of enactment and not more than 10 percent of future deposits for the Office of Management and Budget (OMB) to make payments to federal entities for research and development, engineering studies, economic analyses, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use. [4] This Final Rule implements those provisions of the Spectrum Pipeline Act regarding the review and approval by the Technical Panel of plans submitted by federal entities requesting such additional payments from the Spectrum Relocation Fund.

II. Discussion

NTIA is amending its regulations to conform to provisions of the recently enacted Spectrum Pipeline Act. Accordingly, 47 CFR part 301 is amended as discussed below.

Submission and Contents of a Spectrum Pipeline Plan

The Spectrum Pipeline Act provides that a federal entity that seeks payments pursuant to its provisions must submit a plan (hereafter referred to as a ''Spectrum Pipeline Plan'') to the Technical Panel. Such a plan must describe the activities the federal entity will conduct with the funds to improve the efficiency and effectiveness of the spectrum use of federal entities.[5] Payments may be requested for research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use. For requests involving activities with respect to systems that improve the efficiency or effectiveness of the spectrum use of federal entities, such systems shall include: (1) Systems that have increased functionality or that increase the ability of a federal entity to accommodate spectrum sharing with non-federal entities; (2) systems that consolidate functions or services that have been provided using separate systems; or (3) non-spectrum technology or systems.[6] Accordingly, NTIA amends its regulations to list the requirements for the submission of a Spectrum Pipeline Plan.

Review by Technical Panel

The Spectrum Pipeline Act requires the Technical Panel to approve or disapprove a Spectrum Pipeline Plan not later than 120 days after the federal entity submits the plan.[7] It also provides the criteria that the Technical Panel will use to review such plan. Specifically, the Spectrum Pipeline Act states that the Technical Panel shall consider whether the activities the federal entity will conduct with the payment will: (1) Increase the probability of relocation from or sharing of federal spectrum; (2) facilitate an auction intended to occur not later than 8 years after the payment; and (3) increase the net expected auction proceeds in an amount not less than the time value of the amount of the payment.[8] It also requires the Technical Panel to consider whether the funding transfer will leave sufficient amounts in the Spectrum Relocation Fund for its other purposes.[9] The regulations also provide an address for submissions to the Technical Panel and the Dispute Resolution Board. Accordingly, NTIA amends its regulations at 47 CFR 301.115(c) to specify the requirements for Technical Panel review of a Spectrum Pipeline Plan.

[1] Commercial Spectrum Enhancement Act of 2004, Public Law 108 494, 118 Stat. 3986 (2004) (CSEA) (amending, among other provisions, Sections 113(g) and 118 of the NTIA Organization Act, codified at 47 U.S.C. 923 and 928). Through the CSEA, Congress amended the NTIA Organization Act to provide, among other things, for reimbursement of costs associated with relocation of Federal entities' spectrum-dependent operations from the proceeds of spectrum auctions.

[2] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, Section 6701–6703, 126 Stat. 245 (Feb. 22, 2012) (amending, among other provisions, Sections 113(g)–(i) and 118 of the NTIA Organization Act, codified at 47 U.S.C. 923 and 928).

[3] Relocation of and Sharing Spectrum by Federal Government Stations—Technical Panel and Dispute Resolution Boards, 78 FR 5310 (Jan. 25, 2013) (codified at 47 CFR pt. 301).

[4] Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Public Law 114–74, 129 Stat. 621 (Nov. 5, 2015) (Spectrum Pipeline Act).

[5] Spectrum Pipeline Act of 2015, Section 1005(a)(2) (amending Section 118 of the NTIA Organization Act by inserting a new subsection (g), to be codified at 47 U.S.C. 928(g)) and Sections 1005(b) and (c) (amending Section 113(h)(3)(C) and 113(g)(1) of the NTIA Organization Act by updating the scope of NTIA's administrative support of the Technical Panel and modifying the definition of ''Eligible Federal Entities,'' respectively).

[6] 47 U.S.C. 928(g)(2)(B).

[7] 47 U.S.C. 928(g)(2)(E)(i).

[8] 47 U.S.C. 928(g)(2)(E)(ii)(I).

[9] 47 U.S.C. 928(g)(2)(E)(ii)(II).

Administrative Procedure Act

The amendments to 47 CFR part 301 in this Final Rule relate solely to the internal management of the agency and, as such, are not subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2). These amendments do not affect the rights or obligations of the public, but relate solely to the obligations of federal entities seeking payments from OMB from the Spectrum Relocation Fund.

Executive Order 12866

This regulation has been determined not to be significant for purposes of Executive Order 12866.

Congressional Review Act

It has been determined that this final rule is not major under 5 U.S.C. 801 *et seq.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply since the rule is exempt from the requirement of the Administrative Procedure Act.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact.

Paperwork Reduction Act

This document does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

List of Subjects in 47 CFR Part 301

Administrative practice and procedure, Communications Common Carriers, Communications equipment, Defense communications, Government employees, Satellites, Radio, Telecommunications.

Dated: January 14, 2016.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

• For the reasons set forth in the preamble, NTIA amends 47 CFR part 301 as follows:

PART 301—RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS

■ 1. Revise the authority citiation for part 301 to read as follows:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.,* as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(l), 928) and the Spectrum Pipeline Act of 2015, Title X of the Bipartisan Budget Act of 2015, Pub. L. 114–74, 129 Stat. 621 (Nov. 5, 2015) (47 U.S.C. 923, 928).

■ 2. Revise § 301.1 to read as follows:

§ 301.1 Purpose.

The purpose of this part is to set forth procedures for the Technical Panel and Dispute Resolution Board as required pursuant to the National Telecommunications and Information Administration Organization Act (hereinafter ''NTIA Organization Act''), as amended (47 U.S.C. 923(g)–(l) and 928).

■ 3. Amend § 301.20 as follows:

■ a. Revise the definitions of ''Eligible Federal Entity'' and ''Federal Entity''.

■ b. Add a definition of ''Spectrum Pipeline Plan'' in alphabetical order.

The revisions and addition read as follows:

§ 301.20 Definitions.

* * * * *

Eligible Federal Entity means any Federal Entity that:

(1) Operates a U.S. Government station; and

(2) That incurs relocation costs or sharing costs because of planning for an auction of eligible spectrum frequencies or the reallocation of eligible spectrum frequencies from Federal use to exclusive non-Federal use or to shared use.

* * * * *

Federal Entity means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305). [47 U.S.C. 923(l)]

* * * * *

Spectrum Pipeline Plan means a plan submitted by a Federal Entity pursuant to section 118(g)(2)(E)(i) of the NTIA Organization Act (47 U.S.C. 928(g)(2)(E)(i)).

* * * * *

■ 4. Add § 301.30 to subpart A to read as follows:

§ 301.30 Address for submissions to the Technical Panel and Dispute Resolution Board.

Submissions to the Technical Panel and the Dispute Resolution Board under this section shall be made to the Office of the Assistant Secretary, National Telecommunications and Information Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

■ 5. Add § 301.115 to read as follows:

§ 301.115 Spectrum Pipeline Plans.

(a) *Submission of Spectrum Pipeline Plan.* A Federal Entity that requests payment from OMB as provided in section 118(g) of the NTIA Organization Act (47 U.S.C. 928(g)) must submit a plan to the Technical Panel for approval.

(b) *Contents of Spectrum Pipeline Plan.* A Spectrum Pipeline Plan submitted in accordance with this section must describe activities for research and development, engineering studies, economic analyses, activities with respect to systems, or other planning activities intended to improve the efficiency and effectiveness of the spectrum use of Federal Entities in order to make available frequencies for reallocation for non-Federal use or shared Federal and non-Federal use, or a combination thereof, for auction in accordance with such reallocation. Activities with respect to systems that improve the efficiency or effectiveness of the spectrum use of Federal Entities shall include:

(1) Systems that have increased functionality or that increase the ability of a Federal Entity to accommodate spectrum sharing with non-Federal entities;

(2) Systems that consolidate functions or services that have been provided using separate systems; or

(3) Non-spectrum technology or systems.

(c) *Review by Technical Panel*—(1) *Deadline for approval.* Not later than 120 days after a Spectrum Pipeline Plan has been submitted to the Technical Panel in accordance with this section, the Technical Panel shall approve or disapprove such plan.

(2) *Criteria for Review.* As part of its review, the Technical Panel shall consider whether:

(i) The activities that the Federal Entity will conduct with the payment will:

(A) Increase the probability of relocation from or sharing of Federal spectrum;

(B) Facilitate an auction intended to occur not later than 8 years after the payment; and

(C) Increase the net expected auction proceeds in an amount not less than the time value of the amount of the payment.

(ii) The transfer will leave sufficient amounts in the Spectrum Relocation Fund for the other purposes of such fund.

[FR Doc. 2016–01047 Filed 1–20–16; 8:45 am]

BILLING CODE 3510–60–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

NASA Federal Acquisition Regulation Supplement

AGENCY: National Aeronautics and Space Administration.

ACTION: Technical amendments.

SUMMARY: NASA is making technical amendments to the NASA FAR Supplement (NFS) to provide needed editorial changes.

DATES: *Effective:* January 21, 2016.

FOR FURTHER INFORMATION CONTACT: Manuel Quinones, NASA, Office of Procurement, Contract and Grant Policy Division, via email at *manuel.quinones@nasa.gov,* or telephone (202) 358–2143.

SUPPLEMENTARY INFORMATION:

I. Background

As part NASA's retrospective review of existing regulations pursuant to section 6 of Executive Order 13563, Improving Regulation and Regulatory Review, NASA conducted a review of its regulations and published a final rule in the **Federal Register** on March 12, 2015 (80 FR 12946). As published, this rule contains errors due to inadvertent omissions. A summary of changes follows:

- Section 1852.214–72 is revised to correct the clause prescription from 1814.201–670(b) to 1814.201–670(c).
- Section 1852.232–70 is revised to correct the clause date from ''AUG 2003'' to ''APR 2015.''
- Section 1852.246–72 is revised to correct the clause date from ''AUG 2003'' to ''APR 2015.''

List of Subjects in 48 CFR Part 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR part 1852 is amended as follows:

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.214–72 [Amended]

■ 2. Amend section 1852.214–72 by removing ''1814.201–670(b)'' and adding ''1814.201–670(c)'' in its place.

1852.232–70 [Amended]

■ 3. Amend section 1852.232–70 by removing ''AUG 2003'' and adding ''APR 2015'' in its place.

1852.246–72 [Amended]

■ 4. Amend section 1852.246–72 by removing ''AUG 2003'' and adding ''APR 2015'' in its place.

[FR Doc. 2016–01085 Filed 1–20–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150105004–5355–01]

RIN 0648–XE398

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustment for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action decreases the possession and trip limit for Southern New England/Mid-Atlantic yellowtail flounder for Northeast multispecies common pool vessels for the remainder of the 2015 fishing year. The most recent catch data indicates that the common pool is expected to reach its annual quota for this stock before the end of January. Decreasing the trip limit is intended to prevent the common pool fishery from exceeding its allocation for the stock in the 2015 fishing year, and from triggering an area closure for portions of Southern New England/Mid-Atlantic.

DATES: The possession and trip limit decrease is effective January 15, 2016, through April 30, 2016.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Management Specialist, 978–282–8493.

SUPPLEMENTARY INFORMATION: The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels in order to help prevent the overharvest or underharvest of the common pool quotas.

Based on information and data reported through January 5, 2016, the common pool fishery has caught approximately 76 percent of its annual quota for Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder. At the current rate of fishing, the common pool fishery is projected to reach its annual quota by January 26, 2016. Any overage of the annual quota will be deducted from the next fishing year's annual quota. Additionally, we project that 90 percent of the common pool's Trimester 3 Total Allowable Catch (TAC) for SNE/MA yellowtail flounder will be reached by January 24, 2016. If the common pool reaches 90 percent of the Trimester TAC, we are required by regulations at § 648.82(n)(2)(ii) to close the SNE/MA Yellowtail Flounder Trimester TAC Area (defined at § 648.82(n)(2)(ii)(F)) to all common pool vessels fishing on groundfish trips with trawl and sink gillnet gear.

The current possession and trip limit of SNE/MA yellowtail flounder is 2,000 lb (907 kg) per day-at-sea (DAS), and up to 6,000 lb (2,722 kg) per trip for common pool vessels. To help prevent the common pool fishery from exceeding its SNE/MA yellowtail flounder allocation for the 2015 fishing year, and to help prevent the common pool from triggering a closure of the SNE/MA Yellowtail Flounder Trimester TAC Area for the remainder of the fishing year by reaching 90 percent of the Trimester 3 TAC, effective January 15, 2016, the possession and trip limit of SNE/MA yellowtail flounder for all common pool vessels is decreased to 50 lb (22.7 kg) per trip.

Common pool groundfish vessels that have declared their trip through the vessel monitoring system (VMS) or interactive voice response (IVR) system, and crossed the VMS demarcation line prior to January 15, 2016, are not subject to the new possession and trip limit for that trip.

Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: *http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment

and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to help prevent the overharvest or underharvest of the pertinent common pool quotas. The catch data used as the basis for this action only recently became available. The available analysis indicates that if the SNE/MA yellowtail flounder possession and trip limit are not reduced immediately, the common pool fishery will likely exceed its 2015 fishing year allocation for this stock by January 26, 2016. Analysis also indicates that if the possession and trip limit are not reduced immediately, the common pool fishery will likely reach 90 percent of its Trimester 3 TAC by January 24, 2016, triggering a closure of the SNE/MA Yellowtail Flounder Trimester TAC Area. This action reduces the probability of the common pool fishery exceeding its allocation for SNE/MA yellowtail flounder. Any overages of the common pool quota for this stock would undermine conservation objectives and trigger the implementation of accountability measures that would have negative economic impacts on the common pool vessels. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary possession and trip limit adjustment in a timely manner, which could undermine conservation objectives of the Northeast Multispecies Fishery Management Plan, and cause negative economic impacts to the common pool fishery.

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

Dated: January 13, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–00909 Filed 1–15–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 13
Thursday, January 21, 2016

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Flaxseed

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Request for information.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking comments from the public regarding the United States (U.S.) Standards for Flaxseed under the United States Grain Standards Act (USGSA). To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current flaxseed standards and grading practices need to be changed.

DATES: We will consider comments we receive by March 21, 2016.

ADDRESSES: You may submit written or electronic comments on this request for information to:

- *Mail:* Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. Flaxseed Standards request for information comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, 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.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive. This would include comments made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–8479 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Robert Dorman at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO 64153; Telephone (816) 659–8411; Fax Number (816) 872–1258; email *Robert.J.Dorman@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for flaxseed and other grains regarding kind, class, quality and condition. The flaxseed standards, established by USDA on August 1, 1934, were last revised in 1987 and appear in the USGSA regulations at 7 CFR 810.601 through 810.604. The standards facilitate flaxseed marketing and define U.S. flaxseed quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 5, ''Flaxseed'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as dockage and moisture content. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare flaxseed quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of flaxseed. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded flaxseed are accepted as *prima facie* evidence in all Federal courts. U.S. flaxseed standards and the affiliated grading and testing services offered by GIPSA verify that a seller's flaxseed meets specified requirements, and ensure that customers receive the quality of flaxseed they purchased.

In order for U.S. standards and grading procedures for flaxseed to remain relevant, GIPSA is issuing this request for information to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. flaxseed standards and inspection procedures.

Authority: 7 U.S.C. 71–87K.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–01045 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Triticale

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Request for information.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards

Administration (GIPSA) is seeking comment from the public regarding the United States (U.S.) Standards for Triticale under the United States Grain Standards Act (USGSA). To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current triticale standards and grading practices need to be changed.

DATES: We will consider comments we receive by April 20, 2016.

ADDRESSES: You may submit written or electronic comments on this proposed rule to:

- *Mail:* Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. Triticale Standards request for information comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, 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.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive. This would include comments made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–8479 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Robert Dorman at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO 64153; Telephone (816) 659–8411; Fax Number (816) 872–1258; email *Robert.J.Dorman@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for triticale and other grains regarding kind, class, quality and condition. The triticale standards, established by USDA on May 1, 1977, were last revised in 1987 and appear in the USGSA regulations at 7 CFR 810.2001 through 810.2005. The standards facilitate triticale marketing and define U.S. triticale quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 13, ''Triticale'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as dockage and moisture content. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare triticale quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of triticale. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded triticale are accepted as *prima facie* evidence in all Federal courts. U.S. triticale standards and the affiliated grading and testing services offered by GIPSA verify that a seller's triticale meets specified requirements, and ensure that customers receive the quality of triticale they purchased.

In order for U.S. standards and grading procedures for triticale to remain relevant, GIPSA is issuing this request for information to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. triticale standards and inspection procedures.

Authority: 7 U.S.C. 71–87K.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–01042 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Rye

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Request for information.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) is seeking comment from the public regarding the United States (U.S.) Standards for Rye under the United States Grain Standards Act (USGSA). To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current rye standards and grading practices need to be changed.

DATES: We will consider comments we receive by April 20, 2016.

ADDRESSES: You may submit written or electronic comments on this proposed rule to:

- *Mail:* Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. Standards for Rye request for information comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. Also, 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.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive. This would include comments made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–8479 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Greg Giese at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO 64153; Telephone (816) 891–0460; Fax Number (816) 872–1258; email *Gregory.J.Giese@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for rye and other grains regarding kind, class, quality and condition. The rye standards, established by USDA on July 1, 1923, were last revised in 1999 and appear in the USGSA regulations at 7 CFR 810.1201 through 810.1205. The standards facilitate rye marketing and define U.S. rye quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 8, ''Rye'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as moisture content and official criteria. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare rye quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of rye. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded rye are accepted as *prima facie* evidence in all Federal courts. U.S. Standards for Rye and the affiliated grading and testing services offered by GIPSA verify that a seller's rye meets specified requirements, and ensure that customers receive the quality of rye they purchased.

In order for U.S. standards and grading procedures for rye to remain relevant, GIPSA is issuing this request for information to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. Standards for Rye and inspection procedures.

Authority: 7 U.S.C. 71–87K.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–01044 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Mixed Grain

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Request for information.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers, and Stockyards Administration (GIPSA) is seeking comment from the public regarding the United States (U.S.) Standards for Mixed Grain under the United States Grain Standards Act (USGSA). To ensure that standards and official grading practices remain relevant, GIPSA invites interested parties to comment on whether the current mixed grain standards and grading practices need to be changed.

DATES: We will consider comments we receive by April 20, 2016.

ADDRESSES: You may submit written or electronic comments on this proposed rule to:

- *Mail:* Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. Mixed Grain Standards request for information comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, 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.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive. This would include comments made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–8479 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Robert Dorman at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO 64153; Telephone (816) 659–8411; Fax Number (816) 872–1258; email *Robert.J.Dorman@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the USGSA (7 U.S.C. 76), GIPSA establishes standards for mixed

grain and other grains regarding kind, class, quality and condition. The mixed grain standards, established by USDA on July 2, 1934, were last revised in 1987 and appear in the USGSA regulations at 7 CFR 810.801 through 810.805. The standards facilitate mixed grain marketing and define U.S. mixed grain quality in the domestic and global marketplace. The standards define commonly used industry terms; contain basic principles governing the application of standards, such as the type of sample used for a particular quality analysis; the basis of determination; and specify grades and grade requirements. Official procedures for determining grading factors are provided in GIPSA's Grain Inspection Handbook, Book II, Chapter 6, ''Mixed grain'' which also includes standardized procedures for additional quality attributes not used to determine grade, such as dockage and moisture content. Together, the grading standards and testing procedures allow buyers and sellers to communicate quality requirements, compare mixed grain quality using equivalent forms of measurement and assist in price discovery.

GIPSA's grading and inspection services are provided through a network of federal, state, and private laboratories that conduct tests to determine the quality and condition of mixed grain. These tests are conducted in accordance with applicable standards using approved methodologies and can be applied at any point in the marketing chain. Furthermore, the tests yield rapid, reliable and consistent results. In addition, GIPSA-issued certificates describing the quality and condition of graded mixed grain are accepted as *prima facie* evidence in all Federal courts. U.S. mixed grain standards and the affiliated grading and testing services offered by GIPSA verify that a seller's mixed grain meets specified requirements, and ensure that customers receive the quality of mixed grain they purchased.

In order for U.S. standards and grading procedures for mixed grain to remain relevant, GIPSA is issuing this request for information to invite interested parties to submit comments, ideas, and suggestions on all aspects of the U.S. mixed grain standards and inspection procedures.

Authority: 7 U.S.C. 71–87K.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–01046 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0183; Directorate Identifier 2015–SW–016–AD]

RIN 2120–AA64

Airworthiness Directives; Kaman Aerospace Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Kaman Aerospace Corporation (Kaman) Model K–1200 helicopters. This proposed AD would require revising the ''Flight Limitations—NO LOAD'' and ''Flight Limitations—LOAD'' sections of the rotorcraft flight manual (RFM). This proposed AD is prompted by a report of certain flight maneuvers that may lead to main rotor (M/R) blade to opposing hub contact. The proposed actions are intended to prevent damage to the M/R flight controls and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by March 21, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0183; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Kaman Aerospace Corporation, Old Windsor Rd., P.O. Box 2, Bloomfield, Connecticut 06002–0002; telephone (860) 242–4461; fax (860) 243–7047; or at *http://www.kamanaero.com*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Kaman Model K–1200 helicopters. This proposed AD would require revising the ''Flight Limitations—NO LOAD'' and ''Flight Limitations—LOAD'' sections of the RFM by inserting a warning and limitations about rearward to forward flight, establishing maximum rearward and sideward flight speeds, and prohibiting weather-vanning takeoffs and departures to turn the helicopter. This proposed AD is prompted by a

report of a Model K1200 helicopter turning suddenly and causing blade contact with the hub. The report suggests that a rapid aircraft yaw rate and subsequent yaw arresting maneuver may cause low clearance of the M/R blades with the opposing M/R hub. This condition could cause an M/R blade to strike the opposing rotor's flight controls. The proposed actions are intended to prevent damage to the M/R flight controls and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Related Service Information

We reviewed Kaman K–1200 RFM, Revision 5, dated April 14, 2015. This revision of the limitations section of the RFM inserts, for both load operations and no load operations, a warning and limitations about departing from rearward to forward flight, a maximum rearward flight speed of 25 knots, a maximum sideward flight speed of 17 knots, and a prohibition on weather-vanning takeoffs and departures as a method to turn aircraft.

Proposed AD Requirements

This proposed AD would require, within 10 hours time-in-service, revising the Limitations section of the RFM by inserting a copy of this AD or by making pen-and-ink changes. This proposed AD, under ''Flight Limitations—NO LOAD'' and ''Flight Limitations—LOAD,'' would insert a warning and limitations about departing from rearward to forward flight to avoid high rates of turn and minimize yaw and cyclic control inputs, establish a maximum rearward flight speed of 25 knots, establish a maximum sideward flight speed of 17 knots, and prohibit weather-vanning takeoffs and departures as a method to turn the helicopter.

Costs of Compliance

We estimate that this proposed AD would affect 16 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per work-hour, we expect revising the RFM would require 0.5 work-hour, for cost of about $43 per helicopter, or $688 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Kaman Aerospace Corporation (Kaman): Docket No. FAA–2016–0183; Directorate Identifier 2015–SW–016–AD.

(a) Applicability

This AD applies to Model K–1200 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a main rotor (M/R) blade striking the opposing rotor's flight controls. This condition could result in damage to the M/R flight controls and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by March 21, 2016.

(d) Compliance

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

(e) Required Actions

Within 10 hours time-in-service, revise Section 2 Limitations of the Kaman K–1200 Rotorcraft Flight Manual (RFM) by inserting a copy of this AD into the RFM or by making pen-and-ink changes, as follows:

(1) In the ''Flight Limitations—NO LOAD'' and ''Flight Limitations—WITH LOAD,'' sections, add the information in Figure 1 to paragraph (e)(1) of this AD.

WARNING

When departing from rearward to forward flight, avoid high rates of turn and minimize yaw and cyclic control inputs to prevent exceeding 17 knot sideward flight limit.

Figure 1 to paragraph (e)(1).

(2) In the ''Flight Limitations—NO LOAD'' and ''Flight Limitations—WITH LOAD'' sections, add the following: Maximum rearward flight speed: 25 knots. Maximum sideward flight speed: 17 knots. Weather—

vanning takeoffs/departures as a method to turn aircraft: Prohibited.

(f) Credit for Actions Previously Completed

Incorporating the changes contained in Kaman K–1200 RFM, Revision 5, dated April 14, 2015, before the effective date of this AD is considered acceptable for compliance with the corresponding actions specified in paragraph (e) of this AD.

(g) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7190; email *kirk.gustafson@faa.gov.*

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

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6710, Main Rotor Control.

Issued in Fort Worth, Texas, on January 12, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00947 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0459; Directorate Identifier 2015–NM–081–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–10–03, for certain Airbus Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. AD 2015–10–03 currently requires a detailed inspection for visible chrome of each affected main landing gear (MLG) sidestay upper cardan pin, associated nuts, and retainer assembly; pin replacement if needed; measurement of cardan pin clearance dimensions (gap check); corrective actions if necessary; and a report of all findings. Since we issued AD 2015–10–03, further investigation concluded that the reported MLG sidestay upper cardan pin migration event had been caused by corrosion due to lack of jointing compound and inadequate sealant application during the MLG installation. This proposed AD would require a detailed inspection of the upper cardan pin and nut threads for any corrosion, pitting, or thread damage, and if necessary, replacement of the cardan pin and nut threads. This proposed AD would also revise the applicability to include additional airplane models. We are proposing this AD to detect and correct migration of the sidestay upper cardan pin, which could result in disconnection of the sidestay upper arm from the airplane structure, and could result in a landing gear collapse and consequent damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by March 7, 2016.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0459; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–0459; Directorate Identifier 2015–NM–081–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On April 30, 2015, we issued AD 2015–10–03, Amendment 39–18158 (80 FR 30608, May 29, 2015). AD 2015–10–03 requires actions intended to address an unsafe condition on certain Airbus Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes.

Since we issued AD 2015–10–03, Amendment 39–18158 (80 FR 30608, May 29, 2015), further investigation concluded that the reported MLG sidestay upper cardan pin migration event had been caused by corrosion due to lack of jointing compound and inadequate sealant application during the MLG installation. Therefore, this issue affects any MLG that had an upper cardan pin replacement or reinstallation, regardless of MLG overhaul. Any corrosion on the upper cardan pin and nut threads would not have been detected during the currently required detailed inspection.

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0079, dated May 7, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 and –300 series airplanes, Model A340–200 and –300 series airplanes, and Model A340–541 and –642 airplanes. The MCAI states:

An A330 aeroplane equipped with Basic MLG was rolling out after landing when it experienced a nose wheel steering fault (unrelated to the safety subject addressed by this AD), which resulted in the crew stopping the aeroplane on the taxiway after vacating the runway. The subsequent investigation revealed that the right-hand MLG sidestay upper cardan pin had migrated out of position. The sidestay upper cardan nut and retainer had detached from the upper cardan pin and were found, still bolted together, in the landing gear bay.

Prompted by these findings, Airbus published Alert Operators Transmission (AOT) A32L003–14, providing inspection instructions and, as an interim solution, EASA issued AD 2014–0066 [which corresponds to FAA AD 2015–10–03, Amendment 39–18158 (80 FR 30608, May 29, 2015)] to require repetitive detailed inspections (DET) of the MLG upper cardan pin, nut and retainer. That AD also required accomplishment of a one-time gap check between wing rear spar fitting lugs and the bush flanges and, depending on findings, corrective action(s). The gap check (including corrections, as necessary) terminated the repetitive DET.

Since that [EASA] AD was issued, further investigation concluded that the reported MLG sidestay upper cardan pin migration event had been caused by corrosion, due to lack of jointing compound and inadequate sealant application during MLG installation. Therefore, this issue affects any MLG that had an upper cardan pin replacement or re-installation, irrespective of MLG overhaul. Any corrosion on the upper cardan pin and nut threads would not have been detected during the previously required DET.

This condition, if not detected and corrected, could lead to a complete migration of the sidestay upper cardan pin and a disconnection of the sidestay upper arm from the aeroplane structure, possibly resulting in MLG collapse with consequent damage to the aeroplane and injury to occupants.

To address this potential unsafe condition, Airbus published Service Bulletin (SB) A330–32–3269, SB A340–32–4301 and SB A340–32–5115 providing inspection instructions. In addition, to prevent any improper re-installation of an upper cardan pin on a MLG, Airbus amended the applicable Aircraft Maintenance Manual (AMM) on 01 October 2014.

For the reasons described above, this [EASA] AD supersedes EASA [AD] 2014–0066 and requires a one-time DET of the MLG upper cardan pin and nut threads to check for corrosion or damage on the upper cardan pin and nut threads, and, depending on findings, replacement of the damaged part(s).

As this unsafe condition could also develop on A330 freighters and A340–500/–600 aeroplanes, this [EASA] AD also applies to those aeroplanes.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0459.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A330–32–3269, dated February 17, 2015.
- Airbus Service Bulletin A340–32–4301, dated February 17, 2015.
- Airbus Service Bulletin A340–32–5115, dated February 17, 2015.

The service information describes procedures for a detailed inspection of the upper cardan pin and nut threads for any corrosion, pitting, or thread damage, and replacement of the cardan pin and nut threads. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of this Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 95 airplanes of U.S. registry.

We also estimate that it would take about 11 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $88,825, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing $78,136, for a cost of $79,156 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–10–03, Amendment 39–18158 (80 FR 30608, May 29, 2015), and adding the following new AD:

Airbus: Docket No. FAA–2016–0459; Directorate Identifier 2015–NM–081–AD.

(a) Comments Due Date

We must receive comments by March 7, 2016.

(b) Affected ADs

This AD replaces 2015–10–03, Amendment 39–18158 (80 FR 30608, May 29, 2015).

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, except airplanes on which an upper cardan pin on a main landing gear (MLG) has never been replaced or reinstalled since first entry into service of the airplane.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers .

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers.

(3) Airbus Model A340–541 and –642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a report that an MLG sidestay upper cardan pin migration event had been caused by corrosion due to lack of jointing compound and inadequate sealant application during the MLG installation. We are issuing this AD to detect and correct migration of the sidestay upper cardan pin, which could result in disconnection of the sidestay upper arm from the airplane structure, and could result in a landing gear collapse and consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Definition

For the purpose of this AD, an upper cardan pin on a MLG is affected if it has been installed as a replacement part, or reinstalled since first entry of the airplane into service, and if the installation was accomplished using the applicable airplane maintenance manual at a revision level prior to October 1, 2014.

(h) Inspection and Replacement

(1) For an affected upper cardan pin on an MLG: Before exceeding 96 months since its latest installation on an airplane, or within 12 months after the effective date of this AD, whichever occurs later, do a detailed inspection of the upper cardan pin and nut threads for any corrosion, pitting, or thread damage, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (i) of this AD.

(2) If, during the detailed inspection specified in paragraph (h)(1) of this AD, any corrosion, pitting, or thread damage is found, before further flight, replace the upper cardan pin and/or nut, as applicable, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (i) of this AD.

(i) Applicable Service Information

Do the actions required by paragraph (h) of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) Airbus Service Bulletin A330–32–3269, dated February 17, 2015 (for Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes).

(2) Airbus Service Bulletin A340–32–4301, dated February 17, 2015 (for Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes).

(3) Airbus Service Bulletin A340–32–5115, dated February 17, 2015 (for Airbus Model A340–541 and –642 airplanes).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0079, dated May 7, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0459.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 8, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00944 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0460; Directorate Identifier 2015–NM–078–AD]

RIN 2120–AA64

Airworthiness Directives; Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Beechcraft Corporation Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 airplanes. This proposed AD was prompted by reports of inadvertent stowage of the thrust reversers, which can result in high forward engine thrust even though the throttle is commanding reverse thrust. This proposed AD would require installing kits that include relays, associated wiring, and a thrust reverser fail annunciator. We are proposing this AD to prevent inadvertent stowage of the thrust reversers, which could cause a runway overrun during a rejected takeoff or landing, and consequent structural failure and possible injury to occupants.

DATES: We must receive comments on this proposed AD by March 7, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, Beechcraft Corporation, TMDC, P.O. Box 85, Wichita, KS 67201–0085; telephone 316–676–8238; fax 316–671–2540; email *tmdc@beechcraft.com;* Internet *http://pubs.beechcraft.com.* You may view this referenced service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0460; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey Englert, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Dwight D. Eisenhower National Airport, Wichita, KS 67209; phone: 316–946–4167; fax: 316–946–4107; email: *jeffrey.englert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–0460; Directorate Identifier 2015–NM–078–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of inadvertent stowage of the thrust reversers, which can result in high forward engine thrust even though the throttle is commanding reverse thrust. These reports were on another type of airplane that utilizes a similar engine and thrust reverser system. The root cause is incorrect software logic within the engine's electronic control unit. This condition, if not corrected, could result in inadvertent stowage of the thrust reversers, which could cause a runway overrun during a rejected takeoff or during landing, and consequent structural failure and possible injury to occupants.

Related Service Information Under 1 CFR Part 51

We reviewed Beechcraft Mandatory Service Bulletin 78–4133, dated May 2015. The service information describes procedures for installing kits having part numbers 140–9005 and 140–9006, which include relays, associated wiring, and a thrust reverser fail annunciator. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

Although Beechcraft Mandatory Service Bulletin 78–4133, dated May 2015, specifies that ''Should any difficulty be encountered in accomplishing this Service Bulletin, contact Beechcraft Corporation,'' this proposed AD would require operators to resolve difficulties in accordance with a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD affects 38 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	340 work-hours × $85 per hour = $28,900	$100,000	$128,900	$4,898,200

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Beechcraft Corporation (Type Certificate Previously Held by Hawker Beechcraft Corporation; Raytheon Aircraft Company): Docket No. FAA–2016–0460; Directorate Identifier 2015–NM–078–AD.

(a) Comments Due Date

We must receive comments by March 7, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Beechcraft Corporation (type certificate previously held by Hawker Beechcraft Corporation; Raytheon Aircraft Company) airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model BAe.125 series 1000A and 1000B airplanes, serial numbers 258151, 258159, and 259004 through 259042 inclusive.

(2) Model Hawker 1000 airplanes, serial numbers 259003 and 259043 through 259052 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 78, Exhaust.

(e) Unsafe Condition

This AD was prompted by reports of inadvertent stowage of the thrust reversers, which can result in high forward engine thrust even though the throttle is commanding reverse thrust. We are issuing this AD to prevent inadvertent stowage of the thrust reversers, which could cause a runway overrun during a rejected takeoff or landing, and consequent structural failure and possible injury to occupants.

(f) Compliance

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

(g) Installation

Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first: Install kits having part numbers 140–9005 and 140–9006, in accordance with the Accomplishment Instructions of Beechcraft Mandatory Service Bulletin 78–4133, dated May 2015, except as specified in paragraph (h) of this AD.

(h) Exception to Service Information

A note in the Accomplishment Instructions of Beechcraft Mandatory Service Bulletin 78–4133, dated May 2015, instructs operators to contact Beechcraft Corporation if any difficulty is encountered in accomplishing the service bulletin. However, any deviation from the actions required by paragraph (g) of this AD must be approved as an alternative method of compliance (AMOC) under paragraph (i)(1) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Jeffrey Englert, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Dwight D. Eisenhower National Airport, Wichita, KS 67209; phone: 316–946–4167; fax: 316–946–4107; email: *jeffrey.englert@faa.gov.*

(2) For service information identified in this AD, contact Beechcraft Corporation, TMDC, P.O. Box 85, Wichita, KS 67201–0085; telephone 316–676–8238; fax 316–671–2540; email *tmdc@beechcraft.com;* Internet *http://pubs.beechcraft.com.* You may view this referenced service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 8, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00951 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0457; Directorate Identifier 2015–NM–084–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–11–15, for all BAE Systems (Operations) Limited Model 4101 airplanes. AD 2012–11–15 currently requires a one-time detailed inspection for cracks, corrosion, and other defects of the rear face of the wing rear spar, and repair if necessary. Since we issued AD 2012–11–15, we received new reports of cracking found in the wing rear spar and technical analysis results confirmed that the crack initiation and propagation are due to fatigue, with no indication of any other crack initiation mechanism (*e.g.* stress corrosion). This proposed AD would require repetitive detailed inspections, and repair if necessary. We are proposing this AD to detect and correct cracking in the wing rear spar, which could propagate to a critical length, possibly affecting the structural integrity of the area and resulting in a fuel tank rupture, with consequent damage to the airplane and possible injury to its occupants.

DATES: We must receive comments on this proposed AD by March 7, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0457; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–0457; Directorate Identifier 2015–NM–084–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 31, 2012, we issued AD 2012–11–15, Amendment 39–17079 (77 FR 36127, June 18, 2012). AD 2012–11–15 requires actions intended to address an unsafe condition on BAE Systems (Operations) Limited Model 4101 airplanes.

Since we issued AD 2012–11–15, Amendment 39–17079 (77 FR 36127, June 18, 2012), we received new reports of cracking found in the wing rear spar and technical analysis results confirmed that the crack initiation and propagation are due to fatigue, with no indication of any other crack initiation mechanism (*e.g.* stress corrosion).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0100, dated June 3, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model 4101 airplanes. The MCAI states:

> During an investigation of a fuel leak on the rear spar of a Jetstream 4100 aeroplane, 4 cracks were found between Ribs 6 and 7 (immediately inboard of the inboard engine rib). The cracks initiated at adjacent fastener bores in the rear spar upper boom, and progressed downwards, diagonally, into the rear spar web.
>
> These cracks, if not detected and corrected, could propagate to a critical length, affecting the structural integrity of the area, possibly resulting in a fuel tank rupture with consequent damage to the aeroplane and injury to its occupants.
>
> Prompted by these findings, EASA issued [EASA] AD 2011–0096 [which corresponds to FAA AD 2012–11–15, Amendment 39–17079 (77 FR 36127, June 18, 2012)] to require a one-time [detailed] inspection [for cracks, corrosion, and other defects] of the rear face of the wing rear spar and the accomplishment of applicable corrective actions [*i.e.,* repair], depending on findings. Initial analysis of the event did not lead to the conclusion that the cracking was fatigue related, therefore [EASA] AD 2011–0096 did not require repetitive inspections.
>
> Since that [EASA] AD [2011–0096] was issued, the results of the technical analysis confirmed that the cracks were due to fatigue, with no indication of any other crack initiation mechanism (*e.g.* stress corrosion). In addition, further similar in-service events have been reported. During investigation of those events, further metallurgical analysis indicated that the crack initiation and propagation are indeed fatigue driven and occur at the same location.
>
> To address this unsafe condition, a review of the inspection interval was undertaken based on the cracks from both aeroplanes and BAE Systems (Operations) Ltd issued Service Bulletin (SB) J41–A57–029 Revision 3 in order to reduce the inspection interval of the wing rear spar from 2,000 flight cycles (FC) to 1,600 FC.
>
> For the reasons described above, this [EASA] AD supersedes AD 2011–0096, without retaining its requirements, introduces repetitive inspections and, depending on findings, requires the accomplishments of applicable corrective action(s) [*i.e.,* repair].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0457.

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Alert Service Bulletin J41–A57–029, Revision 3, dated April 8, 2014. The service information describes detailed inspections for cracks, corrosion, and other defects of the rear face of the wing rear spars.

BAE Systems (Operations) Limited also has issued Subject 57–00–00, Wings General, of Chapter 57, Wings, of the Jetstream Series 4100 Structural Repair Manual, Volume 1, Revision 32, dated October 15, 2014. The service information describes procedures for doing certain wing repairs.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 15 airplanes of U.S. registry.

We also estimate that it would take up to 25 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is

$85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $31,875, or up to $2,125 per product.

We have received no definitive data that would enable us to provide a cost estimates for the on-condition actions (repairing cracks, corrosion, and defects) specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–11–15, Amendment 39–17079 (77 FR 36127, June 18, 2012), and adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2016–0457; Directorate Identifier 2015–NM–084–AD.

(a) Comments Due Date

We must receive comments by March 7, 2016.

(b) Affected ADs

This AD replaces AD 2012–11–15, Amendment 39–17079 (77 FR 36127, June 18, 2012).

(c) Applicability

This AD applies to BAE (Operations) Limited Model 4101 airplanes, certificated in any category, all models, and all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by new reports of cracking found in the wing rear spar and technical analysis results confirmed that the crack initiation and propagation are due to fatigue, with no indication of any other crack initiation mechanism (*e.g.,* stress corrosion). We are issuing this AD to detect and correct cracking in the wing rear spar, which could propagate to a critical length, possibly affecting the structural integrity of the area and resulting in a fuel tank rupture, with consequent damage to the airplane and possible injury to its occupants.

(f) Compliance

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

(g) Repetitive Inspections and Repair

Within 30 days after the effective date of this AD, or within 1,600 flight cycles since the most recent detailed inspection was done as specified in BAE Systems Alert Service Bulletin J41–A57–029, whichever occurs later: Do a detailed inspection for cracks, corrosion, and other defects (defects include scratches, dents, holes, damage to fastener holes, or damage to surface protection and finish) of the rear face of the wing rear spars, in accordance with the Accomplishment Instructions of BAE Systems Alert Service Bulletin J41–A57–029, Revision 3, dated April 8, 2014. Repeat the inspection thereafter at intervals not to exceed 1,600 flight cycles.

(1) If any cracking, corrosion, or other defect is found within the criteria defined in Subject 57–00–00, Wings General, of Chapter 57, Wings, of the Jetstream Series 4100 Structural Repair Manual, Volume 1, Revision 32, dated October 15, 2014: Before further flight, repair the affected area, in accordance with the repair instructions of Subject 57–00–00, Wings General, of Chapter 57, Wings, of the Jetstream Series 4100 Structural Repair Manual, Volume 1, Revision 32, dated October 15, 2014.

(2) If any cracking, corrosion, or other defect is found exceeding the criteria defined in Subject 57–00–00, Wings General, of Chapter 57, Wings, of the Jetstream Series 4100 Structural Repair Manual, Volume 1, Revision 32, dated October 15, 2014: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA).

(h) Repair Does Not Constitute Terminating Action Except for Certain Repairs

Accomplishment of a repair as required by paragraphs (g)(1) and (g)(2) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD, unless the approved repair required by paragraph (g)(2) of this AD states otherwise (*e.g.,* the approved repair states the repair terminates the inspections for the repaired area only).

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA,

the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0100, dated June 3, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0457.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 13, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01088 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2015–2776; Airspace Docket No. 15–AEA–5]

RIN 2120–AA66

Proposed Amendment and Establishment of Restricted Areas; Chincoteague Inlet, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This action reopens the comment period for the NPRM published September 10, 2015, proposing to expand the restricted airspace at Chincoteague Inlet, VA. This reopening of the comment period is necessary because a chart depicting the proposed airspace was not available prior to the original comment period closing date. This action will ensure that interested persons have the opportunity to view the chart and submit comments regarding the proposal.

DATES: The comment period for the NPRM published September 10, 2015 (80 FR 54444) closed on October 26, 2015, and reopened until February 22, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2015–2776 and Airspace Docket No. 15–AEA–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* Comments on environmental and land use aspects to should be directed to: NASA Wallops Flight Facility, Attn: Ms. Shari Silbert, Wallops Island, VA 23337; telephone: (757) 824–2327.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2015–2776 and Airspace Docket No. 15–AEA–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2015–2776 and Airspace Docket No. 15–AEA–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A.

Background

On September 10, 2015, the FAA published a notice of proposed rulemaking (NPRM) proposing the amendment and establishment of restricted areas at Chincoteague Inlet, VA (80 FR 54444), Docket No. FAA–2015–2776, Airspace Docket No. 15–AEA–5. The NPRM included a statement that a color chart of the proposed airspace would be available for viewing on the *www.regulations.gov* Web site. However, the chart was not posted until after the comment closing date. One commenter responded that it is difficult to understand the proposed changes because the chart was unavailable.

A color chart showing the location of the proposed restricted areas is now posted on the internet at *http://www.regulations.gov.* Search docket no. FAA–2015–2776 and click on ''open docket folder'' to view the chart.

To give the public an opportunity to view the chart prior to submitting comments, the FAA is reopening the comment period for 30 days. All comments submitted during the new comment period, as well as all comments previously received, will be considered before any final action is taken on the proposal. No other proposal information as published in the NPRM has been changed.

Issued in Washington, DC, on January 14, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–01211 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1231

[Docket No. CPSC–2015–0031]

Safety Standard for High Chairs; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The United States Consumer Product Safety Commission (''Commission'' or ''CPSC'') is correcting a Notice of Proposed Rulemaking (''NPR'') that appeared in the **Federal Register** of November 9, 2015 (80 FR 69144). The document proposed a safety standard for high chairs. The Commission is correcting an error in the proposed regulatory text concerning rearward stability.

DATES: As established in the November 9, 2015 NPR, comments on the proposed rule are due by January 25, 2016.

FOR FURTHER INFORMATION CONTACT: Stefanie C. Marques, Project Manager, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2581; email: *smarques@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 9, 2015 (80 FR 69144), the Commission published an NPR proposing to establish a safety standard for high chairs pursuant to section 104(b) of the Consumer Product Safety Act of 2008 (''CPSIA''; Pub. L. 110–314, 122 Stat. 3016). The NPR proposed to incorporate by reference ASTM F404–15, *Standard Consumer Safety Specification for High Chairs* (''ASTM F404–15'') into 16 CFR part 1231 and proposed more stringent requirements than those specified in ASTM F404–15 for rearward stability and warnings on labels and in instructional literature. The NPR contained an error, which the Commission is now correcting.

The correction pertains to proposed 16 CFR 1231.2, paragraph (b)(2), regarding the rearward stability index (''SI'') the Commission proposed to require for high chairs. The preamble to the NPR (page 69151, section VIII.A., titled *Description of Proposed Changes to ASTM Standard, Rearward Stability*) and the briefing package available on the Commission's Web site correctly described and discussed the Commission's proposal to require high chairs to have an SI of 50 or more. However, the proposed regulatory text on page 69159 of the NPR misstated the proposed requirement as prohibiting high chairs from having an SI of 50 or more.

The Commission hereby makes the following correction to the NPR appearing on page 69144 in the **Federal Register** of November 9, 2015:

§ 1231.2 [Corrected]

■ On page 69159, in the third column, in § 1231.2, in paragraph (b)(2), ''6.5.2 *Rearward stability*—When tested in accordance with 7.7.2.6 (paragraph (c)(3) of this section), a high chair shall not have a Rearward Stability Index of 50 or more.'' is corrected to read ''6.5.2 *Rearward stability*—When tested in accordance with 7.7.2.6 (paragraph (c)(3) of this section), a high chair shall have a Rearward Stability Index of 50 or more.''

Dated: January 15, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–01133 Filed 1–20–16; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–76922; File No. S7–15–15]

RIN 3235–AL74

Access to Data Obtained by Security-Based Swap Data Repositories and Exemption From Indemnification Requirement

AGENCY: Securities and Exchange Commission.

ACTION: Reopening of comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the comment period for proposed amendments to rule 13n–4 under the Securities Exchange Act of 1934 (''Exchange Act'') related to regulatory access to security-based swap data held by security-based swap data repositories. The proposed rule amendments would implement Exchange Act provisions that conditionally require that security-based swap data repositories make data available to certain regulators and other authorities. Recent legislation has modified certain underlying statutory provisions.

DATES: The comment period for the proposed rule published September 14, 2015, at 80 FR 55182, is reopened. Submit comments on or before February 22, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–15–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Joshua Kans, Senior Special Counsel, or Kateryna P. Imus, Special Counsel, at (202) 551–5870; Division of Trading and Markets, Securities and Exchange

Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Proposed Rule

Exchange Act sections 13(n)(5)(G) and (H), which were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, conditionally require security-based swap data repositories to make data available to certain regulators and other entities. The statute identifies certain entities as being eligible to access data, and states that the Commission may determine that other persons are appropriate to access such data. The statute further provides that the Commission must be notified of requests for access, and also conditions data access on the security-based swap data repository receiving certain confidentiality-related agreements. Moreover, under the statute as it was originally enacted in 2010, data access was conditional on the recipient entity agreeing to indemnify the repository and the Commission for expenses arising from litigation relating to the information provided.[1]

On September 14, 2015, the Commission proposed rules to implement those data access provisions.[2] Key features of the proposal included:

(i) *Designation of entities that may access data.* The proposal provided that, in addition to the entities identified by the statute, the Federal Reserve Banks and the Office of Financial Research (''OFR'') may access data.[3] The proposal also specified factors and conditions that the Commission would consider in making future determinations regarding entities eligible to access data and the scope of such entities' access to data. In that regard the Commission stated that it preliminarily expected that such determination orders ''typically would incorporate conditions that specify the scope of a relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandates or legal responsibility or authority.'' [4]

(ii) *Confidentiality condition to data access.* To implement the statutory confidentiality condition, the proposal provided that there must be a memorandum of understanding (''MOU'') or other arrangement between the Commission and the recipient of data to address the confidentiality of the data provided to the recipient.[5] The Commission stated that it expected this approach would help avoid the possibility of uneven and potentially inconsistent application of the confidentiality condition.[6]

(iii) *Notification requirement.* The proposal provided that a security-based swap data repository could satisfy the statutory notification requirement by notifying the Commission of the first data access request by an entity, and maintaining a record of subsequent requests.[7]

(iv) *Indemnification exemption.* The proposal included an exemption from the indemnification requirement. This exemption would have been conditioned, in part, on the information provided relating to ''persons or activities within the recipient entity's regulatory mandate, or legal responsibility or authority.'' [8]

B. Statutory Amendment

On December 4, 2015, President Obama signed into law Public Law 114–94, the Surface Transportation Reauthorization and Reform Act of 2015. This law, among other things, amended the statutory data access provisions by eliminating the indemnification requirement discussed above.[9] The law also revised the data access provisions in two other ways.[10]

The elimination of the indemnification requirement makes unnecessary paragraph (d) of proposed rule 13n–4, which would have implemented the conditional exemption from the indemnification requirement.[11] The statutory amendments, however, do not affect the proposed provisions: (i) Addressing the designation of additional entities as being eligible to access data (potentially including the Federal Reserve Banks and the OFR); (ii) implementing the confidentiality condition to data access; and (iii) implementing the statutory notification requirement.

II. Request for Comments

Commenters are invited to discuss the proposal in light of the recent statutory amendments. Commenters particularly are invited to address the impact, on the remaining aspects of the proposal, arising from the elimination of the proposed indemnification exemption, including the exemption's proposed condition limiting access to security-based swap data to persons or authorities within a relevant authority's regulatory mandate or legal responsibility or authority. For example, to what extent should those criteria related to an entity's regulatory mandate or legal responsibility and authority be used by the Commission as it implements the confidentiality condition and/or the Commission's determination authority?

Commenters further are invited to address whether the use of that limitation should vary depending on the type of recipient entity. For example, should those criteria be considered exclusively in conjunction with recipient authorities not specifically named in the statute, including the Federal Reserve Banks and the OFR, or should those criteria instead be considered in conjunction with access to data by all entities under these provisions? [12]

In addition, commenters are requested to address whether the proposal should be revised to address the other statutory changes to the data access provisions—such as addition of the term ''other

[1] *See generally* Access to Data Obtained by Security-Based Swap Data Repositories and Exemption From Indemnification Requirement, Exchange Act Release No. 75845 (Sept. 14, 2015), 80 FR 55182 (Sept. 14, 2015) (''Data Access Proposing Release'').

[2] The proposal built upon two prior Commission proposals to implement the data access provisions and to provide an exemption from the indemnification requirement. *See id.* at 55182–84.

[3] *See* proposed Exchange Act rule 13n–4(b)(9)(ix).

[4] *See* Data Access Proposing Release, 80 FR 55187–88.

[5] *See* proposed Exchange Act rule 13n–4(b)(10).

[6] *See* Data Access Proposing Release, 80 FR 55190.

[7] *See id.* at 55188–89; proposed Exchange Act rule 13n–4(e).

[8] *See* proposed Exchange Act rule 13n-4(d). The proposal also would require the Commission and the recipient of data to enter into an MOU or other arrangement to specify the type of information that would fall within this regulatory mandate, or legal responsibility or authority. *See id.*

[9] *See* Public Law 114–94, sec. 86011(c)(2).

[10] In part, the statutory revision clarified that the scope of the data access provision applies to security-based swap data, not all data maintained by the repository. *See* Public Law 114–94, sec. 86011(c)(1)(A) (striking ''all'' and adding ''security-based swap'' in the introductory part of Exchange Act section 13(n)(5)(G)). That focus on security-based swaps already was incorporated into the proposal. *See* proposed Exchange Act rule 13n–4(b)(9).

The statutory revision also added the term ''other foreign authorities'' to the nonexclusive statutory list of entities that the Commission may determine appropriate to access data under these provisions. *See* Public Law 114–94, sec. 86011(c)(1)(B). That change is consistent with the proposal, which used the term ''including, but not limited to'' in the relevant portion of the rule text (preceding the specific references to foreign financial supervisors, foreign central banks, and foreign ministries). *See* proposed Exchange Act rule 13n–4(b)(9)(x).

[11] *See* Data Access Proposing Release, 80 FR at 55211.

[12] As noted above, the Commission stated that it preliminarily expected that subsequent determination orders under the statute and proposed rule ''typically would incorporate conditions that specify the scope of a relevant authority's access to data, and that limit this access in a manner that reflects the relevant authority's regulatory mandates or legal responsibility or authority.''

foreign authorities'' to the list of entities that the Commission may determine appropriate to access data. For example, should the Commission revise proposed paragraph (b)(9)(x) of rule 13n–4 to specifically note that it may determine that ''other foreign authorities'' also may access data pursuant to these provisions?

Commenters are also invited to address the impact of the statutory amendments on the Commission's economic analysis.

By the Commission.

Dated: January 15, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–01148 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2016–0002; Notice No. 157]

RIN 1513–AC23

Proposed Establishment of the Willcox Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 526,000-acre ''Willcox'' viticultural area in portions of Cochise and Graham Counties in southeastern Arizona. The proposed viticultural area does not lie within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by March 21, 2016.

ADDRESSES: Please send your comments on this proposed rule to one of the following addresses (please note that TTB has a new address for comments submitted by U.S. mail):

- *Internet: http://www.regulations.gov* (via the online comment form for this proposed rule as posted within Docket No. TTB–2016–0002 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), ''Alcohol and Tobacco Tax and Trade Bureau,'' dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Willcox Petition

TTB received a petition from Paul S. Hagar, the special projects manager of Dragoon Mountain Vineyard, on behalf of Dragoon Mountain Vineyard and other vineyard and winery owners in Willcox, Arizona, proposing the establishment of the ''Willcox'' AVA in southeastern Arizona. The proposed AVA contains approximately 526,000 acres and has 21 commercial vineyards, covering approximately 454 acres, distributed across the proposed AVA.

According to the petition, an additional 650 acres of vineyards are planned within the proposed AVA in the next few years. The proposed AVA also has 18 bonded wineries. According to the petition, the distinguishing features of the proposed Willcox AVA include its geology, topography, soils, and climate. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this proposed rule come from the petition for the proposed Willcox AVA and its supporting exhibits.

Name Evidence

The proposed Willcox AVA derives its name from the city of Willcox, which is located within the proposed AVA. Within the proposed AVA is also a large natural feature known as the Willcox Playa, the dry bed of an ancient lake. The phone directory for Cochise County, where the majority of the proposed AVA is located, lists 26 businesses and organizations within the proposed AVA that use the name ''Willcox,'' including Willcox Rock and Sand Inc., Willcox Travel Center, Willcox Car Wash, Willcox Meat Packing House, and Willcox Real Estate Company. Additionally, the region is served by the Willcox Chamber of Commerce, the Willcox Rural Fire Department, and the Willcox Unified School District. Finally, a business consortium created by wine industry members in the region to promote local wines is known by the name ''Willcox Wine Country.''

Boundary Evidence

The proposed Willcox AVA is described in the petition as a large, high-altitude valley resembling a shallow basin. The valley of the proposed AVA is separated from several neighboring valleys by a series of high mountain ranges to the north, east, and west. The northern and northeastern portions of the proposed AVA boundary follow the base of the Pinalenos Mountains, which separate the proposed AVA from the Gila Valley. The eastern portion of the boundary follows the foothills of the Chiricahua and Dos Cabezas Mountains, which separate the proposed AVA from the San Simon Valley. The southern portion of the boundary approximates the slight ridge that forms the southern edge of the Willcox basin and separates the proposed AVA from the Sulphur Springs Valley and its drainage system. The western and northwestern portions of the boundary follow the base of the Dragoon, Little Dragoon, and Winchester Mountains, which separate the proposed AVA from the Aravaipa and San Pedro Valleys.

Distinguishing Features

The distinguishing features of the proposed Willcox AVA include its geology, topography, soils, and climate.

Geology

The proposed Willcox AVA is in the Arizona geological province known as the ''basin-and-range'' province, which is characterized by high mountain ranges that are separated by valleys. The features of the basin-and-range province were formed over millions of years by periods of massive volcanic explosions and the pushing, folding, and stretching of the Earth's crust. The underlying geology of the basin in which the proposed AVA is located is primarily composed of alluvial (water-borne) and eolian (wind-borne) deposits. By contrast, the underlying geology of the surrounding mountain ranges is composed mostly of igneous rocks derived from volcanic materials, such as rhyolite, granite, and tuff.

The most recent period of geologic activity in the region of the proposed AVA occurred between 15 and 8 million years ago, during a period of modest volcanic activity and intense stretching of the crust. The stretching of the crust caused large blocks of the mountains to drop thousands of feet in a nearly vertical manner. This vertical block faulting resulted in the formation of the Chiricahua, Dos Cabezas, Pinalenos, Dragoon, Little Dragoon, and Winchester Mountains that surround the proposed Willcox AVA and contrast with the flat, shallow basin of the proposed AVA.

Early in this last period of major geologic activity, existing drainage systems such as creeks and rivers were disrupted throughout southeastern Arizona, and many valleys became closed basins. A closed basin is a valley in which no water flows in or out, and any lakes or underground aquifers within the closed basin are replenished only through rainfall. Over time, many of the closed basins near the proposed AVA became filled with enough erosional deposits from the surrounding mountains to allow streams to flow once more into and through the basins. These basins, where streams now flow, include the Gila Valley to the north, the San Simon Valley to the east, the San Pedro Valley to the west, the Aravaipa Valley to the northwest, and the Sulphur Springs Valley to the south. The Willcox basin, however, was permanently closed.

The closed nature of the Willcox basin allowed it to retain large quantities of rainwater during a cool, wet period between 2 million and 15,000 years ago. Thus, an ancient lake formed, known as Lake Cochise. Later, as the climate became warmer and drier, the lake began to evaporate, and the clay sediments and alkali salts in the water settled in the shallower southern end of the lake. Today, the remains of the southern end of Lake Cochise form the Willcox Playa, a large, dry, alkali flat in the west-central portion of the proposed Willcox AVA.

The geologic forces that shaped the proposed Willcox AVA have an effect on viticulture. Because the basin system is closed, irrigation water comes solely from wells and the small amounts of annual rainfall that the region receives. The petition also notes that water is not brought into the proposed AVA via canals, aqueducts, or other manmade methods. As a result, vineyard owners within the proposed AVA must carefully manage their water usage through water-conserving methods such as drip irrigation.

Topography

As previously noted, the proposed Willcox AVA sits within a large, shallow basin. Elevations within the proposed AVA range from 4,135 feet in the Willcox Playa to 4,700 feet at the edge of the foothills of the Chiricahua Mountains along the eastern edge of the proposed AVA. Because the proposed AVA is within a closed basin system, the basin's floor has not been cut or eroded by flowing bodies of water such as creeks, streams, or rivers. As a result, the terrain within the proposed AVA is relatively uniform and very flat, with slope angles ranging from 0 to 1.5 percent.

The topography of the proposed Willcox AVA affects viticulture. The small range of elevations and the flat terrain allow for relative uniformity of vineyard sites and growing conditions throughout the proposed AVA. The shallow slopes and the lack of creeks or streams within the proposed AVA reduce the risk of erosion. The flat basin floor allows for abundant sunlight to reach the vines, which stimulates vine growth and fruit maturation. Due to the intense sunlight, vineyard owners within the proposed AVA must manage the leaf canopies carefully so that the fruit does not become sunburnt, while preventing the canopies from becoming so dense and shady that the fruit does not reach optimum ripeness. Finally, because the proposed AVA is lower and flatter than the neighboring mountain ranges, cool nighttime air flowing down from the mountains settles in the proposed AVA. During the early spring,

the cooler air can reach sub-freezing temperatures, which can damage new growth or buds on the vines. To protect their vines, vineyard owners often install tall fans to mix warmer ambient air with the cooler descending air streams and to prevent the cold air from pooling.

Several mountain ranges surround the proposed AVA, including the Pinaleno Mountains to the north and northeast, the Dos Cabezas and Chiricahua Mountains to the east, and the Dragoon, Little Dragoon, and Winchester Mountains to the west. The elevations within these ranges are higher than those found within the proposed Willcox AVA. Large valleys with elevations lower than those found in the proposed AVA extend beyond each of these mountain ranges. The Gila Valley lies to the north, the San Simon Valley lies to the east, the San Pedro Valley lies to the west, and the Aravaipa Valley lies to the northwest. All of these valleys, along with the Sulphur Springs Valley south of the proposed AVA boundary, also are open basin systems. Because these valleys are open basin systems, their valley floors have been eroded by running water. The continual erosion results in a steady descent in elevation along the long axis of each of the valleys, which contrasts with the generally level valley floor of the closed basin system that comprises the proposed AVA.

Soils

Although all of the valleys in southeastern Arizona contain soils derived from the erosion of the surrounding mountains, the petition notes that each mountain block has its own specific geologic details. As a result, each valley below will have its own unique soil profile. The soils within the proposed Willcox AVA are predominately loams comprised of sand, silt, and clay in relatively even proportions. The petition included a list of the 30 soil series that, together, comprise 80 percent of the soils of the proposed Willcox AVA. Of these 30 soil series, 20 are specifically loams. The Tubac, Sonoita, Forrest, and Frye soils are the most common soils on which viticulture occurs within the proposed AVA and are all classified as loamy soils. These soils are described as slightly acidic in the first 9 to 12 inches of the soil profile, with a gradually increasing alkalinity below that to a depth of 5 feet.

According to the petition, loams generally contain high levels of nutrients. For this reason, loams are not typically preferred for vineyards, because high levels of nutrients can cause overly vigorous vine and leaf growth. However, the petition notes that the stress placed on the vines by the hot, dry climate of the proposed AVA keeps vine and leaf growth in check, so there is little chance the vines will grow too vigorously.

Loamy soils also retain adequate amounts of water to hydrate vineyards while allowing excess water to percolate quickly through the loamy soils and into the aquifer. Because vineyard owners within the proposed AVA rely primarily on the aquifer for irrigation, soils that both retain water and allow for quick recharging of the aquifer are beneficial.

Only 11 of the 30 most common soils found in the proposed Willcox AVA comprise at least one tenth of one percent of the total soils found in at least one of the surrounding regions. Together, these 11 soils represent approximately 30 percent of all the soils within the proposed Willcox AVA. The following table shows the percentage of soil each of these 11 soils comprises in the proposed AVA and the surrounding areas. All 30 of the soils are included in Exhibits 30 and 31 to the petition, which are posted as part of Docket TTB–2016–0002.

TABLE 1—SOILS FOUND IN BOTH THE PROPOSED AVA AND THE SURROUNDING REGIONS

Soils	Percentage of total soils					
	Willcox, AZ (proposed AVA)	Safford, AZ (north of proposed AVA)	San Simon, AZ (east of proposed AVA)	McNeal, AZ (south of proposed AVA)	Chiricahua Mountains (SE of proposed AVA)	Benson, AZ (SW of proposed AVA)
Tubac soils, including Tubac sandy clay loam and Tubac sandy loam	10	0	4.5	0	13.1	0
Karro loam	3.3	0	0	0.5	0	0
Grabe loam	3.2	3.4	0	0	0	0
Pima-Grabe association	3.1	0	0.3	0	15.3	0
McAllister loam	2.6	0	0	5	0	0
Comoro sandy loam	2.1	0.3	0	1.3	0	0
Guest silty clay	1.5	0	0	0.3	0	0
Stronghol-McAllister-Elgin complex	1.5	0	0	0	0	1.8
Sonoita gravelly sandy loam	1.2	2.2	2.2	0	0	0
White House-Forrest association	1.1	0	0	0	11	0
Courtland-Sasabe-Diaspar complex	1	0	0	7.6	1.1	0.9
Total	30.6	5.9	7	14.7	40.5	2.7

The table shows that the regions to the north, south, east, and southwest of the proposed AVA all contain smaller percentages of these 11 soils. The exception is the region to the southeast of the proposed AVA, which contains only 4 of the 30 primary soils of the proposed AVA but has a larger percentage of those 4 soils. Frye soils, which are among the most prevalent soil series of the proposed AVA, are not included in this table because they comprise less than one tenth of one percent of the total soils in any of the surrounding regions.

Climate

Southeastern Arizona, including the region of the proposed Willcox AVA, is generally considered to have an arid climate. Annual precipitation amounts in the region are very low. According to the petition, slight amounts of rain may fall at the end of winter, when the vines

are emerging from dormancy. However, the most significant rainfall occurs during the monsoon season, in July and August. During the monsoon season, the large-scale atmospheric circulation shifts to initiate a flow of humid air from both the Gulf of Mexico and the Gulf of California. This flow of humid air brings more cloud cover and scattered rainfall in the form of thunderstorms. The following table summarizes the average growing season rainfall amounts within the proposed AVA and the surrounding areas.

TABLE 2—AVERAGE ANNUAL GROWING SEASON PRECIPITATION [1]

[Inches]

Month	Willcox, AZ (within proposed AVA)	Safford (north of proposed AVA)	Chiricahua Mountains (SE of proposed AVA)	San Simon Valley (east of proposed AVA)	Douglas (south of proposed AVA)	Benson (SW of proposed AVA)	Cascabel (west of proposed AVA)
March	0.37	0.32	0.98	0.29	0.24	0.33	0.40
April	0.11	0.14	0.25	0.08	0.06	0.10	0.13
May	0.42	0.14	0.36	0.08	0.15	0.19	0.24
June	0.41	0.16	0.81	0.34	0.23	0.22	0.21
July	3.61	1.80	3.22	2.46	2.99	3.21	3.23
August	2.32	2.01	3.21	1.77	3.11	2.87	2.16
Sept.	0.84	0.92	1.79	0.74	1.11	2.24	1.15
October	0.34	0.39	0.68	0.34	0.28	0.16	0.22
Average growing season totals	8.42	5.88	11.3	6.1	8.17	9.32	7.74

Annual growing season precipitation amounts within the proposed Willcox AVA are higher than those of all the stations in the surrounding areas except the Chiricahua Mountains and Benson. The petition states that rainfall amounts are higher in areas close to the mountains and foothills, such as the locations to the southeast and southwest of the proposed AVA, because the moisture-laden air cools as it rises over the hills and eventually reaches the point where it releases its moisture in the form of rain. As the storms move beyond the mountains and foothills, they begin to weaken and dissipate.

Throughout the region of the proposed AVA, temperatures are affected by elevation. The warmest temperatures are typically in areas with low elevations. The warmest daytime high temperatures typically occur in June and are accompanied by strong afternoon winds. The following table shows the average annual growing season highs for a weather station located within the proposed AVA and the closest weather stations in the surrounding areas. Because elevation plays a role in the climate in the region, the average elevation of each location is also included.

TABLE 3—AVERAGE ANNUAL GROWING SEASON HIGH TEMPERATURES [2]

[Degrees Fahrenheit]

Month	Willcox, AZ (within proposed AVA)	Safford (north of proposed AVA)	Chiricahua Mountains (SE of proposed AVA)	San Simon Valley (east of proposed AVA)	Douglas (south of proposed AVA)	Benson (SW of proposed AVA)	Cascabel (west of proposed AVA)
Elevation	4,170 ft	2,953 ft	5,400 ft	3,609 ft	4,104 ft	3,691 ft	3,196 ft
March	71.5	72.5	65.9	72.4	73.1	73.4	74.3
April	79.2	81.6	73.4	81.5	80.5	81.0	82.3
May	86.7	90.2	81.7	89.8	88.6	89.4	90.8
June	96.5	98.7	90.8	98.4	97.4	99.2	100.9
July	96.9	97.8	89.2	97.5	94.8	97.6	99.2
August	94.7	95.2	86.9	95.2	92.1	93.6	95.7
September	91.0	91.6	84.0	91.1	89.7	90.3	92.0
October	82.4	83.6	76.4	82.1	82.7	83.6	83.0
Average	87.3	88.9	81.0	88.5	87.4	88.5	89.8

The data shows that annual growing season high temperatures within the proposed Willcox AVA are lower than those in four of the six surrounding regions. The four regions are all at significantly lower elevations than the proposed AVA. Temperatures in Douglas, AZ, which is at a similar elevation to the proposed AVA, are nearly identical to those of the proposed AVA. Of the six surrounding weather stations, the station within the Chiricahua Mountains, adjacent to the southeastern boundary of the proposed AVA, is at the highest elevation and, as a result, has the lowest average high temperature.

The data in the table shows that during the months of May and June, temperatures within the proposed Willcox AVA are noticeably lower than in all of the surrounding regions, with the exception of the higher elevations of

[1] Source: National Climate Data Center records from 2005 through 2012. Chiricahua station data only available from 2009 through 2012.

[2] Source: National Climate Data Center records from 2005 through 2012. According to the petition, some data may be missing in the record, but no average has less than 7 years of data.

the Chiricahua Mountains. The petition notes that May and June, just before the start of the monsoon season, are the most stressful months for vines. The air is very dry, and most of the water stored in the soil from late winter rains has been depleted. Temperatures begin to rise noticeably during these two months, placing heat stress on the vines and increasing the amount of water that evaporates from their leaves. Therefore, in such a warm region as southeastern Arizona, average high temperatures that are only a few degrees cooler than the surrounding area offer respite to the vines, particularly during the hot, dry pre-monsoon months.

The climate of the proposed Willcox AVA affects viticulture. The hot temperatures, combined with extremely dry air for much of the growing season, put heavy stress on the vines. In order to preserve water, the vines close the stoma on their leaves during the hottest parts of the day, especially when temperatures rise above 90 degrees Fahrenheit. When the stoma are closed, however, photosynthesis slows considerably, preventing the plant from producing food efficiently. As a result, fruit development and maturation is delayed. The lack of cloud cover for most of the growing season puts the grapes at risk for sunburn. So vineyard owners within the proposed AVA manage canopy levels to provide shelter for the fruit. Although the rainfall amounts during the monsoonal season are not heavy enough to eliminate the need for irrigation, the rains do provide some relief for the vines and also replenish the aquifer, which is the only source of water within the closed basin system that forms the proposed AVA. Additionally, the monsoon season brings relief to the vines in the form of higher humidity levels, which allow the stoma to remain open longer and produce food for the vine during the peak period of fruit development. Finally, the increased cloud cover during the monsoon season lowers temperatures slightly and provides the maturing grapes some protection from sunburn.

Summary of Distinguishing Features

In summary, the evidence provided in the petition indicates that the viticulturally significant geographic features of the proposed Willcox AVA distinguish it from the surrounding regions in each direction. With respect to topography, the proposed AVA is located within a flat valley that is part of a closed basin system. By contrast, the regions adjacent to the northern, eastern, and western boundaries of the proposed AVA are all marked by mountainous terrain with higher, steeper elevations. Beyond each of these mountain ranges are large valleys with lower elevations than the proposed AVA. These valleys are also all open basin systems, and the valley floors have all been eroded to varying degrees by flowing water. South of the proposed AVA is the lower-elevation Sulphur Springs Valley, which is also an open basin system.

The soils of the surrounding regions are primarily loams, as are the soils of the proposed Willcox AVA. However, the soil series that comprise the majority of the soils within the proposed AVA are generally present only in very small amounts outside the proposed AVA or, in some cases, are not present at all. The exception is the region to the southeast of the proposed AVA, where 4 of the 11 primary soil series of the proposed AVA are found in higher amounts.

The climate of the proposed Willcox AVA is hot and arid like much of the surrounding regions. However, growing season high temperatures within the proposed AVA are lower than those of most of the surrounding region, notably during the months of May and June. The exception is within the higher elevations of the Chiricahua Mountains, where growing season temperatures are generally lower than within the proposed AVA. Annual rainfall amounts within the proposed AVA are higher than those of the surrounding regions, with the exception of the foothill regions to the southeast and southwest of the proposed AVA.

TTB Determination

TTB concludes that the petition to establish the approximately 526,000-acre Willcox AVA merits consideration and public comment, as invited in this proposed rule.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Willcox,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, if this proposed rule is adopted as a final rule, wine bottlers using the name ''Willcox'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Willcox AVA on wine labels that include the term ''Willcox,'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this proposed rule by using one of the

following three methods (please note that TTB has a new address for comments submitted by U.S. Mail):

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2016–0002 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 157 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the ''Help'' tab.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 157 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly indicate if you are commenting on your own behalf or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this proposed rule, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2016–0002 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov.* A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 157. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.* For information on how to use Regulations.gov, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or other similarly-sized documents that may be included as part of the AVA petition. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this proposed rule.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.____to read as follows:

§ 9.____Willcox.

(a) *Name.* The name of the viticultural area described in this section is ''Willcox''. For purposes of part 4 of this chapter, ''Willcox'' is a term of viticultural significance.

(b) *Approved maps.* The 21 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Willcox viticultural area are titled:

(1) Fort Grant, AZ, 1996;
(2) West of Greasewood Mountain, AZ, 1996;
(3) Greasewood Mountain, AZ, 1996;
(4) Willcox North, AZ, 1996;
(5) Railroad Pass, Ariz., 1979;
(6) Simmons Peak, AZ, 1996;
(7) Dos Cabezas, AZ, 1996;
(8) Pat Hills North, Ariz., 1974;
(9) Pat Hills South, Ariona, 1986 provisional edition;
(10) Sulphur Hills, AZ, 1996;
(11) Pearce, AZ., 1996;
(12) Turquoise Mountain, AZ, 1996;
(13) Black Diamond Peak, AZ, 1996;
(14) Cochise Stronghold, AZ, 1996;
(15) Cochise, AZ, 1996;
(16) Red Bird Hills, AZ, 1996;
(17) Steele Hills, AZ, 1996;
(18) Square Mountain, AZ, 1996;
(19) Muskhog Mountain, AZ, 1996;
(20) Reiley Peak, AZ, 1996; and
(21) Sierra Bonita Ranch, Ariz., 1972.

(c) *Boundary.* The Willcox viticultural area is located in Cochise and Graham Counties in southeastern Arizona. The boundary of the Willcox viticultural area is as described below:

(1) The beginning point is on the Fort Grant map at the intersection of State

Highway 266 and an unnamed light-duty road known locally as Curtis Parkway, in Fort Grant, section 35, T9S/R23E. From the beginning point, proceed south-southeast in a straight line approximately 20.4 miles, crossing over the West of Greasewood Mountain and the Greasewood Mountain map and onto the Willcox North map, to the intersection of three unnamed light-duty roads known locally as Porters Ranch Road, East Saguaro Road, and North Circle I Road, near benchmark (BM) 4,243 on the Willcox North map, section 36, T12S/R24E; then

(2) Proceed east in a straight line approximately 5 miles to Interstate Highway 10 near the community of Raso, section 1, T13S/R25E; then

(3) Proceed south in a straight line approximately 0.8 mile to the 4,400-foot elevation contour, section 1, T13S/R25E; then

(4) Proceed southwesterly along the 4,400-foot elevation contour around the west end of the Dos Cabezas Mountains and continue southeasterly along the 4,400-foot elevation contour for a total of approximately 13.3 miles, crossing over the Railroad Pass map and onto the Simmons Peak map, to State Highway 186 on the Simmons Peak map, section 28, T14S/R26E; then

(5) Proceed south-southeast in a straight line approximately 15.8 miles, crossing over the Dos Cabezas map and onto the Pat Hills North map, to the intersection of the 4,700-foot elevation contour and an unnamed light-duty road known locally as East Creasey Ranch Road on the Pat Hills North map near BM 4,695, section 21, T16S/R28E; then

(6) Proceed southerly along the 4,700-foot elevation contour approximately 10.6 miles, crossing onto the Pat Hills South map, to an unnamed light-duty road known locally as East Uncle Curtis Lane, section 7, T18S/R28E; then

(7) Proceed west along East Uncle Curtis Lane approximately 0.5 mile to an unnamed light-duty road known locally as South Single Tree Lane near the marked 4,664-foot elevation point, section 7, T18S/R28E; then

(8) Proceed south along South Single Tree Lane approximately 0.5 mile to State Highway 181, section 7, T18S/R28E; then

(9) Proceed west along State Highway 181 approximately 9.9 miles, crossing onto the Sulphur Hills map, to State Highway 191, section 10, T18S/R26E; then

(10) Proceed north-northeasterly, then west, along State Highway 191 approximately 4.8 miles, crossing onto the Pearce map, to an unnamed light-duty road known locally as Kansas Settlement Road, near BM 4,327, section 36, T17S/R25E; then

(11) Proceed southwest in a straight line approximately 8.9 miles, crossing over the Turquoise Mountain map and onto the Black Diamond Peak map, to the southeastern-most corner of the boundary of the Coronado National Forest on the Black Diamond Peak map, section 35, T18S/R24E; then

(12) Proceed north along the boundary of the Coronado National Forest approximately 2 miles to the marked 4,821-foot elevation point, section 26, T18S/R24E; then

(13) Proceed north-northwest in a straight line approximately 13 miles, crossing over the Cochise Stronghold map and onto the Cochise map, to the northeastern corner of the boundary of the Coronado National Forest at the marked 4,642 elevation point on the Cochise map, section 26, T16S/R23E; then

(14) Proceed north-northwest in a straight line approximately 1.2 miles to the intersection of the 4,450-foot elevation contour and an unnamed secondary highway known locally as West Dragoon Road, section 23, T16S/R23E; then

(15) Proceed north in a straight line approximately 1.3 miles to the 4,400-foot elevation contour, section 11, T16S/R23E; then

(16) Proceed generally northerly along the 4,400-foot elevation contour approximately 10 miles, crossing onto the Red Bird Hills map, to Interstate Highway 10, section 3, T15S/R23E; then

(17) Proceed north-northwest in a straight line approximately 5.8 miles, crossing onto the Steele Hills map, to the intersection of the 4,600-foot elevation contour and an unnamed light-duty road known locally as West Airport Road, section 7, T14S/R23E; then

(18) Proceed east-northeasterly, then easterly, then northerly, then easterly along West Airport Road approximately 7.2 miles, crossing back onto the Red Bird Hills map and then onto the Square Mountain map, to the 4,240-foot elevation contour east of BM 4,264, section 6, T14S/R24E; then

(19) Proceed north-northwest in a straight line approximately 20.5 miles, crossing over the Muskhog Mountain and Reiley Peak maps and onto the Sierra Bonita Ranch map, to the intersection of two unnamed light-duty roads known locally as West Ash Creek Road and South Wells Road, near BM 4,487 on the Sierra Bonita Ranch map, section 3, T11S/R22E; then

(20) Proceed generally northerly along South Wells Road to BM 4,502, then continuing northerly along the western fork of the road for a total of approximately 7.7 miles to an unnamed light-duty road known locally as Bonita Aravaipa Road, section 27, T9S/R22E; then

(21) Proceed east in a straight line approximately 8.2 miles, crossing onto the Fort Grant map, to the beginning point.

Signed: January 13, 2016.

John J. Manfreda,

Administrator.

[FR Doc. 2016–01150 Filed 1–20–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–0272]

RIN 1625–AA08

Special Local Regulations; Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update the final regulation that governs recurring special local regulations in the Seventh Coast Guard District. These regulations will apply to all recurring events held on navigable waters of the Seventh District, such as regattas, parades, and fireworks displays. This update is being proposed to ensure that all known recurring marine events are included in the final regulation and to allow respective Captains of the Port greater ease in enacting or modifying those portions of the regulation which apply to their respective areas.

DATES: Comments and related material must be received by the Coast Guard on or before February 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0272 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Eugene Stratton, Coast Guard District Seven Waterways Management, (305) 415–6750, email *Eugene.Stratton@uscg.mil* or Lieutenant Brendan Sullivan, Coast

Guard District Seven Legal, U.S. Coast Guard; telephone (305) 415–6957, email *Brendan.Sullivan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On January 25, 2008, 33 CFR 100.701 was published in the **Federal Register** (73 FR 4461) to provide permanent notice of recurring marine events in the Seventh Coast Guard District. Since that time, it was amended, (March 14, 2012 (77 FR 14962)) to remove several lines in Table 100.701 with incorrect information and to add lines regarding marine event dates, geographic locations, and corresponding regulated areas. The Coast Guard is now proposing a comprehensive revision of the table of events contained within this regulation to ensure that it accurately captures all recurring marine events in the Seventh Coast Guard District and to allow respective Captains of the Port greater ease in managing events occurring in their zones.

33 U.S.C. 1233 provides the legal basis for the Coast Guard's authority to establish special local regulations. The purpose of the rule is to provide for the safety of life on the navigable waters of the Seventh Coast Guard District during recurring marine events.

III. Discussion of Proposed Rule

The Coast Guard proposes to revise the list of permanent special regulations contained in 33 CFR 100.701 for recurring marine events within the geographic boundary of the Seventh Coast Guard District. In general, the Seventh Coast Guard District is comprised of the land areas and U.S. navigable waters adjacent to South Carolina, Georgia, Florida, and Puerto Rico. For a detailed description of the geographical area of the District and each Coast Guard Sector, please refer to 33 CFR 3.35.

At present, there are a great number of annually recurring marine events within the Seventh Coast Guard District. These events are currently listed in a single table, with no demarcation by which to easily identify specific events. This proposed change to the regulation includes breaking the table into seven distinct sections, one for each Captain of the Port (COTP) zone. Each event within each COTP section will be assigned a line number, which will result in each event being easily identifiable based on its location within a table and line and will make future editing or enforcement of any event a more streamlined process.

Additionally, the Coast Guard seeks to update the regulation to ensure that it accurately reflects all recurring events within the Seventh District, to include marine events which started on a recurring basis since the last revision of this regulation and any marine events which may have been left off of the last revision.

The proposed changes to this rule will reduce the administrative burden on the Coast Guard by ensuring all recurring events are represented in the table and by minimizing the need to duplicate the rulemaking process for repeat events. Additionally, when notices of enforcement are published for recurring events, these amendments will clarify the regulation and implications referenced. Generally, the public will be advised of these events and specific information, including exact dates, specific areas, and description of the regulated area, through Local Notice to Mariners and Broadcast Notice to Mariners. The notices will contain the following information:

(i) Name and sponsoring organization of event;
(ii) Expected number of participants;
(iii) Course of event;
(iv) Regulated area;
(v) Spectator Area, if applicable; and
(vi) Dates and times of event and enforcement of regulations.

The Coast Guard realizes that some large scale events, such as those with many participants or spectators, or those that could severely restrict navigation or pose a significant hazard, may still require separate special local regulations or safety zones that address the specific peculiarities of the event. In those situations, the Coast Guard will create special local regulations or safety zones specifically for the event, and those regulations will supersede the proposed regulations in this rulemaking. However, the Coast Guard believes that a majority of the events held on the waters of the Seventh Coast Guard District may be adequately regulated by the requirements of this proposed rule.

Due to the activities involved, the large number of participants and spectators present, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels transiting through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this proposed rule would establish special local regulations for the time and location of each marine event.

This proposed rule will prevent vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port, or designated Coast Guard Patrol Commander. A designated ''Patrol Commander'' includes Coast Guard commissioned, warrant, or petty officers who have been designated by the Captain of the Port to act on their behalf. Patrol Commanders may be augmented by local, State, or Federal officials authorized to act in support of the Coast Guard.

Only event sponsors, designated participants, and official patrol vessels will be allowed to enter regulated areas unless otherwise given permission by the Patrol Commander or the Captain of the Port. Spectators may be confined to a designated spectator area to view events. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

The Coast Guard proposes to revise 33 CFR 100.701 by adding 18 new recurring marine events as special local regulations listed in this section. Furthermore, the Coast Guard proposes to modify 14 existing regulated areas and remove 111 regulated areas that are no longer active.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been

designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the following factors: (1) The regulations will be enforced for short, predefined periods of time; (2) persons and vessels may enter, transit through, anchor in or otherwise access the restricted areas with authorization from the respective Captains of the Port; (3) the Coast guard will provide advance notification of the regulations to the local community by issuing Notice of Enforcements, Broadcast Notice to Mariners, and Patrol Commanders. Moreover, in the majority of cases, vessels will be able to safely transit around restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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** section. 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.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. 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.

F. 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 (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 proposed rule involves amending and republication of a table of recurring marine events for special regulations issued in conjunction with a regatta or marine parade. The events themselves are permitted by the Coast Guard before this regulation would be utilized and the permitting process involves a thorough environmental review. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and 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 proposed rule.

G. 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online

docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Amend section 100.701 by revising TABLE 1 TO SEC. 100.701 to read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District

* * * * *

TABLE TO § 100.701

No.	Date	Event	Sponsor	Location
(a) COTP Zone Miami; Special Local Regulations				
1	2nd or 3rd Weekend in June.	Rotary Club of Fort Lauderdale New River Raft Race.	Rotary Club of Fort Lauderdale.	All waters of the New River contained within the following points: starting at Point 1 in position 26°07′10″ N., 80°08′52″ W.; thence southeast to Point 2 in position 26°07′05″ N., 80°08′34″ W.; thence southwest to Point 3 in position 26°07′04″ N., 80°08′35″ W.; thence northwest to Point 4 in position 26°07′08″ N., 80°08′52″ W.; thence north back to origin.
2	2nd or 3rd weekend in April.	Stuart Sailfish Regatta.	Stuart Sailfish, Inc ...	All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within a line connecting the following points, with the exception of the spectator area: Starting at Point 1 in position 27°12′47″ N., 80°11′43″ W.; thence southeast to Point 2 in position 27°12′22″ N., 80°11′28″ W.; thence northeast to Point 3 in position 27°12′35″ N., 80°11′00″ W.; thence northwest to Point 4 in position 27°12′47″ N., 80°11′04″ W.; thence northeast to Point 5 in position 27°13′05″ N., 80°11′01″ W.; thence southeast back to origin.
3	2nd or 3rd week in April.	Ft. Lauderdale Air Show.	Lauderdale Air Show LLC.	(1) Exclusion area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within a line connecting the following points: Starting at Point 1 in position 26°10′39″ N., 80°05′47″ W.; thence southeast to Point 2 in position 26°10′32″ N., 80°04′39″ W.; thence southwest to Point 3 in position 26°06′33″ N., 80°05′08″ W.; thence northwest to Point 4 in position 26°06′40″ N., 80°06′15″ W.; thence northeast back to origin. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the exclusion area. (2) Limited access area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within a line connecting the following points: Starting at Point 1 in position 26°05′41″ N., 80°06′59″ W.; thence southeast to Point 2 in position 26°05′26″ N., 80°06′51″ W.; thence northeast to Point 3 in position 26°05′32″ N., 80°05′24″ W.; thence north to Point 4 in position 26°05′42″ N., 80°05′24″ W.; thence southwest back to origin. All vessels 500 gross tons or greater are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.
4	2nd or 3rd weekend in April.	Red Bull Candola	Red Bull North America.	All waters of the New River between the Esplanade Park and slightly east of the South Andrews Avenue Bascule Bridge encompassed between the following points: Point 1 in position 26°07′09″ N., 80°08′52″ W. and Point 2 in position 26°07′04″ N., 80°08′34″ W.
5	2nd or 3rd weekend in May.	Miami Superboat Grand Prix.	Super Boat International Productions, Inc.	All waters of the Atlantic Ocean east of Miami Beach, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°49′14″ N., 80°07′13″ W.; thence east to Point 2 in position 25°49′13″ N., 80°06′48″ W.; thence southwest to Point 3 in 25°46′00″ N., 80°07′26″ W.; thence west to Point 4 in position 25°46′00″ N., 80°07′51″ W.; thence northeast back to origin.
6	1st or 2nd weekend in June.	West Palm Beach Triathlon.	Game On Sports Marketing Group.	All waters of the Intracoastal Waterway in West Palm Beach, Florida between the Flagler Memorial Bridge to the Royal Palm Way Bridge.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
7	2nd or 3rd weekend in September.	Publix Escape to Miami Triathlon.	US Road Sports and Entertainment of Florida, LLC.	All waters of Biscayne Bay, east of Margaret Pace Park, Miami, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°47′40″ N., 80°11′07″ W.; thence northeast to Point 2 in position 25°48′13″ N., 80°10′48″ W.; thence southeast to Point 3 in 25°47′59″ N., 80°10′34″ W.; thence south to Point 4 in position 25°47′52″ N., 80°10′34″ W.; thence southwest to Point 5 in position 25°47′33″ N., 80°11′07″ W.; thence north back to origin.
8	2nd or 3rd weekend in October.	Ironman 70.3	Miami Tri Events	All waters of Biscayne Bay located east of Bayfront Park and encompassed within a line connecting the following points: Starting at Point 1 in position 25°46′44″ N., 080°11′00″ W.; thence southeast to Point 2 in position 25°46′24″ N., 080°10′44″ W.; thence southwest to Point 3 in position 25°46′18″ N., 080°11′05″ W.; thence north to Point 4 in position 25°46′33″ N., 080°11′05″ W.; thence northeast back to origin. All coordinates are North American Datum 1983.
9	2nd or 3rd week in October.	West Palm Beach World Championship.	Offshore Powerboat Association LLC.	All waters of the Atlantic Ocean east of Jupiter, FL encompassed within a line connecting the following points: Starting at Point 1 in position 26°56′06″ N., 80°04′06″ W.; thence northeast to Point 2 in position 26°56′11″ N., 80°03′38″ W.; thence southeast to Point 3 in 26°53′11″ N., 80°02′35″ W.; thence southwest to Point 4 in position 26°53′03″ N., 80°03′06″ W.; thence northwest back to origin.
10	1st or 2nd weekend in November.	Red Bull Flugtag	Red Bull North America.	All waters of Biscayne Bay, Miami, FL between Bayfront Park and the Intercontinental-Miami Hotel encompassed within a line connecting the following points: Starting at point 1 in position 25°46′32″ N., 80°11′06″ W.; thence southeast to point 2 in position 25°46′30″ N., 80°11′04″ W.; thence south to point 3 in position 25°46′26″ N., 80°11′04″ W.; thence southwest to point 4 in position 25°46′25″ N., 80°11′06″ W.; thence north back to origin.
11	1st or 2nd weekend in December.	Boynton & Delray Holiday Boat Parade.	Boynton Reach Community Redevelopment Agency.	All waters within a moving zone that will begin at Boynton Inlet and end at the C–15 Canal, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
12	1st or 2nd weekend in December.	Palm Beach Holiday Boat Parade.	Marine Industries Association of Palm Beach County.	All waters within a moving zone that will begin at Lake Worth Daymarker 28 in North Palm Beach and end at Loxahatchee River Daymarker 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
13	2nd or 3rd weekend in December.	Miami Outboard Club Holiday Boat Parade.	Miami Outboard Club	All waters within a moving zone that will transit as follows: The marine parade will begin at the Miami Outboard Club on Watson Island, head north around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. This will include a buffer zone extending to 50 yards ahead of the lead vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
14	2nd or 3rd weekend in December.	Seminole Hard Rock Winterfest Holiday Boat Parade.	Winterfest, Inc	All waters within a moving zone that will begin at Cooley's Landing Marina and end at Lake Santa Barbara, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
15	2nd or 3rd weekend in December.	City of Pompano Beach Holiday Boat Parade.	Greater Pompano Beach Chamber of Commerce.	All waters within a moving zone that will begin at Lake Santa Barbara and head north on the Intracoastal Waterway to end at the Hillsboro Bridge, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
(b) COTP Zone San Juan; Special Local Regulation				
1	1st Friday, Saturday, and Sunday of February.	CNSJ International Regatta.	Club Nautico de San Juan.	San Juan, Puerto Rico; (1) Outer Harbor Race Area. All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°28.4′ N., 66°07.6′ W.; then south to Point 2 in position 18°28.1′ N., 66°07.8′ W.; then southeast to Point 3 in position 18°27.8′ N., 66°07.4′ W.; then southeast to point 4 in position 18°27.6′ N., 66°07.3′ W.; then west to point 5 in position 18°27.6′ N., 66°07.8′ W.; then north to point 6 in position 18°28.4′ N., 66°07.8′ W.; then east to the origin. (2) Inner Harbor Race Area; All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°27.6′ N., 66°07.8′ W.; then east to Point 2 in position 18°27.6′ N., 66°07.1′ W.; then southeast to Point 3 in position 18°27.4′ N., 66°06.9′ W.; then west to point 4 in position 18°27.4′ N., 66°07.7′ W.; then northwest to the origin.
2	Last Full Weekend of March.	St. Thomas International Regatta.	St. Thomas Yacht Club.	St. Thomas, U.S. Virgin Islands; All waters of St. Thomas Harbor encompassed within the following points: Starting at Point 1 in position 18°19.9′ N., 64°55.9′ W.; thence east to Point 2 in position 18°19.97′ N., 64°55.8′ W.; thence southeast to Point 3 in position 18°19.6′ N., 64°55.6′ W.; thence south to point 4 in position 18°19.1′ N., 64°55.5′ W.; thence west to point 5 in position 18°19.1′ N., 64°55.6′ W.; thence north to point 6 in position 18°19.6′ N., 64°55.8′ W.; thence northwest back to origin at Harbor, St. Thomas, San Juan.
3	Last week of April	St. Thomas Carnival	Virgin Islands Carnival Committee.	St. Thomas, U.S. Virgin Islands; (1) Race Area. All waters of the St. Thomas Harbor located around Hassel Island, St. Thomas, U.S. Virgin Island encompassed within the following points: Starting at Point 1 in position 18°20.2′ N., 64°56.1′ W.; thence southeast to Point 2 in position 18°19.7′ N., 64°55.7′ W.; thence south to Point 3 in position 18°19.4′ N., 64°55.7′ W.; thence southwest to point 4 in position 18°19.3′ N., 64°56.0′ W.; thence northwest to point 5 in position 18°19.9′ N., 64°56.5′ W.; thence northeast to point 6 in position 18°20.2′ N., 064°56.3′ W.; thence east back to origin. (2) Jet Ski Race Area. All waters encompassed the following points: Starting at Point 1 in position 18°20.1′ N., 64°55.9′ W.; thence west to Point 2 in position 18°20.1′ N., 64°56.1′ W.; thence north to Point 3 in position 18°20.3′ N., 64°56.1′ W.; thence east to Point 4 in position 18°20.3′ N., 64°55.9′ W.; thence south back to origin. (3) Buffer Zone. All waters of the St. Thomas Harbor located around Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N., 64°55.9′ W.; thence southeast to Point 2 in position 18°19.7′ N., 64°55.7′ W.; thence south to Point 3 in position 18°19.3′ N., 64°55.72′ W.; thence southwest to Point 4 in position 18°19.2′ N., 64°56′ W.; thence northwest to Point 5 in position 18°19.9′ N., 64°56.5′ W.; thence northeast to Point 6 in position 18°20.3′ N., 64°56.3′ W.; thence east back to origin. (4) Spectator Area. All waters of the St. Thomas Harbor located east of Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N., 64°55.8′ W.; thence southeast to Point 2 in position 18°19.9′ N., 64°55.7′ W.; thence northeast to Point 3 in position 18°20.2′ N., 64°55.5′ W.; thence northwest back to origin.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
4	1st Sunday of May	Ironman 70.3 St. Croix.	Project St. Croix, Inc	St. Croix (Christiansted Harbor), U.S. Virgin Islands; All waters encompassed within the following points: Point 1 on the shoreline at Kings Wharf at posn 17°44′51″ N., 064°42′16″ W., thence north to point 2 at the southwest corner of Protestant Cay in posn 17°44′56″ N., 064°42′12″ W., then east along the shoreline to point 3 at the southeast corner of Protestant Cay in posn 17°44′56″ N., 064°42′08″ W., thence northeast to point 4 at Christiansted Harbor Channel Round Reef Northeast Junction Lighted Buoy RR in position 17°45′24″ N., 064°41′45″ W., thence southeast to point 5 at Christiansted Schooner Channel Lighted Buoy 5 in position 17°45′18″ N., 064°41′43″ W., thence southwest to point 6 at Christiansted Harbor Channel Buoy 15 in position 17°44′56″ N., 064°41′56″ W., thence southwest to point 7 on the shoreline north of Fort Christiansted in position 17°44′51″ N., 064°42′05″ W., thence west along the shoreline to origin.
5	July 4th	Fireworks Display	St. John Festival & Cul., Org.	St. John (West of Cruz Bay/Northeast of Steven Cay), U.S. Virgin Islands; All waters from the surface to the bottom for a radius of 200 yards centered around position 18°19′55″ N., 064°48′06″ W.
6	3rd Week of July, Sunday.	San Juan Harbor Swim.	Municipality of Cataño.	San Juan Harbor, San Juan, Puerto Rico; All waters encompassed within the following points: Point 1: La Puntilla Final, Coast Guard Base at position 18°27′33″ N., 066°07′00″ W., then south to point 2: Cataño Ferry Pier at position 18°26′36″ N., 066°07′00″ W., then northeast along the Cataño shoreline to point 3: Punta Cataño at position 18°26′40″ N., 066°06′48″ W., then northwest to point 4: Pier 1 San Juan at position 18°27′40″ N., 066°06′49″ W., then back along the shoreline to origin.
7	1st Sunday of September.	Cruce A Nado International.	Cruce a Nado Inc	Ponce Harbor, Bahia de Ponce, San Juan; All waters of Bahia de Ponce encompassed within the following points: Starting at Point 1 in position 17°58.9′ N., 66°37.5′ W.; thence southwest to Point 2 in position 17°57.5′ N., 66°38.2′ W.; thence southeast to Point 3 in position 17°57.4′ N., 66°37.9′ W.; thence northeast to point 4 in position 17°58.7′ N., 66°37.3′ W.; thence northwest along the northeastern shoreline of Bahia de Ponce to the origin.
8	2nd Sunday of October.	St. Croix Coral Reef Swim.	The Buccaneer Resort.	St. Croix, U.S. Virgin Islands; All waters of Christiansted Harbor within the following points: Starting at Point 1 in position 18°45.7′ N., 64°40.6′ W.; then northeast to Point 2 in position 18°47.3′ N., 64°37.5′ W.; then southeast to Point 3 in position 17°46.9′ N., 64°37.2′ W.; then southwest to point 4 in position 17°45.51′ N., 64°39.7′ W.; then northwest to the origin.
9	December 31st	Fireworks St. Thomas, Great Bay.	Mr. Victor Laurenza, Pyrotecnico, New Castle, PA.	St. Thomas (Great Bay area), U.S. Virgin Islands; All waters within a radius of 600 feet centered around position 18°19′14″ N., 064°50′18″ W.
10	December–1st week	Christmas Boat Parade.	St. Croix Christmas Boat Committee.	St. Croix (Christiansted Harbor), U.S. Virgin Islands; 200 yards off-shore around Protestant Cay beginning in posn 17°45′56″ N., 064°42′16″ W., around the cay and back to the beginning position.
11	December–2nd week	Christmas Boat Parade.	Club Nautico de San Juan.	San Juan, Puerto Rico; Parade route. All waters of San Juan Harbor within a moving zone that will begin at Club Nautico de San Juan, move towards El Morro and then return, to Club Nautico de San Juan; this zone will at all times extend 50 yards in front of the lead vessel, 50 yards behind the last vessel, and 50 yards out from all participating vessels.
(c) COTP Zone Key West; Special Local Regulation				
1	January 1st	Blessing of the Fleet	Islamorada Charter Boat Association.	From Whale Harbor Channel to Whale Harbor Bridge, Islamorada, Florida.
2	January through April, last Monday or Tuesday.	Wreckers Cup Races	Schooner Wharf Bar	Key West Harbor to Sand Key, Florida (Gulf of Mexico side).
3	3rd Week of January, Monday–Friday.	Yachting Key West Race Week.	Premiere Racing, Inc	Inside the reef on either side of main ship channel, Key West Harbor Entrance, Key West, Florida.
4	1st Saturday of February.	The Bogey	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
5	1st Sunday of February.	The Bacall	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.
6	3rd Weekend of April	Miami to Key Largo Sailboat Race.	MYC Youth Sailing Foundation, Inc.	Biscayne Bay and Intracoastal Waterway from the Rickenbacker Causeway in Miami, Florida to Key Biscayne to Cape Florida to Soldier Key to Sands Key to Elliot Key to Two Stacks to Card Sound to Barnes Sound to Blackwater Sound in Key Largo, Florida no closer than 500 feet from each vessel.
7	Last Friday of April	Conch Republic Navy Parade and Battle.	Conch Republic	All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and the Hilton Pier within the Key West Harbor in Key West, Florida.
8	1st Weekend of June	Swim around Key West.	Florida Keys Community College.	Beginning at Smather's Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Flemming Cut, south on Cow Key Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels.
9	2nd Week of November, Wednesday–Sunday.	Key West World Championship.	Super Boat International Productions, Inc.	In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.
10	1st Thursday of December.	Boot Key Harbor Christmas Boat Parade.	Dockside Marina	Boot Key Harbor (entire harbor), Marathon, Florida.
11	2nd Sunday of December.	Key Colony Beach Holiday Boat Parade.	Key Colony Beach Community Association.	Key Colony Beach, Marathon, Florida, between Vaca Cut Bridge and Long Key Bridge.
12	3rd Saturday of December.	Key Largo Boat Parade.	Key Largo Boat Parade.	From Channel Marker 41 on Dusenbury Creek in Blackwater Sound to tip of Stillwright Point in Blackwater Sound, Key Largo, Florida.
13	3rd Saturday of December.	Key West Lighted Boat Parade.	Schooner Wharf Bar	All waters between Christmas Tree Island and Coast Guard Station thru Key West Harbor to Mallory Square, approximately 35 yards from shore.
(d) COTP Zone St. Petersburg; Special Local Regulation				
1	3rd Saturday of January.	Gasparilla Children's Parade Air show.	Air Boss and Consulting.	All waters of Hillsborough Bay north of an line drawn at 27°55′ N., west of Davis Islands, and south of the Davis Island Bridge.
2	Last Saturday of January.	Gasparilla Boat Parade.	YE Mystic Krewe of Gasparilla.	Tampa Bay, Florida, including all waters of Hillsborough Bay and its tributaries north of a line drawn along latitude 27°51′18″ N., Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge.
3	Last Friday, Saturday, and Sunday of March.	Honda Grand Prix	Honda Motor Company and City of St. Petersburg.	Demens Landing St Petersburg Florida; All waters within 100 ft. of the seawall.
4	Last Friday, Saturday, and Sunday of March.	St. Pete Grand Prix Air show.	Honda Motor Company and City of St. Petersburg.	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida, within two nautical miles of the Albert Whitted Airport.
5	Last Sunday of April	St. Anthony's Triathlon.	St. Anthony's Healthcare.	Gulf of Mexico, St. Petersburg, Florida within one nautical mile of Spa Beach.
6	July 4th	Freedom Swim	None	Peace River, St. Petersburg, Florida within two nautical miles of the US 41 Bridge.
7	1st Sunday of July	Suncoast Offshore Grand Prix.	Suncoast Foundation for the Handicapped.	Gulf of Mexico in the vicinity of Sarasota, Florida from New Pass to Siesta Beach out to eight nautical miles.
8	3rd Friday, Saturday, and Sunday of September.	Homosassa Raft Race.	Citrus 95 FM radio	Homosassa River in Homosassa, Florida Between Private Green Dayboard 81 east located in approximate position 28°46′58.937″ N., 082°37′25.131″ W., to private Red Dayboard 2 located in approximate position 28°47′19.939″ N., 082°36′44.36″ W.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
9	September 30th	Clearwater Superboat Race.	Superboat International.	(1) Race Area; All waters of the Gulf of Mexico near St. Petersburg, Florida, contained within the following points: 27°58.96′ N., 82°50.05′ W.; thence to position 27°58.60′ N., 82°50.04′ W.; thence to position 27°58.64′ N., 82°50.14′ W.; thence to position 28°00.43′ N., 82°50.02′ W.; thence to position 28°00.45′ N., 82°50.13′ W.; thence back to the start/finish position; (2) Buffer Area; All waters of the Gulf of Mexico encompassed within the following points: 27°58.4′ N., 82°50.2′ W.; thence to position 27°58.3′ N., 82°49.9′ W.; thence to position 28°00.6′ N., 82°50.2′ W.; thence to position 28°00.7′ N., 82°49.7′W.; thence back to position 27°58.4′ N., 82°50.2′ W. (3) Spectator Area; All waters of Gulf of Mexico seaward of the following points: 27°58.6′ N., 82°50.2′ W., thence to position 28°00.5′ N., 82°50.2′ W.
10	Last weekend of September.	Cocoa Beach Grand Prix of the Seas.	Powerboat P1—USA, LLC.	Atlantic ocean at Cocoa Beach, Florida. Sheppard Park. All waters encompassed within the following points: Starting at point 1 in position 28°22.285′ N., 80°36.033′ W.; thence east to Point 2 in position 28°22.253′ N., 80°35.543′ W.; thence south to Point 3 in position 28°21.143′ N., 80°35.700′ W.; thence west to Point 4 in position 28°21.195′ N., 80°36.214′ W.; thence north back to the origin.
11	2nd Friday, Saturday, and Sunday of October.	St. Petersburg Airfest.	City of St. Petersburg.	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida all waters within 2 nautical miles of the Albert Whitted Airport.
12	3rd Thursday, Friday, and Saturday of November.	Ironman World Championship Triathlon.	City of Clearwater & Ironman North America.	Gulf of Mexico, Clearwater, Florida within 2 nautical miles of Clearwater Beach FL.
(e) COTP Zone Jacksonville; Special Local Regulation				
1	Last Saturday of February.	El Cheapo Sheepshead Tournament.	Jacksonville Offshore Fishing Club.	Mayport Boat Ramp, Jacksonville, Florida; 500 foot radius from the boat ramp.
2	1st Saturday of March.	Jacksonville Invitational.	Stanton Rowing Foundation (May vary).	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
3	1st Saturday of March.	Stanton Invitational (Rowing Race).	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
4	1st weekend of March.	Hydro X Tour	H2X Racing Promotions.	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
5	2nd Full Weekend of March.	TICO Warbird Air Show.	Valiant Air Command	Titusville; Indian River, FL: All waters encompassed within the following points: Starting at the shoreline then due east to Point 1 at position 28°31′25.15″ N., 080°46′32.73″ W., then south to Point 2 located at position 28°30′55.42″ N., 080°46′32.75″ W., then due west to the shoreline.
6	3rd Weekend of March.	Tavares Spring Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
7	Palm Sunday in March or April.	Blessing of the Fleet-Jacksonville.	City of Jacksonville Office of Special Events.	St. Johns River, Jacksonville, Florida in the vicinity of Jacksonville Landing between the Main Street Bridge and Acosta Bride.
8	Palm Sunday in March or April.	Blessing of the Fleet-St. Augustine.	City of St. Augustine	St. Augustine Municipal Marina (entire marina), St. Augustine Florida.
9	1st Full Weekend of April (Saturday and Sunday).	Mount Dora Yacht Club Sailing Regatta.	Mount Dora Yacht Club.	Lake Dora, Mount Dora, Florida—500 feet off Grantham Point.
10	3rd Saturday of April	Jacksonville City Championships.	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
11	3rd weekend of April	Florida Times Union Redfish Roundup.	The Florida Times-Union.	Sister's Creek, Jacksonville, Florida; All waters within a 100 yard radius of Jim King Park and Boat Ramp at Sister's Creek Marina, Sister's Creek.
12	2nd Weekend in May	Saltwater Classic—Port Canaveral.	Cox Events Group ...	All waters of the Port Canaveral Harbor located in the vicinity of Port Canaveral, Florida encompassed within the following points: Starting at Point 1 in position 28°24′32″ N., 080°37′22″ W., then north to Point 2 28°24′35″ N., 080°37′22″ W., then due east to Point 3 at 28°24′35″ N., 080°36′45″ W., then south to Point 4 at 28°24′32″ N., 080°36′45″, then west back to the original point.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
13	1st Friday of May	Isle of Eight Flags Shrimp Festival Pirate Landing and Fireworks.	City of Fernandina Beach.	All waters within a 500 yard radius around approximate position 30°40′15″ N., 81°28′10″ W.
14	1st Saturday of May	Mug Race	The Rudder Club of Jacksonville, Inc.	St. Johns River; Palatka to Buckman Bridge.
15	3rd Friday–Sunday of May.	Space Coast Super Boat Grand Prix.	Super Boat International Productions, Inc.	Atlantic Ocean in the vicinity of Cocoa Beach, Florida includes all waters encompassed within the following points: Starting at Point 1 in position 28°22′16″ N., 80°36′04″ W.; thence east to Point 2 in position 28°22′15″ N., 80°35′39″ W.; thence south to Point 3 in position 28°19′47″ N., 80°35′55″ W.; thence west to Point 4 in position 28°19′47″ N., 80°36′22″ W.; thence north back to origin.
16	4th weekend of May	Memorial Day RiverFest.	City of Green Cove Springs.	St. Johns River, Green Cove Springs, Florida; All waters within a 500-yard radius around approximate position 29°59′39″ N., 081°40′33″ W.
17	Last full week of May (Monday–Friday).	Bluewater Invitational Tournament.	Northeast Florida Marlin Association.	There is a no-wake zone in affect from the St. Augustine City Marina out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m. during the above days.
18	2nd weekend of June.	Hydro X Tour	H2X Racing Promotions.	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
19	1st Saturday of June	Florida Sport Fishing Association Offshore Fishing Tournament.	Florida Sport Fishing Association.	Port Canaveral, Florida from Sunrise Marina to the end of Port Canaveral Inlet.
20	2nd weekend of June (Saturday and Sunday).	Kingfish Challenge	Ancient City Game Fish Association.	There is a no-wake zone in affect from the St. Augustine City Marina in St. Augustine, Florida out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m.
21	3rd Friday–Sunday of June.	Daytona Beach Grand Prix of the Sea.	Powerboat P1—USA	All waters of the Atlantic Ocean East of Cocoa Beach, Florida encompassed within the following points: Starting at Point 1 in position 29°14′60″ N., 81°00′77″ W.; thence east to Point 2 in position 29°14′78″ N., 80°59′802″ W.; thence south to Point 3 in position 28°13′860″ N., 80°59′76″ W.; thence west to Point 4 in position 29°13′68″ N., 81°00′28″ W.; thence north back to origin.
22	3rd Saturday of July	Halifax Rowing Association Summer Regatta.	Halifax Rowing Association.	Halifax River, Daytona, Florida, south of Memorial Bridge—East Side.
23	3rd week of July	Greater Jacksonville Kingfish Tournament.	Jacksonville Marine Charities, Inc.	Jacksonville, Florida; All waters of the St. Johns River, from lighted buoy 10 (LLNR 2190) in approximate position 30°24′22″ N., 081°24′59″ W. to Lighted Buoy 25 (LLNR 7305).
24	Last weekend of September.	Jacksonville Dragon Boat Festival.	In the Pink Boutique, Inc.	St. John's River, Jacksonville, Florida. In front of the Landing, between the Acosta & Main Street bridges From approximate position 30°19′26″ N., 081°39′47″ W. to approximate position 30°19′26″ N., 81°39′32″ W.
25	2nd week of October	First Coast Head Race.	Stanton Rowing Foundation.	St. Johns River and Arlington River, Jacksonville, Florida, starting near the Arlington Marina and ending on the Arlington River near the Atlantic Blvd. Bridge.
26	1st weekend of November.	Hydro X Tour	H2X Racing Promotions.	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
27	3rd Weekend of November.	Tavares Fall Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
28	2nd Saturday of December.	St. Johns River Christmas Boat Parade.	St. Johns River Christmas Boat Parade, Inc.	St. Johns River, Deland, Florida; Whitehair Bridge, Deland to Lake Beresford.
29	2nd Saturday of December.	Christmas Boat Parade (Daytona Beach/Halifax River).	Halifax River Yacht Club.	Daytona Beach, Florida; Halifax River from Seabreeze Bridge to Halifax Harbor Marina.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
(f) COTP Zone Savannah; Special Local Regulation				
1	May, 2nd weekend, Sunday.	Blessing of the Fleet—Brunswick.	Knights of Columbus—Brunswick.	Brunswick River from the start of the East branch of the Brunswick River (East Brunswick River) to the Golden Isles Parkway Bridge.
2	3rd full weekend of July.	Augusta Southern Nationals Drag Boat Races.	Augusta Southern Nationals.	Savannah River, Augusta, Georgia, from the US Highway 1 (Fifth Street) Bridge at mile 199.5 to Eliot's Fish Camp at mile 197.
3	Last weekend of September.	Ironman 70.3	Ironman	All waters of the Savannah River encompassed within the following points: Starting at Point 1 in position 33°28′44″ N., 81°57′53″ W.; thence northeast to Point 2 in position 33°28′50″ N., 81°57′50″ W.; thence southeast to Point 3 in position 33°27′51″ N., 81°55′36″ W.; thence southwest to Point 4 in position 33°27′47″ N., 81°55′43″ W.; thence northwest back to origin.
4	1st Saturday after Thanksgiving Day in November.	Savannah Harbor Boat Parade of Lights and Fireworks.	Westin Resort, Savannah.	Savannah River, Savannah Riverfront, Georgia, Talmadge bridge to a line drawn at 146 degrees true from Dayboard 62.
5	2nd Saturday of November.	Head of the South Regatta.	Augusta Rowing Club.	Savannah River, Augusta, Georgia; All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51′20″ N., 079°54′06″ W., South along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N., 079°53′49″ W., South along the coast of Mt. Pleasant, SC, to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N., 079°54′39″ W. There will be a temporary Channel Closer from 0730 to 0815 on June 01, 2013 between Wando River Terminal Buoy 3 (LLNR 3305), and Wando River Terminal Buoy 5 (LLNR 3315). The zone will at all times extend 75 yards in front of the lead safety vessel preceding the first race participants; 75 yards behind the safety vessel trailing the last race participants; and at all times extending 100 yards on either side of the race participants and safety vessels.
(g) COTP Zone Charleston; Special Local Regulation				
1	2nd and 3rd weekend of April.	Charleston Race Week.	Sperry Top-Sider	Charleston Harbor and Atlantic Ocean, South Carolina, All waters encompassed within an 800 yard radius of position 32°46′39″ N., 79°55′10″ W., All waters encompassed within a 900 yard radius of position 32°45′48″ N., 79°54′46″ W. All waters encompassed within a 900 yard radius of position 32°45′44″ N., 79°53′32″ W.
2	1st week of May	Low Country Splash	Logan Rutledge	Wando River, Cooper River, Charleston Harbor, South Carolina, including the waters of the Wando River, Cooper River, and Charleston Harbor from Daniel Island Pier, in approximate position 32°51′20″ N., 079°54′06″ W., south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N., 079°53′49″ W., south along the coast of Mt. Pleasant, South Carolina, to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N., 079°54′39″ W., and extending out 150 yards from shore.
3	2nd week of June	Beaufort Water Festival.	City of Beaufort	Atlantic Intracoastal Waterway, Bucksport, South Carolina; All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.5″ N., 079°05′36.8″ W.; thence west to point 2 in position 33°39′12.2″ N., 079°05′47.8″ W.; thence south to point 3 in position 33°38′39.5″ N., 079°05′37.4″ W.; thence east to point 4 in position 33°38′42.3″ N., 079°05′30.6″ W.; thence north back to origin.

TABLE TO § 100.701—Continued

No.	Date	Event	Sponsor	Location
4	3rd week of September.	Swim Around Charleston.	Kathleen Wilson	Wando River, main shipping channel of Charleston Harbor, Ashley River, Charleston, South Carolina; A moving zone around all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N., 79°54′27″ W., crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50′14″ N., 80°01′23″ W.
5	2nd week of November.	Head of the South ...	Augusta Rowing Club.	Upper Savannah River mile marker 199 to mile marker 196, Georgia.
6	2nd week December	Charleston Harbor Christmas Parade of Boats.	City of Charleston	Charleston harbor, South Carolina, from Anchorage A through Shutes Folly, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina.

Dated: January 11, 2016.

S.A. Buschman,

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

[FR Doc. 2016–01032 Filed 1–20–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No FWS–HQ–ES–2015–0176; 4500030113]

RIN 1018–A104

Endangered and Threatened Wildlife and Plants; Proposed Removal of the Scarlet-Chested Parakeet and Turquoise Parakeet From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our September 2, 2003, proposed rule to remove the scarlet-chested parakeet (*Neophema splendida*) and the turquoise parakeet (*Neophema pulchella*) from the List (List) of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended. We are taking this action to determine whether removing these species from the List is still warranted, and to ensure we get the best scientific and commercial information available.

DATES: We will consider comments received or postmarked on or before February 22, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter FWS–HQ–ES–2015–0176, which is the docket number for this rulemaking. Then, click the Search button. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2015–0176, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Ecological Services, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2171; facsimile, 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In our September 2, 2003 proposed rule (68 FR 52169), we proposed to remove the scarlet-chested parakeet (*Neophema splendida*) and the turquoise parakeet (*Neophema pulchella*) from the List of Endangered and Threatened Wildlife under the Act, because the endangered designation no longer correctly reflected the current conservation status of these birds. Our review of the status of the species at the time showed that the wild populations of these species were stable and increasing, with more than 20,000 breeding-age turquoise parakeets and 10,000 breeding-age scarlet-chested parakeets found throughout their range. Furthermore, trade in wild caught specimens was strictly limited, and the species' were protected through domestic regulation within the range country (Australia), as well as through additional national and international treaties and laws. Currently, the Act prohibits the import, export and interstate and foreign commerce of these species, unless the individual can prove that the otherwise prohibited act enhances the propagation or survival of the species, or it is for scientific research. Removal of these species from the List means that the protections of the Act will no longer apply. However, protections under the Convention on International Trade of Endangered Fauna and Flora the Lacey Act and the Wild Bird Conservation Act (for wild-caught specimens only) would remain unchanged.

For more information on previous Federal actions concerning the scarlet-chested and turquoise parakeet, or information regarding the species' biology, status, distribution, and habitat, refer to the proposed rule published in the **Federal Register** on September 2, 2003 (68 FR 52169), which is available online at *http://www.gpo.gov/fdsys/granule/FR-2003-09-02/03-22225,* or by mail from the U.S. Fish and Wildlife Service in Falls Church, VA (see **FOR FURTHER INFORMATION CONTACT**).

Public Comments

We will accept written comments and information during this reopened comment period on our proposal to remove the scarlet-chested parakeet (*Neophema splendida*) and the turquoise parakeet (*Neophema pulchella*) from the List. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2015–0176, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Falls Church, VA (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members in the Ecological Services Program, U.S. Fish and Wildlife Service, Falls Church, VA.

Authority

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

Dated: January 8, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–01142 Filed 1–20–16; 8:45 am]

BILLING CODE 4333–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BF05

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 109 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to the Secretary of Commerce (Secretary) for review. If approved, Amendment 109 would amend the FMP to support increased participation in local small-scale groundfish fisheries managed under the Western Alaska Community Development Quota (CDQ) Program. Specifically, Amendment 109 would amend the description of observer coverage requirements in the FMP to allow catcher vessels less than or equal to 46 feet (ft) (14.0 meters (m)) length overall (LOA) using hook-and-line gear to be placed in the partial observer coverage category when groundfish CDQ fishing. In addition, Amendment 109 would exempt operators of registered catcher vessels greater than 32 ft (9.8 m) LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry a License Limitation Program (LLP) license when conducting groundfish CDQ fishing. Amendment 109 also would update descriptive information about the CDQ Program in the FMP and make several editorial revisions. The objective of Amendment 109 is to facilitate increased participation by residents of CDQ communities in the groundfish CDQ fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI), and to support economic development in western Alaska. This action would benefit the six CDQ groups and the operators of local small hook-and-line catcher vessels that the CDQ groups authorize to participate in the groundfish CDQ fisheries by reducing the costs of participating in those fisheries.

DATES: Submit comments on or before March 21, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0060, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0060,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis/Environmental Assessment prepared for this action (collectively the ''Analysis'') are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7389.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery and Conservation Act (Magnuson-Stevens Act) in section 304(a) requires that each regional fishery management council submit an amendment to a fishery management plan for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act in section 304(a) also requires that the Secretary, upon receiving an amendment to a fishery management plan, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. The Council has submitted Amendment 109 to the Secretary for review. This notice announces that proposed Amendment 109 to the FMP is

available for public review and comment.

Amendment 109 to the FMP was adopted by the Council in February 2015. The objective of Amendment 109 is to facilitate increased participation by residents of CDQ communities in the groundfish CDQ fisheries in the BSAI, thereby supporting economic development in western Alaska. This action would benefit the six CDQ groups and the operators of local small hook-and-line catcher vessels that the CDQ groups authorize to participate in the groundfish CDQ fisheries by reducing the costs of participating in those fisheries.

If approved by the Secretary, Amendment 109 would amend Section 3.2.4.1 of the FMP to revise the description of observer coverage requirements to allow catcher vessels less than or equal to 46 ft LOA using hook-and-line gear to be placed in the partial observer coverage category when groundfish CDQ fishing, and make several editorial revisions. The editorial revisions to Section 3.2.4.1 would replace the terms ''<100% observer coverage'' and ''≥100% observer coverage'' with the more accurate terms ''partial observer coverage category'' and ''full observer coverage category,'' and correct capitalization and grammatical errors. In addition, Amendment 109 would amend Section 3.3.1 of the FMP to add registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing to the list of exemptions from the LLP license requirements. Amendment 109 also would update descriptive information about the CDQ Program in Section 4.5.4 of the FMP, and make other miscellaneous revisions to the FMP consistent with these amendments.

Background

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purpose of the CDQ Program is to provide western Alaska communities with the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska. Regulations establishing the CDQ Program were first implemented in 1992. Congress amended the Magnuson-Stevens Act in 1996 through the Sustainable Fisheries Act (Public Law 104–297) to include specific provisions governing the CDQ Program.

The CDQ Program also is a catch share program that allocates a portion of the BSAI total allowable catch limits for specific target crab and groundfish species, a portion of the commercial catch limits for halibut assigned by the International Pacific Halibut Commission, and portions of certain prohibited species catch (PSC) limits to the CDQ Program, referred to as prohibited species quota (PSQ). These amounts are then further allocated among the six CDQ groups as allocations that may be transferred among the CDQ groups (with the exception of Chinook salmon PSQ, which may be transferred to other authorized American Fisheries Act entities). The primary focus of Amendment 109 is on the halibut CDQ allocations, the Pacific cod CDQ allocations, and allocations of the halibut PSQ needed to support the Pacific cod CDQ fisheries.

There are 65 communities eligible to participate in the CDQ Program. Each community is represented by one of the six CDQ groups. The 65 eligible communities and the CDQ groups are identified in the Magnuson-Stevens Act at section 305(i)(1)(D) and in Table 7 to 50 CFR part 679. CDQ groups use the revenue derived from the harvest of their fisheries allocations as a basis for funding economic development activities and for providing employment opportunities. The successful harvest of CDQ Program allocations is integral to achieving the goals of the CDQ Program and the community development plans of each CDQ group. One of the most effective ways the CDQ groups provide benefits to residents of their CDQ communities is to use the CDQ allocations to create local small-scale commercial fisheries. For purposes of this notice, ''local small-scale'' means CDQ fisheries prosecuted by catcher vessels that are less than or equal to 46 ft LOA, using hook-and-line gear, and homeported or operated from CDQ communities. These local small-scale CDQ fisheries provide opportunities for residents of the CDQ communities to earn income from the sale of the commercially harvested fish.

In October 2013, the Council received a proposal from the representatives of all six of the CDQ groups to revise certain Federal regulations that restrict the ability of fishermen in CDQ communities to harvest allocations of Pacific cod CDQ with small hook-and-line catcher vessels. In particular, representatives for the CDQ groups identified full observer coverage and LLP license requirements as limitations on the ability of CDQ community fishermen to retain Pacific cod CDQ when participating in the halibut CDQ fisheries or to develop separate local small-scale directed fisheries for Pacific cod CDQ. In addition, the representatives reported that recent declines in halibut CDQ allocations could prevent the CDQ Program from meeting its economic development objectives, and the ability to develop a local small-scale Pacific cod CDQ fishery would help to offset the lost halibut harvesting and processing opportunities in the CDQ communities.

The Council considered the CDQ groups' proposal and examined several alternative ways to implement it, ultimately adopting its preferred alternative in February 2015. The Council's preferred alternative would 1) place catcher vessels less than or equal to 46 ft LOA using hook-and-line gear in the partial observer coverage category when they are groundfish CDQ fishing; 2) exempt operators of registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry an LLP license when groundfish CDQ fishing (catcher vessels less than or equal to 32 ft LOA already are exempt from the LLP requirements in the BSAI); 3) allow halibut caught by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing to accrue as either halibut CDQ, halibut individual fishing quota, or halibut PSC, on a trip-by-trip basis; and 4) implement new in-season management and catch accounting procedures to properly account for the harvest of groundfish and halibut and the accrual of halibut PSC by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when halibut or groundfish CDQ fishing.

The Council's proposed revisions to the observer coverage and LLP license requirements require both an FMP amendment (Amendment 109) and regulatory amendments to regulations implementing the FMP at 50 CFR part 679. The remaining elements of the Council's preferred alternative require only regulatory amendments for implementation. The forthcoming proposed rule to implement Amendment 109 and the regulatory amendments recommended by the Council also would revise regulations at 50 CFR part 679 to make miscellaneous editorial revisions to 50 CFR part 679. All of the proposed changes to the regulations will be described in detail in the proposed rule.

The Council's preferred alternative is intended to provide a regulatory structure for the harvest of groundfish CDQ that provides opportunities for the

small catcher vessels that fish on behalf of a CDQ group to retain additional Pacific cod and other groundfish in the halibut CDQ fishery, or to develop separate Pacific cod or other groundfish CDQ fisheries without triggering LLP and full observer coverage requirements. The Council's preferred alternative also is intended to provide additional fishing opportunities to small catcher vessel operators in CDQ communities who have had reduced harvest opportunities due to lower halibut abundance and the resulting lower CDQ allocations, and to provide the regulatory flexibility necessary for the CDQ groups to develop diversified local small-scale halibut and groundfish fisheries. The following provides additional information on the two main provisions of Amendment 109.

Observer Coverage

Amendment 109 would place hook-and-line catcher vessels less than or equal to 46 ft LOA that are groundfish CDQ fishing in the partial observer coverage category. This proposed change would remove a significant financial and operational barrier to further development of the small vessel groundfish CDQ fisheries. In making this recommendation, the Council recognized that it is likely that few CDQ small vessels would be required to carry an observer under the existing partial observer coverage deployment strategy and deployment rates for vessels within the partial observer coverage category. To establish effective catch accounting for hook-and-line catcher vessels less than or equal to 46 ft LOA that are groundfish CDQ fishing, the Council recommended that NMFS modify its catch accounting procedures and use estimates of halibut PSC and other at-sea discards for these small vessels based on the best available observer data collected from observed vessels. These recommended revisions are described in more detail in the Analysis and the forthcoming proposed rule for Amendment 109.

LLP Exemption

The Council determined that a new LLP exemption for registered hook-and-line catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA when groundfish CDQ fishing was necessary to encourage the retention and sale of groundfish CDQ in the halibut fisheries and to encourage the development of directed fisheries for groundfish CDQ by vessel operators delivering catch to processors located in CDQ communities. Exemption from the LLP would remove a barrier created by the limited number of LLP licenses available for small hook-and-line catcher vessels fishing on behalf of a CDQ group. The Council determined that this limited exemption to the LLP license requirements would not undermine the objectives of the LLP because it would apply only to registered small catcher vessels when groundfish CDQ fishing. Because the CDQ groups receive specific harvest allocations, the Council determined that providing a limited exemption to registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA when groundfish CDQ fishing would not result in increased harvests overall in the BSAI groundfish fisheries, or contribute to a ''race for fish'' among fishery participants.

NMFS is soliciting public comments on proposed Amendment 109 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 109, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 109 to be considered in the approval/disapproval decision on Amendment 109. NMFS will consider all comments received by the end of the comment period on Amendment 109, whether specifically directed to the FMP amendment or the proposed rule, in the approval/disapproval decision on Amendment 109. Comments received after that date may not be considered in the approval/disapproval decision on Amendment 109. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: January 14, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–01034 Filed 1–20–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 81, No. 13

Thursday, January 21, 2016

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.

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The US African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

DATES: The meeting date is Tuesday, February 2, 2016, 10:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting location is OPIC, 1100 New York Ave. NW., Washington, DC 20527.

FOR FURTHER INFORMATION CONTACT: Julia Lingham, 202–233–8811.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: January 14, 2016.

Doris Mason Martin,

General Counsel.

[FR Doc. 2016–01077 Filed 1–20–16; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Agency's (RHS) intention to request an extension of a currently approved information collection in support of the program for 7 CFR part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers.''

DATES: Comments on this notice must be received by March 21, 2016, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Anita Outen, Community Programs, Rural Housing Service, U.S. Department of Agriculture, Stop 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1507, Email: Anita. *Outen@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1951, subpart F, ''Analyzing Credit Needs and Graduation of Borrowers''.

OMB Number: 0575–0093.

Expiration Date of Approval: June 30, 2016.

Type of Request: Extension of currently approved information collection.

Abstract: Section 333 of the Consolidated Farm and Rural Development Act (CONACT) (7 U. S.C. 1983) requires the Agencies to ''graduate'' their direct loan borrowers to other credit when they are able to do so. Graduation is required because the Government loans are not to be extended beyond a borrower's need for subsidized rates or Government credit. Borrowers must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available, the Agencies will continue to review the account for possible graduation at periodic intervals. The information collected to carry out these statutory mandates is financial data such as amount of income, operating expenses, asset values and liabilities. This information collection is then submitted by the Agencies to private creditors.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Public bodies, Not for Profits, or Indian Tribes.

Estimated Number of Respondents: 256.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 266.

Estimated Total Annual Burden on Respondents: 522.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, 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 Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) 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, U. S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250.

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: January 13, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–01074 Filed 1–20–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–147–2015]

Approval of Subzone Status, MannKind Corporation, Danbury, Connecticut

On November 3, 2015, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Bridgeport Port Authority, grantee of FTZ 76, requesting subzone status subject to the existing activation limit of FTZ 76, on behalf of MannKind Corporation in Danbury, Connecticut.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (80 FR 69193, November 9,

2015). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 76B is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 76's 476-acre activation limit.

Dated: January 13, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–01178 Filed 1–20–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Chemical Weapons Convention Declaration and Report Handbook and Forms

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

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 21, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention Implementation Act of 1998 and Commerce Chemical Weapons Convention Regulations (CWCR) specify the rights, responsibilities and obligations for submission of declarations and reports and inspections of certain chemical facilities. This information is required for the United States to comply with the Chemical Weapons Convention (CWC), an international arms control treaty.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0091.

Form Number(s): Form 1–1, Form 1–2, Form 1–2A, Form 1–2B, etc.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 779.

Estimated Time per Response: 10 minutes—12 hours per response.

Estimated Total Annual Burden Hours: 14,813.

Estimated Total Annual Cost to Public: $51,300.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–01030 Filed 1–20–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE234

Taking of Marine Mammals Incidental to Specified Activities; Coupeville Timber Towers Preservation Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Washington State Department of Transportation (WSDOT) for an authorization to take small numbers of 10 species of marine mammals, by Level B harassment, incidental to proposed construction activities for the Coupeville Timber Tower Preservation Project in Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to WDOT 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 February 22, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, 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 is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

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* 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.

A copy of the application may be obtained by writing to the address specified above or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. 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 June 9, 2015, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to construction associated with the Coupeville Timber Towers Preservation Project at the Coupeville Ferry Terminal in Washington State, between July 15, 2016, and July 14, 2017. On September 22, WSDOT submitted a revised IHA application which incorporated rigorous monitoring and mitigation measures that would prevent the take of humpback whales and the Southern Resident killer whales, which are listed under the Endangered Species Act (ESA). The revised IHA application requests the take of small numbers of 10 marine mammal species incidental to the Coupeville Timber Towers Preservation Project. NMFS determined that the IHA application was complete on October 1, 2015. NMFS is proposing to authorize the Level B harassment of the following marine mammal species/stocks: harbor seal, California sea lion, Steller sea lion (eastern Distinct Population Segment, or DPS), northern elephant seal, killer whale (West Coast transient stock), gray whale, minke whale, harbor porpoise, Dall's porpoise, and Pacific white-sided dolphin.

Description of the Specified Activity

Overview

WSDOT proposes to conduct Coupeville Timber Towers Preservation Project at the Washington Coupeville Ferry Terminal on Whidbey Island, Washington (Figure 1–2 of the IHA application), to upgrade the existing transfer span towers at the Coupeville Ferry Terminal.

Eight 24-inch diameter hollow steel piles would be installed to support the towers, and concrete caps will be installed on top of the towers in order to support the headframe that houses the pulleys for the transfer span cables. Five to seven 12-inch timber piles would be removed to allow room for the new steel piles to be installed. The remaining tower timber piles would remain in place to help support the structure. Up to 6 temporary 24-inch diameter hollow steel piles would be installed to support the transfer span and towers cable systems during construction. All pile installation would be using impact pile driving.

Temporary steel piles would be removed with a vibratory hammer. Timber piles would be removed with a vibratory hammer or by direct pull using a chain wrapped around the pile. Although timber piles may be removed by means unlikely to result in harassment of marine mammals, we assume for purposes of this analysis that all timber piles would be removed with a vibratory hammer. The crane operator would take measures to reduce turbidity, such as vibrating the pile slightly to break the bond between the pile and surrounding soil, and removing the pile slowly; or if using direct pull, keep the rate at which piles are removed low enough to meet regulatory turbidity limit requirements. If piles are so deteriorated they cannot be removed using either the vibratory or direct pull method, the operator would use a clamshell to pull the piles from below the mudline. All work would occur in water depths between -10 and -20 feet mean lower-low water.

Dates and Duration

The number of days it would take to complete the project depends on the difficulty in removing and installing piles. Only one hammer (either vibratory or impact) will be in operation at a time. Durations are conservative, and the actual amount of time to remove and install will likely be less. Duration estimates are:

Vibratory removal of timber piles would take approximately 30 minutes per pile, with 5–7 piles removed over two days.

Impact driving of each temporary 24-inch steel pile would take approximately 15 minutes, (approximately 700 strikes per pile), with up to 6 piles installed over 2 days. Temporary piles do not need to be impacted as deep as permanent piles, therefore the duration is shorter.

Impact driving of each permanent 24-inch steel pile would take approximately 30 minutes, (approximately 1,400 strikes per pile), with 8 piles installed over 2 days.

Vibratory removal of each temporary 24-inch steel pile would take approximately 30 minutes, with up to 6 piles removed over 2 days.

A summary of the pile to be removed and installed is provided in Table 1.

TABLE 1—SUMMARY OF PILES TO BE REMOVED AND DRIVEN FOR THE COUPEVILLE TIMBER TOWERS PRESERVATION PROJECT

Size	Install or remove/pile type	Number of piles	Hammer noise type	Duration (minutes per pile)	Duration (hours)	Duration (days)
12-inch	Remove timber (existing)	5–7	Vibratory	30	3.5	2
24-inch	Install steel (temporary)	6	Impact	15	1.5	2
24-inch	Install steel (permanent)	8	Impact	30	4	2
24-inch	Remove steel (temporary)	6	Vibratory	30	3	2
Totals		5–7 existing removed			12	8

TABLE 1—SUMMARY OF PILES TO BE REMOVED AND DRIVEN FOR THE COUPEVILLE TIMBER TOWERS PRESERVATION PROJECT—Continued

Size	Install or remove/pile type	Number of piles	Hammer noise type	Duration (minutes per pile)	Duration (hours)	Duration (days)
	....	6 temporary installed/removed. 8 permanent installed.				

Specified Geographic Region

The proposed Coupeville Timber Towers Preservation Project would be conducted at the Coupeville Ferry Terminal, located on Whidbey Island, Island County, Washington (Figure 1–2 of the IHA application). See WSDOT's application for further information regarding the specified geographic region.

Detailed Description of Coupeville Timber Towers Preservation Project

The following construction sequence is anticipated:

- Remove timber piles
- Install temporary steel piles
- Install permanent steel piles
- Install concrete caps
- Transfer headframe to new pile caps
- Remove temporary piles

Detailed descriptions of these activities are provided below.

(1) Vibratory Hammer Removal

Vibratory hammer extraction is a common method for removing timber and steel piling. A vibratory hammer is suspended by cable from a crane and derrick, and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane.

Once unseated, the crane continues to raise the hammer and pulls the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland. Figure 1–4 shows a timber pile being removed with a vibratory hammer.

(2) Direct Pull and Clamshell Removal

Older timber pilings are prone to breaking at the mudline because of damage from marine borers and vessel impacts. In some cases, removal with a vibratory hammer is not possible if the pile is too fragile to withstand the hammer force. Broken or damaged piles may be removed by wrapping the piles with a cable and pulling them directly from the sediment with a crane.

If the piles break below the waterline, the pile stubs will be removed with a clamshell bucket, a hinged steel apparatus that operates like a set of steel jaws. The bucket will be lowered from a crane and the jaws will grasp the pile stub as the crane pulled up. The broken piling and stubs will be loaded onto the barge for off-site disposal. Clamshell removal will be used only if necessary, as it will produce temporary, localized turbidity impacts. Turbidity will be kept within required regulatory limits. Direct pull and clamshell removal do not produce noise that could impact marine mammals. Direct pull and clamshell removal of piles are not expected to affect marine mammals.

(3) Impact Hammer Installation

Impact hammers can be used to install plastic/steel core, wood, concrete, or steel piles. An impact hammer is a steel device that works like a piston. Impact hammers are usually large, though small impact hammers are used to install small diameter plastic/steel core piles. Impact hammers have guides (called a lead) that hold the hammer in alignment with the pile while a heavy piston moves up and down, striking the top of the pile, and drives it into the substrate from the downward force of the hammer on the top of the pile.

To drive the pile, the pile is first moved into position and set in the proper location using a choker cable or vibratory hammer. Once the pile is set in place, pile installation with an impact hammer can take less than 15 minutes under good conditions, to over an hour under poor conditions (such as glacial till and bedrock, or exceptionally loose material in which the pile repeatedly moves out of position).

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*) (transient and Southern Resident stocks), Eastern North Pacific gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dalli*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). The Western North Pacific gray whale has been observed off the Northwest Pacific, however, the occurrence of this gray whale population in the vicinity of the project area is very unlikely.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Species	ESA Status	MMPA Status	Occurrence
Harbor Seal	Not listed	Non-depleted	Frequent.
California Sea Lion	Not listed	Non-depleted	Frequent.
Northern Elephant Seal	Not listed	Non-depleted	Occasional.
Steller Sea Lion (eastern DPS)	Not listed	Under review	Rare.
Harbor Porpoise	Not listed	Non-depleted	Frequent.
Dall's Porpoise	Not listed	Non-depleted	Occasional.
Pacific White-sided dolphin	Not listed	Non-depleted	Occasional.
Killer Whale	Endangered (Southern Resident)	Depleted	Occasional.
Killer whale	Not listed (transient)	Non-depleted	Occasional.
Gray Whale	Delisted (Eastern North Pacific)	Unclassified	Occasional.
Humpback Whale	Endangered	Depleted	Rare.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY—Continued

Species	ESA Status	MMPA Status	Occurrence
Minke Whale	Not listed	Non-depleted	Rare.

General information on the marine mammal species found in Washington coastal waters can be found in Caretta *et al.* (2015), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/pacific_sars_2014_final_noaa_swfsc_tm_549.pdf.* Refer to that document for information on these species. A list of marine mammals in the vicinity of the action and their status are provided in Table 2. Specific information concerning these species in the vicinity of the proposed action area is provided in detail in the WSDOT's IHA application. Currently, NMFS is conducting a review of the discrete population segments (DPS) of humpback whales for potential delisting, and the Northeast Pacific humpback whale could be delisted from the ESA list if the review determines that this population has recovered significantly.

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* pile removal and pile driving) may impact marine mammals. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 11 marine mammal species (7 cetacean and 4 pinniped species) are likely to occur in the proposed seismic survey area. Of the 7 cetacean species likely to occur in the proposed project area, 3 are classified as low-frequency cetaceans (*i.e.,* humpback, gray, and minke whales), 2 are classified as mid-frequency cetaceans (*i.e.,* killer whale and Pacific white-sided dolphin), and 2 are classified as high-frequency cetaceans (*i.e.,* harbor and Dall's porpoises) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

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, hearing impairment could result in the reduced ability of marine mammals to detect or interpret important sounds. Repeated noise exposure that causes TTS could lead to PTS.

Experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of one hammer strike for pile driving is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of sound exposure level (SEL) than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

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 is the obscuring of sounds of interest by other sounds, often at similar frequencies. Masking generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. 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.

Masking occurs at the frequency band which the animals utilize. Since noise generated from in-water vibratory pile removal and driving is mostly concentrated at low frequency ranges, it may have little effect on high-frequency echolocation sounds by odontocetes (toothed whales), which may hunt California sea lion and harbor seal. However, the lower frequency man-made noises are more likely to affect the detection of communication calls and other potentially important natural sounds, such as surf and prey noise. The noises may also affect communication signals when those signals 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 impact the species at community, population, 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 in the world's oceans have increased by as much as 20 dB (more than 3 times, in terms of SPL) 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 and pile removal and driving, contribute to the elevated ambient noise levels, thus intensifying masking.

Finally, in addition to TS and masking, 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 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 therefore difficult to predict (Southall *et al.* 2007).

The activities of workers in the project area may also cause behavioral reactions by marine mammals, such as pinnipeds flushing from the jetty or pier or moving farther from the disturbance to forage. However, observations of the area show that it is unlikely that more than 10 to 20 individuals of pinnipeds would be present in the project vicinity at any one time. Therefore, even if pinnipeds were flushed from the haul-out, a stampede is very unlikely, due to the relatively low number of animals onsite. In addition, proposed mitigation and monitoring measures would minimize the startle behavior of pinnipeds and prevent the animals from flushing into the water.

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 could be expected to be biologically significant if the change affects growth, survival, or reproduction. Some of these types of significant behavioral modifications include: Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale strandings due to exposure to military mid-frequency tactical sonar); habitat abandonment due to loss of desirable acoustic environment; and cessation of feeding or social interaction.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than non-pulse signals (such as noise from pile driving) (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on the abilities of marine mammals to feed in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

Water and Sediment Quality

Short-term turbidity is a water quality effect of most in-water work, including pile driving. WSDOT must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area.

Roni and Weitkamp (1996) monitored water quality parameters during a pier replacement project in Manchester, Washington. The study measured water quality before, during and after pile driving. The study found that construction activity at the site had ''little or no effect on dissolved oxygen, water temperature and salinity'', and turbidity (measured in nephelometric turbidity units [NTU]) at all depths nearest the construction activity was typically less than 1 NTU higher than stations farther from the project area throughout construction.

Similar results were recorded during pile removal operations at two WSDOT ferry facilities. At the Friday Harbor terminal, localized turbidity levels (from three timber pile removal events) were generally less than 0.5 NTU higher than background levels and never exceeded 1 NTU. At the Eagle Harbor maintenance facility, local turbidity levels (from removal of timber and steel piles) did not exceed 0.2 NTU above background levels. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980).

Cetaceans are not expected to be close enough to the Coupeville Ferry Terminal to experience turbidity, and any pinnipeds will be transiting the terminal area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is

expected to be discountable to marine mammals.

Passage Obstructions

Pile removal and driving at the project site will not obstruct movements of marine mammals. Construction at Coupeville will occur within 35 m of the shoreline, leaving 5.5 km of Admiralty Inlet for marine mammals to pass unaffected by construction noise.

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 WSDOT's proposed Coupeville Timber Towers Preservation Project, WSDOT worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated zones of influence (ZOI) corresponding to NMFS' current Level B harassment thresholds and, if marine mammals with the ZOI appear disturbed by the work activity, to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or TTS to marine mammals would occur and ensuring that Level B behavioral harassment of marine mammals would be reduced to the lowest level practicable.

Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between July 15, 2016, and February 15, 2017.

Underwater Noise Attenuation Device

An air bubble curtain system or other noise attenuation device would be employed during impact installation or proofing of steel piles unless the piles are driven on dry areas.

Establishment of Exclusion Zone and Level B Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WSDOT would establish Level A exclusion zones and Level B zones of influence (ZOIs). The received underwater sound pressure levels (SPLs) within the exclusion zone would be 190 dB (rms) re 1 μPa and above for pinnipeds and 180 dB (rms) re 1 μPa and above for cetaceans. The Level B ZOIs would encompass areas where received underwater SPLs are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulse noise sources (vibratory pile removal), respectively.

Based on in-water measurements at the WSDOT Port Townsend Ferry Terminal (WSDOT 2011a), removal of 12-in timber piles generated 149 to 152 dB (rms) re 1 μPa with an overall average value of 150 dB (rms) re 1 μPa measured at 16 m. A worst-case noise level for vibratory removal of 12-in timber piles would be 152 dB (rms) re 1 μPa at 16 m.

Based on in-water measurements at the WSDOT Port Townsend Ferry terminal, impact pile driving of 24-in steel piles ranged from 172 to185 dB (rms) re 1 μPa measured at 10 m during the use of an air bubble curtain (WSDOT 2014a). An air bubble curtain would be used to attenuate steel pile impact driving noise during this project. A worst-case noise level for impact driving of 24-in steel piles would be 185 dB (rms) re 1 μPa at 10 m.

Data for vibratory removal of 24-inch temporary steel piles is not available, so it is conservatively assumed to be the same as vibratory driving. Based on in-water measurements at the same location as the activity considered here (previously known as the WSDOT Keystone Ferry Terminal), vibratory driving of 24-in steel piles ranged from 164 to 176 dB (rms) re 1 μPa with an overall average value of 171 dB (rms) re 1 μPa. Distances from hydrophone to pile ranged between 6 and 11 m (WSDOT 2010a). A worst-case noise level for vibratory removal of 24-in steel piles will be 176 dB (rms) re 1 μPa at 6 m.

Using a simple practical spreading model (sound transmission loss of 4.5dB per doubling distance) to determine the distance where underwater sound will attenuate to the 120 dB (rms) re 1 μPa threshold, the ZOIs are calculated below:

- 152 dB (rms) re 1 μPa at 16 m (12-in timber vibratory pile removal): ~2.3 km/1.4 mi
- 176 dB (rms) re 1 μPa at 6 m (24-in steel vibratory pile removal): ~32 km/20 mi (land is reached at ~31 km/19 mi)

The vibratory pile removal source levels do not exceed the Level A harassment criteria.

Using 185 dB (rms) re 1 μPa at 10 m for 24-in impact pile driving and the practical spreading loss model, the distances to the thresholds are calculated:

- the 190 dB (rms) re 1 μPa pinniped Level A harassment exclusion zone is reached within 5 m/15 ft.
- the 180 dB (rms) re 1 μPa cetacean Level A harassment exclusion zone is reached within 22 m/72 ft.
- the 160 dB (rms) re 1 μPa Level B ZOI is reached within 464 m/1,523 ft.

The more conservative cetacean injury zone (22 m/72 ft.) will be used to set the 24-inch steel Zone of Exclusion (ZOE).

A summary distances and areas of the exclusion zones for Level A harassment and ZOI for Level B harassment is provide in Table 3 below.

TABLE 2—DISTANCES AND AREAS OF LEVEL A AND LEVEL B HARASSMENT ZONES FOR VIBRATORY AND IMPACT PILE DRIVING ACTIVITIES

Pile driving method	Distance to 190 dB (m)	Distance to 180 dB (m)	Distance to 160 dB (m)	Distance to 120 dB (km)	ZOI size (km^2)
Vibratory pile removal (12-in timber)	NA	NA	NA	2.3	6.4
Vibratory pile removal (24-in steel)	NA	NA	NA	32	140
Impact driving (24-in steel pile)	5	22	464	NA	1.5

Soft Start

A ''soft-start'' technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures.

For vibratory hammers, the contractor shall initiate the driving for 15 seconds

at reduced energy, followed by a 1 minute waiting period. This procedure shall be repeated two additional times before continuous driving is started. This procedure shall also apply to vibratory pile removal.

For impact driving, an initial set of three strikes would be made by the hammer at 40-percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets at 40-percent energy, with 1-minute waiting periods, before initiating continuous driving.

Shutdown and Power-Down Measures

WSDOT shall implement shutdown if a marine mammal is sighted within or approaching the Level A exclusion zone. In-water construction activities shall be suspended until the marine mammal is sighted moving away from the exclusion zone, or if a large cetacean is not sighted for 30 minutes or if a small cetacean or pinniped is not sighted for 15 minutes after the shutdown.

In addition, WSDOT would implement shutdown measure when Southern Resident killer whales (as identified by Orca Network, NMFS, or other qualified source) or when humpback whales are detected or are notified by local marine mammal researchers to approach the ZOIs during pile removal and pile driving, therefore preventing Level B takes of Southern Resident killer whales and humpback whales.

If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

Finally, WSDOT would implement shutdown or measure to prevent Level B takes when the take of any other species or stock of marine mammal is approaching the take limited authorized under the IHA (if issued).

Coordination With Local Marine Mammal Research Network

Prior to the start of daily pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. Daily sightings information can be found on the Orca Network Twitter site (*https://twitter.com/orcanetwork*), which would be checked several times a day.

The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The Northwest Fisheries Science Center of NMFS, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

''Sightings'' information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottom-fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other 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
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization (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. WSDOT submitted a marine mammal monitoring plan as part of the IHA application. It can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

WSDOT shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Coupeville timber towers preservation project. During pile removal and installation, land-based and vessel-based PSOs would monitor the area from the best observation points available. The number of PSOs will be based on the sizes of ensonified zones and to ensure that the entire zones are monitored.

- During 24-inch steel impact pile driving, two land-based PSOs monitors will monitor the ZOE and ZOI. Pile driving will be paused if any marine mammal approaches the exclusion zone(s), which equate to the 22-m Level A harassment zone for those species for which take is authorized and to the larger Level B harassment zone for all other species.
- During vibratory timber pile removal, two land-based PSOs will monitor the ZOI, as shown in Figure 2 of WSDOT's Marine Mammal Monitoring Plan.
- During 24-inch vibratory pile removal, 7 land-based PSOs and one monitoring boat with a PSO and boat operator will monitor the ZOI, as shown in Figure 3 of WSDOT's Marine Mammal Monitoring Plan.
- If weather prevents safe use of the boat in the main channel of the ZOI, the boat will be used in other areas of the ZOI that are safe, such as the southwest corner of the ZOI, where lack of public access prevents stationing a land-based PSO.

The PSOs would observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. If a PSO observes a marine mammal within or approaching the exclusion zone, the PSO would notify the work crew to initiate shutdown measures.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). To verify the required monitoring distance, the exclusion zones and ZOIs will be determined by using a range finder or hand-held global positioning system device.

During the project, in-water measurements of vibratory pile removal and driving and impact pile driving noises may be taken to determine if the vibratory ZOIs need to be modified.

Proposed Reporting Measures

WSDOT would be required to submit a final monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. WSDOT shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the vicinity of the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

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].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WSDOT's proposed Coupeville timber tower preservation project.

As mentioned earlier in this document, currently NMFS uses 120 dB re 1 μPa and 160 dB re 1 μPa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 4 summarizes the current NMFS marine mammal take criteria.

TABLE 4—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa (cetaceans). 190 dB re 1 μPa (pinnipeds). root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 μPa (rms).
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 μPa (rms).

As explained above, exclusion zones and ZOIs will be established that encompass the areas where received underwater sound pressure levels (SPLs) exceed the applicable thresholds for Level A and Level B harassments, respectively.

With the exception of harbor seals, Steller sea lion and harbor porpoise, it is anticipated that all of the marine mammals that enter the Level B acoustical harassment ZOIs will be exposed to pile driving and removal noise only as they are transiting the area. Only harbor seals, Steller sea lion and harbor porpoise are expected to forage and haulout in the Coupeville ZOIs with any frequency and could be exposed multiple times during a project.

As mentioned earlier, the distances to NMFS threshold for Level B (harassment) take for impact pile driving and vibratory pile removal were estimated as follows:

- *ZOI–1:* the 160 dB (rms) impact pile driving harassment threshold for 24″ steel = 464 m/1,523 ft.
- *ZOI–2:* the 120 dB (rms) vibratory harassment threshold for 12-inch timber vibratory pile removal: = ~2.3 km/1.4 mi.
- *ZOI–3:* the 120 dB (rms) vibratory harassment threshold for 24-inch steel vibratory pile removal: = ~32 km/20 mi (land is reached at ~31 km/19 mi).

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The 90 dB (rms) re 20 μPa harbor seal threshold was estimated at 126 ft/38 m, and the 100 dB (rms) re 20 μPa sea lion threshold at 40 ft/12 m.

The closest documented harbor seal haulout is the Rat Island/Kilisut Harbor Spit haulout in Port Townsend Bay, 5.5 miles southwest. The closest documented California sea lion haulout is a channel marker buoy located off Whidbey Island's Bush Point, 9 miles south. The closest documented Steller sea lion haulout is Craven Rock haulout, east of Marrowstone Island 5.5 miles south of the ferry terminal.

In-air disturbance could therefore occur only to those pinnipeds moving on the surface through the immediate pier area, within approximately 126 ft/38 m and 40 ft/12 m of pile removal and driving. However, these individuals would also likely be exposed to underwater sound produced by the project. We do not consider potential effects from airborne noise further in this analysis.

No Level A take is expected due to implementing monitoring and mitigation measures such as installing air bubble curtain device for all impact pile driving and implementing shut-down measures for marine mammals about to enter the exclusion zones.

Incidental take for each species is estimated by determining the likelihood of a marine mammal being present within a ZOI during active pile driving or removal. Expected marine mammal presence is determined by past observations and general abundance near the project site during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. The take requests were estimated using local marine mammal data sets (*e.g.,* The Whale Museum, Orca Network, state and federal agencies) based on observations and surveys.

The calculation for marine mammal exposures is estimated by:

Exposure estimate = N × days of pile driving/removal, where:

N = # of animals based on long-term observations by local researchers.

Specifically, daily marine mammal occurrence (N) for harbor seal, Steller sea lion, and harbor porpoise are based on the observation data from the Orca Network (WSDOT 2015). Daily marine mammal occurrence for Dall's porpoise, transient killer whale, gray whale, and minke whale are based on the observation data from the Whale Museum (WSDOT). The occurrence of the rest of the marine mammal species which do not frequently occur in the proposed project area are based on limited sighting occurrence over the years (WSDOT 2015).

Using this approach, a summary of estimated takes of marine mammals incidental to WSDOT's Coupeville Timber Towers Preservation Project are provided in Table 5.

TABLE 5—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT COULD CAUSE LEVEL B BEHAVIORAL HARASSMENT

Species	Estimated marine mammal takes	Abundance	Percentage
Pacific harbor seal	1,600	11,036	14.49
California sea lion	22	296,750	0.01
Steller sea lion	328	60,131	0.55
Northern elephant seal	22	179,000	0.01
Harbor porpoise	220	10,682	2.06
Dall's porpoise	36	42,000	0.09
Killer whale, transient	40	243	16.46
Pacific white-sided dolphin	22	26,930	0.08
Gray whale	12	20,990	0.06
Minke whale	24	478	5.02

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

WSDOT's proposed Coupeville timber tower preservation project would involve vibratory pile removal and impact and vibratory pile driving activities. Elevated underwater noises are expected to be generated as a result of these activities; however, these noises are expected to result in no mortality or Level A harassment and limited Level B harassment of marine mammals. WSDOT would employ attenuation device (*e.g.,* air bubble curtain) during impact pile driving, thus eliminating the potential for injury (including PTS) and TTS from noise impact. For vibratory pile removal and pile driving, noise levels are not expected to reach the level that may cause TTS, injury (including PTS), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment (including injury or PTS) or Level B harassment in the form of TTS from being exposed to in-water pile removal and pile driving associated with WSDOT's construction project.

Additionally, the sum of noise from WSDOT's proposed Coupeville timber tower preservation construction activities is confined to a limited area by surrounding landmasses; therefore, the noise generated is not expected to contribute to increased ocean ambient noise. In addition, due to shallow water depths in the project area, underwater sound propagation of low-frequency sound (which is the major noise source from pile driving) is expected to be poor. Therefore, the actual ZOIs are expected to be smaller than what were modeled.

In addition, WSDOT's proposed activities are localized and of short duration. The entire project area is limited to WSDOT's Coupeville timber towers preservation construction work. The entire project duration for the construction would involve 12 hours in 8 days. These low-intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, the proposed mitigation and monitoring measures are expected to reduce potential exposures and behavioral modifications even further. WSDOT would implement rigorous monitoring and mitigation measures to prevent takes of ESA-listed species such as Southern Resident killer whales and humpback whales. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area (Calambokidis *et al.* 2015). Therefore, the take resulting from the proposed Coupeville timber tower preservation work is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

The proposed project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSDOT's construction activities are expected to affect marine mammals on an infrequent and limited basis.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

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 proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from WSDOT's Coupeville timber tower preservation project will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 1,600 harbor seals, 22 California sea lions, 328 Steller sea lions, 22 northern elephant seals, 220 harbor porpoises, 36 Dall's porpoises, 40 transient killer whales, 22 Pacific white-sided dolphins, 12 gray whales, and 24 minke whales could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the Coupeville Ferry Terminal in Washington State. These numbers represent approximately 0.01% to 11.9% of the populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 5 above), which are small percentages relative to the total populations of the affected species or stocks.

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, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted 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.

Endangered Species Act (ESA)

The humpback whale and the Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. WSDOT would implement rigorous monitoring and mitigation measures to prevent takes of these ESA-listed species. NMFS' Permits and Conservation Division coordinated with NMFS West

Coast Regional Office (WCRO) and reviewed the WSDOT's proposed monitoring and mitigation measures and determined that with the implementation of these measures, ESA-listed species would not be affected. Therefore, WCRO concurs that section 7 consultation under the ESA is not warranted for the issuance of the IHA.

National Environmental Policy Act (NEPA)

NMFS prepared a draft Environmental Assessment (EA) for the proposed issuance of an IHA, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting the Coupeville timber tower preservation project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Authorization is valid from July 15, 2016, through July 14, 2017.

2. This Authorization is valid only for activities associated in-water construction work at the Coupeville timber tower preservation project in the State of Washington.

3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), northern elephant seals (*Mirounga angustirostris*), transient killer whales (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), gray whale (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoena dalli*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Impact and vibratory pile driving;
- Vibratory pile removal; and

(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 West Coast Administrator (206–526–6150), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427–8401, or her designee (301–427–8418).

4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

5. 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 5. 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 protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

6. Mitigation

(a) Time Restriction

In-water construction work shall occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

(b) Underwater Noise Attenuation Device

An air bubble curtain system or other noise attenuation device shall be employed during impact installation or proofing of steel piles unless the piles are driven on dry areas.

(c) Establishment of Exclusion Zone and Level B Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WSDOT would establish Level A exclusion zones and Level B zones of influence (ZOIs).

(i) The Level A exclusion zones shall encompass areas where received underwater sound pressure levels (SPLs) are higher than 190 dB (rms) re 1 μPa for pinnipeds and 180 dB (rms) re 1 μPa for cetaceans.

(ii) The Level B ZOIs shall encompass areas where received underwater SPLs are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile removal), respectively.

(iii) The exclusion zones and ZOIs shall be established based on modeled calculation listed in Table 4, and maybe adjusted based on sound source verification (SSV) measurements during test pile driving.

(d) Monitoring of marine mammals shall take place starting 30 minutes before pile driving begins until 30 minutes after pile driving ends.

(e) Soft Start

(i) When there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

(ii) For vibratory hammers, the contractor shall initiate the driving for 15 seconds at reduced energy, followed by a 1 minute waiting period. This procedure shall be repeated two additional times before continuous driving is started. This procedure shall also apply to vibratory pile removal.

(iii) For impact driving, an initial set of three strikes would be made by the hammer at 40-percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets at 40-percent energy, with 1-minute waiting periods, before initiating continuous driving.

(f) Shutdown Measures

(i) WSDOT shall implement shutdown measures if a marine mammal is sighted within or approaching the Level A exclusion zone. In-water construction activities shall be suspended until the marine mammal is sighted moving away from the exclusion zone, or if a large cetacean is not sighted for 30 minutes or if a small cetacean or pinniped is not sighted for 15 minutes after the shutdown.

(ii) In addition, WSDOT would implement shutdown measures when Southern Resident killer whales (as identified by Orca Network, NMFS, or other qualified source) or when humpback whales are detected to approach the ZOIs during pile removal and pile driving, therefore preventing Level B takes of Southern Resident killer whales and humpback whales.

(iii) If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

(iv) WSDOT shall implement shutdown or power-down measures to prevent Level B takes when the take of any other species or stock of marine mammal is approaching the take limited authorized under this authorization.

(v) WSDOT shall implement shutdown measures if marine mammals with the ZOI appear disturbed by the work activity.

(g) Coordination with Local Marine Mammal Research Network

Prior to the start of daily pile driving, WSDOT will contact the Orca Network and/or Center for Whale Research to get real-time information on the presence or absence of whales before starting any pile driving.

7. Monitoring

(a) Protected Species Observers

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its construction project.

(i) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be required to correctly identify the target.

(ii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).

(iii) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

(iv) Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.

(v) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

(vi) Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A range finder or hand-held global positioning system device will be used to ensure that the Level A exclusion zones and Level B behavioral harassment ZOIs are monitored.

(ii) A 30-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) Marine mammal visual monitoring will be conducted for different ZOIs based on different sizes of piles being driven or removed.

(A) During 24-inch steel impact pile driving, two land-based PSOs monitors will monitor the ZOE and ZOI. Pile driving will be paused if any marine mammal approaches the exclusion zone.

(B) During vibratory timber pile removal, two land-based PSOs will monitor the ZOI.

(C) During 24-inch vibratory pile removal, 7 land-based PSOs and one monitoring boat with a PSO and boat operator will monitor the ZOI.

(D) If weather prevents safe use of the boat in the main channel of the ZOI, the boat will be used in other areas of the ZOI that are safe, such as the southwest corner of the ZOI, where lack of public access prevents stationing a land-based PSO.

(iv) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavior of observed marine mammals;

(D) Location within the ZOI; and

(E) Animals' reaction (if any) to pile-driving activities

8. Reporting

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work or within 90 days of the expiration of the IHA, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from the NMFS West Coast Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, WSDOT shall immediately cease all operations and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Status of all sound source use in the 24 hours preceding the incident;

(iv) Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) Description of marine mammal observations in the 24 hours preceding the incident;

(vi) Species identification or description of the animal(s) involved;

(vii) The fate of the animal(s); and

(viii) 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 WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(E) In the event that WSDOT 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), WSDOT will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(F) In the event that WSDOT 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 in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

WSDOT can continue its operations under such a case.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if NMFS determines that the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization must be in the possession of each contractor who performs the construction work at the Coupeville Ferry Terminal.

Dated: January 14, 2016.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–01107 Filed 1–20–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by the National Futures Association Related to Notices of Swap Valuation Disputes Filed by Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is authorizing the National Futures Association (''NFA'') to receive, review, maintain, and serve as the official custodian of records for notices provided by swap dealers (''SDs'') and major swap participants (''MSPs'') of swap valuation disputes in excess of $20 million U.S. dollars (or its equivalent in any other currency), as provided in Commission regulation 23.502(c).

DATES: Effective Date: March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Erik F. Remmler, Deputy Director, 202–418–7630, *eremmler@cftc.gov,* or Brian G. Mulherin, Associate Director, 202–418–6622, *bmulherin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight (''DSIO''), Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Section 8a(10) of the Commodity Exchange Act [1] (the ''Act'' or ''CEA'') provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law. The performance of such functions shall be undertaken in accordance with rules adopted by such person and approved by the Commission or reviewed by the Commission pursuant to Section 17(j) of the Act.[2]

The purpose of the Act is explained in CEA Section 3(a) [3] as serving the public interest ''through a system of effective self-regulation of . . . market participants and market professionals under the oversight of the Commission.'' Section 17(o) of the Act [4] provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. The Commission has delegated to NFA the authority to conduct many functions previously conducted by the Commission. Such delegated functions include: Processing applications for registration of intermediaries under the Act; [5] reviewing disclosure documents, and providing the Commission with related summaries and periodic reports; [6] and acting as the Commission's official custodian of records.[7] The Commission has found that NFA exercises its delegated authority with proficiency.[8] Authorizing NFA to perform such functions allows the Commission to devote resources to other aspects of its regulatory mission.

CEA Section 4s(f)(1) authorizes the Commission to require SDs and MSPs to ''make such reports as are required by the Commission by rule or regulation regarding the transactions and positions . . .'' of SDs and MSPs.[9] Upon consideration, the Commission has determined to authorize NFA, to receive and review notices of swap valuation disputes, as specified in Regulation 23.502(c).[10] Regulation 23.502(c) requires SDs and MSPs to notify the Commission of swap valuation disputes in excess of $20 million U.S. dollars (or its equivalent in any other currency), if not resolved within certain stated time frames. While those notices are currently submitted directly to the Commission, NFA is capable of receiving and reviewing those notices on the Commission's behalf.

NFA Compliance Rule 2–49 is capable of being used by NFA to collect notices of swap valuation disputes. That rule states:

> A Swap Dealer or Major Swap Participant Member must promptly submit any reports, documents or notices, including those required under CFTC Regulation 3.3 or Part 23 of the CFTC's regulations, and any other supplemental information, to NFA and CFTC, as required by NFA, in the form and manner prescribed by NFA.

Under this rule, NFA has already required SDs and MSPs to submit copies of the Chief Compliance Officer annual reports required under Regulation 3.3,[11] and periodic risk exposure reports required under Regulation 23.600(c)(2)(ii).[12] Because notices of swap valuation disputes are also required under Part 23, NFA is able to require SDs and MSPs to submit those notices to NFA under Compliance Rule 2–49.

NFA has confirmed its willingness to perform the functions described herein and Commission staff has made NFA staff aware of the requirements that shall apply to NFA in maintaining these records. In particular, NFA, its officers, employees and agents shall ensure the confidentiality of those nonpublic portions of the Commission's records furnished to, compiled or maintained by NFA, including any reports generated by NFA based on the swap valuation dispute notices received by NFA except as allowed by existing or future Commission orders or regulations.[13] In

[1] 7 U.S.C. 12a(10) (2014).

[2] 7 U.S.C. 21(j) (2014).

[3] 7 U.S.C. 5(a) (2014).

[4] 7 U.S.C. 21(o) (2014).

[5] *See, e.g.,* 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 58 FR 19657 (Apr. 15, 1993) (floor traders); and 77 FR 2708 (Jan. 19, 2012) (swap dealers and major swap participants).

[6] *See* 62 FR 52088 (Oct. 6, 1997); 64 FR 29273 (June 1, 1999).

[7] *See, e.g.,* 49 FR 39593 (Oct. 9, 1984) (regarding the registration records of future commission merchants, commodity pool operators, and commodity trading advisors); 66 FR 43227 (Aug. 17, 2001) (regarding notice registration filings as futures commission merchants or introducing brokers); 67 FR 77470 (Dec. 18, 2002) (regarding commodity pool operator annual financial reports required by regulation 4.22 and 4.7(b)(3)); 75 FR 55310 (Sep. 10, 2010) (regarding the registration records of retail foreign exchange dealers); and 77 FR 2708 (Jan. 19, 2012) (regarding registration records of swap dealers and major swap participants).

[8] *See, e.g.,* 67 FR 77470 (Dec. 18, 2002).

[9] 7 U.S.C. 6s(f)(1) (2014).

[10] Commission regulations referred to herein may be found at 17 CFR Ch. I (2014).

[11] *See* NFA Notice to Members I–14–22.

[12] *See* NFA Notice to Members I–14–20.

[13] *See* Performance of Registration Functions by National Futures Association, 49 FR 39593, 39596 n.23 (Oct. 9, 1984) (''In this regard, NFA shall take special precautions to protect any information which appears in these [ ] records but which, by its nature, is among the types of information

addition, NFA will maintain these records in accordance with the Commission's Records Disposition Schedule. Further, the work of the Commission requires that Commission staff have ready electronic access to the information contained in the documents encompassed by this Order. Commission staff will have electronic access to a database containing the pertinent information contained in the subject filings. Moreover, NFA will make physical copies of any of the documents encompassed by this Order available to the Commission, Commission staff, the Department of Justice, the Securities and Exchange Commission, and all applicable prudential regulators promptly.

In light of NFA's experience in receiving and reviewing disclosure documents on behalf of the Commission, the Commission has determined to delegate to NFA the responsibility to receive and review notices of swap valuation disputes required to be filed pursuant to Regulation 23.502(c), to provide the Commission with such summaries and periodic reports as the Commission, through the Director of DSIO, may determine are necessary for the effective oversight of SDs and MSPs, and to maintain and serve as the official custodian of records for those documents. This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed on it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary and acceptable to the Commission to accomplish the following: Ensure the security and integrity of the records in NFA's custody; facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise safeguard the confidentiality of the records. NFA shall also make such reports regarding those notices as shall be specified by the Commission or the Director of DSIO.

II. Conclusion and Order

The Commission has determined, in accordance with Sections 4s(f)(1), 8a(10) and 17(o)(1) of the CEA, to authorize NFA to perform the following functions:

(1) To receive in the form and manner prescribed by NFA, and conduct reviews of, the notices of swap valuation disputes specified in Regulation 23.502(c), as described above; and

(2) To maintain and serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and orders promulgated thereunder, and shall provide the Commission with such summaries and periodic reports regarding those records and their contents as the Commission or the Director of DSIO may determine are necessary for the effective oversight of this program.

These determinations are based, in part, on the Commission's authority to delegate to NFA portions of the Commission's responsibilities under the CEA, in furtherance of carrying out these responsibilities in the most efficient and cost-effective manner, and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render ''no-action'' positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in CEA Sections 8a(10) or 17(o) shall affect the Commission's authority to review NFA's performance of Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matter regarding the functions delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous Orders issued by the Commission.

Issued in Washington, DC, on January 14, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–01051 Filed 1–20–16; 8:45 am]

BILLING CODE 6351–01–P

described in sections 8(a), 8(e), and 8a(6) of the Act, so that any such information will not be disclosed inadvertently or without authority.'').

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 22, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (''OIRA'') in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0080. Please provide the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0080, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, or through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Delivery/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://reginfo.gov.* All

comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5496, email: *jchachkin@cftc.gov,* and refer to OMB Control No. 3038–0080.

SUPPLEMENTARY INFORMATION:

Title: Annual Report for Chief Compliance Officer of Registrants (OMB Control No. 3038–0080). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 3.3 (Chief Compliance Officer) [1] under sections 4d(d) and 4s(k) [2] of the Commodity Exchange Act (''CEA''). Commission regulation 3.3 requires each futures commission merchant (''FCM''),[3] swap dealer (''SD''),[4] and major swap participant (''MSP'') [5] to designate, by filing a form 8–R, a chief compliance officer who is responsible for developing and administering policies and procedures that fulfill certain duties of the FCM, SD, or MSP and that are reasonably designed to ensure the registrant's compliance with the CEA and Commission regulations; establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; establishing procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; preparing, signing, certifying and filing with the Commission an annual compliance report that contains the information specified in the regulations; amending the annual report if material errors or omissions are identified; and maintaining records of the registrant's compliance policies and procedures and records related to the annual report.

The information collection obligations imposed by Commission regulation 3.3 are essential to ensuring that FCMs, SDs, and MSPs maintain comprehensive policies and procedures that promote compliance with the CEA and Commission regulations. In particular, the Commission believes that, among other things, these obligations (i) promote compliance behavior through periodic self-evaluation, (ii) inform the Commission of possible compliance weaknesses, (iii) assist the Commission in determining whether the registrant remains in compliance with the CEA and Commission regulations, and (iv) help the Commission to assess whether the registrant has mechanisms in place to adequately address compliance problems that could lead to a failure of the registrant.

Burden Statement: In light of the current number of Commission-registered FCMs, SDs, and MSPs, the Commission revised its estimate of the burden for this collection. Accordingly, the respondent burden for this collection is estimated to be as follows:

Number of Registrants: 178.

Estimated Average Burden Hours per Registrant: 1,006.

Estimated Aggregate Burden Hours: 179,068.

Frequency of Recordkeeping/Third-party Disclosure: Annually or on occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 15, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–01139 Filed 1–20–16; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 3.3.

[2] 7 U.S.C. 6d(d) and 6s(k).

[3] For the definition of FCM, *see* section 1a(28) of the CEA and Commission regulation 1.3(p). 7 U.S.C. 1a(28) and 17 CFR 1.3(p).

[4] For the definition of SD, *see* section 1a(49) of the CEA and Commission regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg).

[5] For the definitions of MSP, *see* section 1a(33) of the CEA and Commission regulation 1.3(hhh). 7 U.S.C. 1a(33) and 17 CFR 1.3(hhh).

COUNCIL ON ENVIRONMENTAL QUALITY

Opportunity for Sponsorship of the GreenGov Symposium

AGENCY: Council on Environmental Quality.

ACTION: Notice. GreenGov Symposium Call for Co-Sponsors.

SUMMARY: This notice informs the public of the opportunity for eligible non-governmental entities to submit an application for co-sponsorship of a potential White House Council on Environmental Quality 2016 GreenGov Symposium. Those interested in becoming co-sponsors should submit an application for co-sponsorship by February 12, 2016.

DATES: To be considered, applications for co-sponsorship must be received via email no later than 5:00 p.m. Eastern Standard Time on February 12, 2016.

ADDRESSES: Submit applications and any supporting materials electronically to the White House Council on Environmental Quality, Office of Federal Sustainability, by sending them via email to: *Gordon_W_Weynand@ceq.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Gordon Weynand, Office of Federal Sustainability, White House Council on Environmental Quality, *Gordon_W_Weynand@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

Application Information: Only non-government entities that are not-for-profit corporations or entities are eligible for co-sponsorship of the 2016 GreenGov Symposium. Potential co-sponsors could include, but are not limited to, registered 501(c)3 organizations and academic institutions. Eligible entities interested in co-sponsoring the 2016 GreenGov Symposium effort should demonstrate and provide relevant information on:

- Alignment of their organization's mission and goals with the mission and goals of CEQ and the Office of Federal Sustainability and with the general purpose of the Symposium;
- ability to contribute to selection of Symposium location(s), associated logistics, agenda planning, speaker proposal and selection, and event outreach;
- experience working successfully with private sector, state and local government and academic sector stakeholders that would attend a GreenGov event;
- ability to travel to various locations within the continental United States, if necessary to host GreenGov events;
- technical and programmatic ability to support internet and web based production of GreenGov educational events; and,
- ability to support both a major multiple day symposium event as well as limited topic specific seminars and workshops.

Background: GreenGov is a CEQ initiative focused on Federal energy and sustainability efforts. Past GreenGov Symposiums brought sustainability leaders and newcomers in the Federal, state, and local government, academic, non-profit and private sectors together to learn from each other, share ideas, and help develop innovative solutions to energy and sustainability challenges in Federal operations. By design, the GreenGov Symposium helps the Federal community save energy, save money, and address sustainability goals and targets under Executive Order 13514: Federal Leadership in Environmental, Energy, and Economic Performance and under Executive Order 13693: Planning for Federal Sustainability in the Next Decade. Historical information on GreenGov is available at: *http://www.whitehouse.gov//greengov.*

Authority: 42 U.S.C. 4342, 4344.

Dated: January 15, 2016.

Christine J. Harada,

Federal Chief Sustainability Officer.

[FR Doc. 2016–01132 Filed 1–20–16; 8:45 am]

BILLING CODE 3225–F6–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0001]

Proposed Collection; Comment Request

AGENCY: U.S. Army Medical Command, Family Advocacy Program Office, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army Family Advocacy Program Office, US Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Medical Command, Health Policy & Services, Behavioral Health Service Line, Family Advocacy Program (ATTN: MCHO–CL–H/Ms. Kathleen Foreman), 2748 Worth Road, JBSA Fort Sam Houston, TX 78234; or call the Point of Contact for U.S. Army Medical Command, Family Advocacy Program Office at 210–295–7370 or email at *kathleen.p.foreman.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* Family Advocacy Program; MEDCOM Form 811-Pilot (Behavioral Health Intake-Psychosocial History and Assessment); OMB Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to obtain and record the behavioral/mental health, psychological and social history of military health eligible and non-eligible beneficiaries in need of domestic violence and child abuse emergency and non-emergency support. The form is used by family advocacy workers to assess the clinical and non-clinical needs of individuals and families to ensure victim safety; reduce the risk of adverse behavioral health events like suicide, homicide, accidental death, and physical, emotional, and sexual abuse and neglect; refer victims and alleged offenders to appropriate treatment and case management resources; to gather case information for presentation and incident determination by a family advocacy review board; and to gather information for data analysis and reporting purposes for overall program improvement.

Affected Public: Individuals or households.

Annual Burden Hours: 3,950.

Number of Respondents: 7,900.

Responses per Respondent: 1.

Annual Responses: 7,900.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Respondents are U.S. citizens (military, civilian, and military-affiliated civilians; spouses, intimate partners; child care providers; teachers) or foreign nationals seeking emergency and non-emergency support from military health care facilities, child care facilities, and DoD school systems who are seeking domestic violence or child abuse support for themselves or their children. MEDCOM Form 811-Pilot records the information needed to conduct a thorough and responsible risk assessment, behavioral health assessment, treatment plan, and case monitoring or management plan. The completed form is included in the Family Advocacy Case file and in Family Advocacy System of Records (information system). The form is used by family advocacy workers to assess the clinical and non-clinical needs of individuals and families to ensure victim safety; reduce the risk of adverse behavioral health events like suicide, homicide, accidental death, and physical, emotional sexual abuse and neglect; refer victims and alleged offenders to appropriate treatment and case management resources; to gather case information for presentation and incident determination by a family advocacy review board; and to gather information for data analysis and reporting purposes for overall program improvement. If the form is not included in the Family Advocacy file, the records will reflect inconsistent risk assessment, behavioral health assessment, treatment and management planning. This form is essential to data collection to inform treatment and management planning. The form bolsters efforts to maintain and document family advocacy worker's compliance with standards in the assessment of victims and alleged offenders of abuse. In addition, the information gathered supports program improvement and risk mitigation.

Dated: January 14, 2016.

Aaron Siegel,

Alternate OSD Federal RegisterLiaison Officer, Department of Defense.

[FR Doc. 2016–01075 Filed 1–20–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0002]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DMDC 22, entitled ''Defense Competency Assessment Tool,'' to conduct web-based competency assessments in order to identify current and future competency gaps and requirements of the DoD civilian workforce based on near and long-term organizational goals, as well as to support analytical reporting to Congress.

DATES: Comments will be accepted on or before February 22, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense 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 *http://dpcld.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 7, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 14, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 22

SYSTEM NAME:

Defense Competency Assessment Tool

SYSTEM LOCATION:

Defense Civilian Personnel Advisory Service (DCPAS), Enterprise Human Resources Information Systems (EHRIS), 4800 Mark Center Drive, Alexandria, VA 22350–1100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DoD civilian employees who have voluntarily completed a competency assessment using the Defense Competency Assessment Tool.

CATEGORIES OF RECORDS IN THE SYSTEM:

DoD ID number (EDIPI), region ID, position ID, email address, last name, first name, middle name, agency code, agency group, occupational series, organization, work city, work state, work country, educational level, current pay plan, pay grade, pay status, supervisor status and responses to employee's and supervisor's assessment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 115b, Biennial strategic workforce plan; and DoD Instruction 1400.25, Volume 250, DoD Civilian Personnel Management System: Volume 250, Civilian Strategic Human Capital Planning (SHCP).

PURPOSE(S):

To conduct web-based competency assessments in order to identify current and future competency gaps and requirements of the DoD civilian workforce based on near and long-term organizational goals; to support analytical reporting to Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted in accordance with 5 U.S.C. 552a(b), the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use. If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of san employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Disclosure of Requested Information Routine Use. A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Disclosure Routine Use. Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Office of Personnel Management Routine Use. A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use. A record from a system of records

maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use. A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or Component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Data Breach Remediation Purposes Routine Use. A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found Online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and/or DoD ID Number.

SAFEGUARDS:

Records are accessed and/or maintained in areas accessible only to authorized personnel. Physical controls include security guards, identification badges, key cards, cipher locks, closed circuit TV, door locks and access codes, and monitoring and escort requirements for all visitors. Technical controls include user identification, intrusion detection system, encryption, external certificate authority certificate, firewall, virtual privacy network, Common Access Cards, and Public Key Infrastructure certificates. Administrative controls include periodic security audits, regular monitoring of users' security practices, methods to ensure only authorized personnel have access to personal information, and encryption of backups containing sensitive data.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration have approved the retention and disposition of these records) treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Technical Director, Development, Requirements, and Resources, DCPAS EHRIS, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Technical Director, Development, Requirements, and Resources, DCPAS EHRIS, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

Signed, written requests should contain the individual's name and/or DoD ID number, organization, and contact information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act, Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain the name and number of this system of records notice, and the individual's name and/or DoD ID number, organization, and contact information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Defense Civilian Personnel Data System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–01037 Filed 1–20–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0003]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records notice DWHS P28, entitled ''Personnel Security Operations File'' to maintain security clearance and authorized access information.

DATES: Comments will be accepted on or before February 22, 2016. This proposed

action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

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:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

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. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense 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 the **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on January 7, 2016 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: January 14, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P28

SYSTEM NAME:

Personnel Security Operations File (August 17, 2001, 66 FR 43236).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Personnel Security Operations Division (PSOD), Human Resources Directorate (HRD), Washington Headquarters Services (WHS), Department of Defense (DoD), 1155 Defense Pentagon, Washington DC 20301–1155.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Applicants for, civilian employees of, and military members assigned to, WHS, the Office of the Secretary of Defense (OSD), and its components and supported organizations who require either vetting under Homeland Security Presidential Directive-12 for vetting purposes or require access to classified DoD information or materials.

Contractors supporting the above organizations covered by Homeland Security Presidential Directive-12 for vetting purposes.

Experts and consultants serving with or without compensation.

Certain employees of the Congressional Budget Office and the U.S. Capitol Police, who require access to classified DoD information or materials.

Staff of Congressional committees and Congressional member office staff of the U.S. Senate and U.S. House of Representatives who require access to classified DoD information or material.

Employees of other Federal agencies detailed to the OSD.

Members and staff of DoD and Presidential Boards, Commissions and Task Forces.

Members detailed to DoD from other Executive Branch Agencies.

Defense contractors requiring access to special programs.Sole entity contractors who require access to classified DoD information or materials.

Unsalaried students working as interns in supported organizations.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), type of DoD affiliation, employing activity, current employment status, position sensitivity, personnel security investigative basis, status of current adjudicative action, security clearance eligibility and access status, reports of security-related incidents, to include issue files, suspension of eligibility and/or access, clearance withdrawal or suspension, denial or revocation of eligibility and/or access, eligibility recommendations or decisions made by an appellate authority, non-disclosure execution dates, indoctrination date(s), level(s) of access granted, debriefing date(s), and reason for debriefing.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; Homeland Security Presidential Directive-12: Policy for a Common Identification Standard for Federal Employees and Contractors; DoD Directive 5200.2, DoD Personnel Security Program; DoD 5200.2–R, DoD Personnel Security Program; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To maintain security clearance and authorized access information.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Disclosure When Requesting Information routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to federal, state, or local

agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance, grant, or other benefit.

Disclosure of Requested Information Routine Use: A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx''*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper file folders and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name and SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained under the direct control of office personnel during duty hours. Building has security guards and office is locked and alarmed during non-duty hours. Computer media is stored in controlled areas. Computer terminal access is controlled by Common Access Cards and/or user passwords that are periodically changed. Classified files are maintained in paper form, versus the electronic storage media. Paper records are maintained in security containers with access to records limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screen and cleared for need-to-know.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Inactivate file when employee leaves the Agency; retain in files storage area and destroy after 2 years. Files for military personnel are destroyed upon separation. Files pertaining to contractor SCI eligibility are destroyed upon favorable SCI eligibility determination.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Personnel Security Operations Division, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington, DC 20301–1155.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Personnel Security Operations Division, Human Resources Directorate, Washington Headquarters Services, Department of Defense, 1155 Defense Pentagon, Washington DC 20301–1155.

Signed, written requests must include the full name of the individual, SSN, and name of the program.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Freedom of Information Act Requester Service Center, 4800 Mark Center Drive, Alexandria, VA 22350–3100.

Signed, written requests must include the full name of the individual, SSN, name of the program, and the name and number of this system of records notice.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''The individual, background investigations and summaries of information from background investigations from the investigating agency, employment suitability related information; and forms and correspondence relating to the security clearance and access of the individual.''

* * * * *

[FR Doc. 2016–01084 Filed 1–20–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Talent Search Program; Correction

Catalog of Federal Domestic Assistance (CFDA) Number: 84.044A

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: This notice corrects the ''Estimated Available Funds'' and ''Maximum Award Amounts'' in the notice inviting applications for new awards for fiscal year (FY) 2016 for the Talent Search program, published on December 22, 2015.

DATES: Effective January 21, 2016.

FOR FURTHER INFORMATION CONTACT: Craig Pooler, OPE, U.S. Department of

Education, 400 Maryland Avenue SW., Room 7E311, Washington, DC 20202. Telephone: (202) 502–7640 or by email: *Craig.Pooler@ed.gov.* If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of December 22, 2015 (80 FR 79574), on page 79576, in the third column, section II. Award Information, under ''Estimated Available Funds,'' we correct the estimated amount to $150,000,000. In addition, we correct the ''Maximum Award,'' which is located a couple paragraphs below the ''Estimated Available Funds,'' to read:

Maximum Award:

- For an applicant that is not currently receiving a Talent Search Program grant, the maximum award amount is $240,000 for a project that will serve a minimum of 500 participants, based upon a per-participant cost of no more than $480.
- For an applicant that is currently receiving a Talent Search Program grant, the maximum award amount is the greater of (a) $240,000 or (b) the award amount obtained by multiplying the applicant's approved FY 2015 number of participants by $480, to serve at least the number of participants approved to serve in FY 2015. The minimum number of participants an applicant proposes to serve must be 500 and the project must propose a per-participant cost that does not exceed $480 per participant. For example, an applicant whose FY 2015 approved number of participants is 600 is eligible for a grant of up to $288,000 to serve 600 participants.

We will reject any application that proposes a budget exceeding the maximum amount listed above for a single budget period of 12 months. We will also reject any application that proposes a budget to serve fewer than 500 participants, and will reject any application that proposes a budget that exceeds the maximum per participant cost of $480.

All other information in the December 22, 2015, notice remains unchanged.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–12.

Accessible Format: Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 14, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning and Innovation Delegated the Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–01158 Filed 1–20–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2016–2017 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.038; 84.033; and 84.007.

SUMMARY: The Secretary announces the 2016–2017 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs'').

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed in the table under the **DEADLINE DATES** section of this notice. You will also find the information on the Information for Financial Aid Professionals (IFAP) Web site at: *www.ifap.ed.gov.*

DEADLINE DATES: The following table provides the 2016–2017 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2016–2017 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2015–2016 funds and the request for supplemental FWS funds for the 2016–2017 award year.	The Reallocation Form is located on the ''Setup'' tab of the Fiscal Operations Report and Application to Participate (FISAP) at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The Reallocation Form must be submitted electronically through the eCampus-Based Web site.	Monday, August 15, 2016.

2016–2017 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
2. The 2017–2018 FISAP (reporting 2015–2016 expenditure data and requesting funds for 2017–2018).	The FISAP is located at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The FISAP must be submitted electronically through the eCampus-Based Web site. The FISAP's signature page must be signed by the institution's Chief Executive Officer (CEO), either electronically or on a printed copy with an original signature. If mailing the FISAP signature page, it must be mailed to: FISAP Administrator, 8405 Greensboro Drive, Suite 1020, McLean, VA 22102.	Friday September 30, 2016.
3. The Work Colleges Program Report of 2015–2016 award year expenditures.	The Work Colleges Program Report is located on the ''Setup'' tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The report must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's Chief Executive Officer (CEO), either electronically or on a printed copy with an original signature. If mailing the Work Colleges Program Report signature page, it must be submitted by one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street NE., Room 64F2, ATTN: Work Colleges Coordinator, Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453	Friday September 30, 2016.
4. The 2015–2016 Financial Assistance for Students with Intellectual Disabilities Expenditure Report.	The Financial Assistance for Students with Intellectual Disabilities Expenditure Report is located on the ''Setup'' tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The report must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's Chief Executive Officer (CEO), either electronically or on a printed copy with an original signature. If mailing the Financial Assistance for Students with Intellectual Disabilities Expenditure Report signature page, it must be submitted by one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, CTP Program, 830 First Street NE., Room 64F2, Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	Friday September 30, 2016.
5. The 2017–2018 FISAP Edit Corrections and Perkins Cash on Hand Update as of October 31, 2016.	The FISAP is located at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The FISAP Edit Corrections and Perkins Cash on Hand Update must be submitted electronically through the eCampus-Based Web site.	Thursday, December 15, 2016.
6. Request for a waiver of the 2017–2018 award year penalty for the underuse of 2015–2016 award year funds.	The request for a waiver is located in Part II, Section C of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The request and justification must be submitted electronically through the eCampus-Based Web site.	Monday, February 6, 2017.
7. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2017–2018 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program can be found on the ''Setup'' tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The application and agreement must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's Chief Executive Officer (CEO), either electronically or on a printed copy with an original signature. If mailing the Institutional Application and Agreement for Participation in the Work Colleges Program signature page, it must be submitted by one of the following methods:	Monday, March 6, 2017.

2016–2017 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
	Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street NE., Room 64F2, ATTN: Work Colleges Coordinator, Washington, DC 20002, or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453	
8. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2017–2018 award year.	The FWS Community Service waiver request is located on the ''Setup'' tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The request and justification must be submitted electronically through the eCampus-Based Web site.	Monday, April 24, 2017.

Notes: ▪ The deadline for electronic submissions is 11:59:00 p.m. (Washington, DC time) on the applicable deadline date. Transmissions must be completed and accepted by 11:59:00 p.m.to meet the deadline.

▪ Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.

▪ Paper documents that are delivered by a commercial courier must be received no later than 4:30:00 p.m. (Washington, DC time) on the applicable deadline date.

▪ The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Any other proof of mailing or delivery acceptable to the Secretary.

If you mail your paper documents through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's IFAP Web site (*http://ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook, which is also posted on the Department's IFAP Web site.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR part 3485.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Pat Stephenson, Manager, Campus-Based Programs, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, Room 64F2, Washington, DC 20202–5453. Telephone: (202) 377–3782 or via email: *pat.stephenson@ed.gov.*

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed in this section.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Dated: January 14, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–01159 Filed 1–20–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0009]

Agency Information Collection Activities; Comment Request; Campus Equity in Athletics Disclosure Act (EADA) Survey

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 21, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0009. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ashley Higgins, 202–219–7061.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Campus Equity in Athletics Disclosure Act (EADA) Survey.

OMB Control Number: 1840–0827.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 2,072.

Total Estimated Number of Annual Burden Hours: 11,397.

Abstract: The collection of information is necessary under section 485 of the Higher Education Act of 1965, as amended, with the goal of increasing transparency surrounding college athletics for student, prospective students, parents, employees and the general public. The survey is a collection tool to compile the annual data on college athletics. The data collected from the individual institutions by ED and is made available to the public through the Equity in Athletics Data Analysis Cutting Tool as well as the College Navigator.

Dated: January 14, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–01027 Filed 1–20–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner or Commission Staff Attendance at Miso Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following MISO-related meetings:

- Advisory Committee
  - January 27, 10 a.m.–1 p.m., Call only
  - February 24, 10 a.m.–1 p.m., Call only
  - March 23, 11 a.m.–5 p.m., Loews Hotel, 300 Poydras St., New Orleans, LA
- Board of Directors Audit & Finance Committee
  - March 23, 4:45 p.m.–6:45 p.m., Loews Hotel, 300 Poydras St., New Orleans, LA
- Board of Directors
  - March 24, 9:30 a.m.–12 noon, Loews Hotel, 300 Poydras St., New Orleans, LA
- Board of Directors Markets Committee
  - January 26, 9 a.m.–11 a.m., Call only
  - March 22, 10 a.m.–12 noon, 300 Poydras St., New Orleans, LA
- Board of Directors System Planning Committee
  - February 23, 3:30 p.m.–5:30 p.m., Call only
  - March 22, 2:30 p.m.–4:30 p.m., 300 Poydras St., New Orleans, LA
- MISO Informational Forum
  - January 26, 3 p.m.–5 p.m., Carmel
  - February 23, 3 p.m.–5 p.m., Call only
  - March 22, 4 p.m.–6 p.m., 300 Poydras St., New Orleans, LA
- MISO Market Subcommittee
  - February 2, 9:30 a.m.–4 p.m., Call only
  - March 1, 9:30 a.m.–4 p.m., Little Rock
- MISO Supply Adequacy Working Group
  - February 4, 9:30 a.m.–4:30 p.m., Little Rock
  - March 3, 9:30 a.m.–4:30 p.m., Little Rock
- MISO Regional Expansion Criteria and Benefits Task Force
  - January 21, 9:30 a.m.–4:30 p.m., Carmel
  - February 17, 9:30 a.m.–4:30 p.m., Metarie
- MISO Planning Advisory Committee
  - January 20, 9:30 a.m.–4:30 p.m., Carmel
  - February 17, 9:30 a.m.–4:30 p.m., Metarie

Unless otherwise noted all of the meetings above will be held at either:

Carmel: MISO Headquarters, 701 City Center Drive, 720 City Center Drive, and Carmel, IN 46032

Little Rock: 1700 Centerview Drive, Little Rock, AR

Eagan: 2985 Ames Crossing Rd., Eagan, MN

Metarie: 3850 N. Causeway Blvd., Suite 442, Metairie, LA

Further information and dial in instructions may be found at *www.misoenergy.org.* All times are Eastern Prevailing Time.

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–89, *MidAmerican Energy Company*
Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–1924, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1943, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1944, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1945, *Midcontinent Independent System Operator, Inc.*
Docket No. EL13–88, *Northern Indiana Public Service Corp. v Midcontinent Independent System Operator, Inc., et al.*
Docket No. EL14–12, *ABATE et al. v Midcontinent Independent System Operator, Inc., et al.*
Docket No. AD12–16, *Capacity Deliverability across the MISO/PJM Seam*
Docket No. AD14–3, *Coordination of Energy and Capacity across the MISO/PJM Seam*
Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1736, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–133, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–530, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–767, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–945, *Midcontinent Independent System Operator, Inc.*
Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3279, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1194, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER15–1210, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–649, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2952, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2605, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1210, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–943, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–213, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–469, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–470, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–490, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–521, *Midcontinent Independent System Operator, Inc.*
Docket No. ER15–2657, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–533, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–534, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–611, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–675, *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–70, *Public Citizen, Inc* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–71, *People of the State of Illinois* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–72, *Southwestern Electric Cooperative, Inc.* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–82, *Illinois Industrial Energy Consumers* v. *Midcontinent Independent System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01120 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–18–000]

Magnum Gas Storage, LLC; Notice of Intent To Prepare anEnvironmental Assessment for the Proposed Magnum Gas Storage Amendment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Magnum Gas Storage Amendment Project (Project) involving construction and operation of facilities by Magnum Gas Storage, LLC (Magnum) in Millard, Juab, and Utah Counties, Utah. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity. The proposed Project is an Amendment to the Certificate of Public Convenience and Necessity (Certificate) issued on March 17, 2011 in Docket No. CP10–22–000 to Magnum. The Certificate authorized Magnum to construct, own, and operate a natural gas storage facility in Millard, Juab, and Utah Counties Utah, with related facilities including a 61.6 mile long, 36-inch diameter natural gas header pipeline (Header).

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 16, 2016.

If you sent comments on this project to the Commission before the opening of this docket on November 16, 2015, you will need to file those comments in Docket No. CP16–18–000 to ensure they

are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Magnum representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Magnum provided landowners with a fact sheet prepared by the FERC entitled *''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov/resources/guides/gas/gas.pdf*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–18–000) with your submission:Kimberly D. Bose, Secretary,Federal Energy Regulatory Commission,888 First Street NE Room 1A,Washington, DC 20426.

Summary of the Proposed Project

For this Amendment, Magnum is proposing the following changes to its facilities, all within the previously analyzed and approved project area:

Facilities Eliminated From Previous Authorization

- Brine evaporation pond 1;
- monitoring wells DA–1 and DA–2; and
- monitoring wells, GA–1, GA–2, GA–9, GA–10, and GA–11.

Pipeline Header

- A 6,252-foot-long segment of the header pipeline would be relocated 63 feet north, west of Jones road in Millard County, Utah.

Aboveground Facilities Relocated on Previous Authorized Site

- Four natural gas caverns;
- water wells 1 through 5;
- compression, dehydration, and pumping facilities;
- 4-inch gas supply line;
- maintenance and laydown area;
- office/warehouse building and substation; and
- site-wide utilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

For the Magnum Project approved in the March 17, 2011 Order, construction and operation would require the use of approximately 1,800 acres of land. The gas storage facilities would be located on a 2,050 acre site. Approximately 28 miles of the 61.6-mile-long Header would be collocated with the existing Utah-Nevada and Kern River Gas Pipelines. Also, a portion of the Header would also be located within the West Wide Energy Corridor. For the proposed Amendment, a 6,252-foot-long segment of the header pipeline would be relocated 63 feet north, west of Jones road. Magnum is not proposing any changes to the temporary or permanent right-of-way width for this portion of the Header alignment. Therefore, the previously approved temporary and permanent disturbance acreage would not increase.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife, including migratory birds;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–18). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01115 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–38–000; PF15–21–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on December 30, 2015, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, TX 77056, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations requesting authority to construct and operate its WB Xpress Project which would include: (i) The construction of approximately 29.2 miles of various diameter pipeline, (ii) modifications to seven existing compressor stations, (iii) construction of two new compressor stations, and (iv) uprating the maximum allowable operating pressure (MAOP) on various segments of Columbia's existing Line WB and Line VB natural gas transmission systems. The WB Xpress Project facilities are designed to expand the capacity of Columbia's existing system to transport up to approximately 1.3 million dekatherms per day (MMDth/d) of natural gas. Facilities to be constructed or uprated are located in Clay, Kanawha, Grant, Upshur, Randolph, Pendleton, Braxton, and Hardy Counties, West Virginia and in Clark, Fauquier, Fairfax, Loudoun, Shenandoah, and Warren Counties, Virginia. The cost to construct the project facilities is approximately 780 million dollars.

The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Michael D. Walker, Manager, FERC Certificates, Columbia Gas Transmission, LLC, P.O. Box 1273 Charleston, West Virginia 25325, phone: (304) 357–2443, Fax: (304) 357–2770, or email *mdwalker@cpg.com* or Brittany Carns, Community Relations & Stakeholder Outreach Manager at the

same address or via phone: (304) 359–2771 or email: *brittanycarns@cpg.com.*

On April 16, 2015 the Commission granted Columbia's request to utilize the Pre-Filing Process and assigned Docket No. PF15–21–000 to staff activities involved in the WB Xpress Project. Now, as of the filing of the December 30 application, the Pre-Filing Process for this Project has ended. From this time forward, this proceeding will be conducted in Docket No. CP16–38–000 as noted in the caption of this Notice.

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 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 5 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 commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Comment Date: 5:00 p.m. Eastern time on February 4, 2016.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01116 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–60–000.
Applicants: Aspirity Energy Mid-States, LLC, Aspirity Energy Northeast, LLC.
Description: Application of Aspirity Energy Northeast, LLC, et al. for Authorization under Section 203 of the FPA and Requests for Expedited Consideration and Confidential Treatment.
Filed Date: 1/13/16.
Accession Number: 20160113–5289.
Comments Due: 5 p.m. ET 2/3/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–38–000.
Applicants: Innovative Solar 43, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator (EWG) of Innovative Solar 43, LLC.
Filed Date: 1/13/16.
Accession Number: 20160113–5225.
Comments Due: 5 p.m. ET 2/3/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–012; ER10–1819–014; ER10–1820–017; ER10–1817–013.
Applicants: Public Service Company of Colorado, Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Southwestern Public Service Company.
Description: Triennial Market Power Analysis and Notice of Change in Status of Public Service Company of Colorado, et al.
Filed Date: 1/14/16.
Accession Number: 20160114–5292.
Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: ER14–1656–007.
Applicants: CSOLAR IV West, LLC.
Description: Notification of Change in Status of CSOLAR IV West, LLC.
Filed Date: 1/14/16.
Accession Number: 20160114–5268.
Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER15–2679–002.
Applicants: Latigo Wind Park, LLC.
Description: Compliance filing: Latigo Wind Park, LLC MBR Tariff to be effective 11/15/2015.
Filed Date: 1/14/16.
Accession Number: 20160114–5273.
Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER15–2680–002.
Applicants: Sandstone Solar LLC.
Description: Compliance filing: Sandstone Solar LLC MBR Tariff to be effective 11/1/2015.
Filed Date: 1/14/16.
Accession Number: 20160114–5272.
Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER16–452–003.
Applicants: RE Tranquillity LLC.
Description: Tariff Amendment: Additional Amendment to Application

and Initial Tariff Filing to be effective 12/3/2015.

Filed Date: 1/13/16.

Accession Number: 20160113–5236.

Comments Due: 5 p.m. ET 1/27/16.

Docket Numbers: ER16–730–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Basin Electric NITSA Rev 3 to be effective 1/1/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5290.

Comments Due: 5 p.m. ET 2/4/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–19–000.

Applicants: Union Electric Company.

Description: Application of Union Electric Company for Section 204 financing authority.

Filed Date: 1/14/16.

Accession Number: 20160114–5303.

Comments Due: 5 p.m. ET 2/4/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01119 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14721–000]

The City of Springfield; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2015, the City of Springfield, Massachusetts (Springfield) 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 Watershops Pond Dam Hydroelectric Project (project) to be located on the Mill River, near Springfield, Hampden County, Massachusetts. 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: (1) The existing 105-foot-long, 32-foot-high, concrete and masonry gravity Watershops Pond dam; (2) an existing 198-acre impoundment with a normal maximum water surface elevation of 155 feet above mean sea level; (3) a new 7-foot-long, 4-foot-wide steel penstock; (4) a new 100-foot-long, 30-foot-wide powerhouse containing a single turbine generator unit with an installed capacity of 145 kilowatts; (5) a new 800-foot-long, 0.48-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated average annual energy generation of 707 megawatt-hours. There are no federal lands associated with the project.

Applicant Contact: Mr. Peter J. Garvey, Director, Department of Capital Asset Construction, 36 Court Street, Room 312, Springfield, Massachusetts 01103; phone: (413) 787–6445.

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@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–14721–000.

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–14721) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01118 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Termination of Requirement To FileFourth Quarter 2015 Land Acquisition Reports

Take notice that sellers with market-based rate authority need not submit reports for the fourth quarter of 2015 documenting the acquisition of control of sites for new generation capacity development (land acquisition reports). Order No. 816,[1] which will become effective on January 28, 2016, terminates the requirement to submit such reports. Therefore, land acquisition reports for the fourth quarter of 2015, which would have been due on January 30, 2016, are not required.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01117 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–14743–000]

ORPC Maine, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 4, 2015, ORPC Maine, LLC (ORPC Maine) filed an application

[1] *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 816, 80 FR 67,056 (Oct. 30, 2015), FERC Stats. & Regs. ¶ 31,374 (2015).

for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Western Passage Tidal Energy Project No. 14743 (Western Passage Project) to be located in Western Passage, near the City of Eastport, Washington County, Maine. 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: (1) 15 double TidGen® TGU hydrokinetic tidal devices, each consisting of a 500-kilowatt turbine-generator unit for a combined capacity of 5,000 kilowatts; (2) an anchoring support structure; (3) a mooring system; (4) a 3,900 to 4,200-foot-long submersible cable connecting the turbine-generator units to a shore station; (5) a 1,900 to 4,600-foot-long, 4.16- to 12.7-kilovolt transmission line connecting the shore station to an existing distribution line; and (6) appurtenant facilities. The estimated average annual generation of the Western Passage Project would be 2.6 to 3.53 gigawatt-hours. There are no federal lands associated with the project.

Applicant Contact: Christopher R. Sauer, President and CEO, Ocean Renewable Power Company, LLC, 66 Pearl Street, Suite 301, Portland, Maine 04101; phone: (207) 772–7707.

FERC Contact: Michael Watts; phone: (202) 502–6123; email: *michael.watts@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–14743–000.

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–14743) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01124 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–008; ER12–2076–005; ER11–2462–006; ER11–2463–006; ER11–2112–007; ER12–2077–005; ER12–2078–005; ER10–2828–003; ER11–2464–006; ER10–3158–006; ER10–2942–005; ER12–2081–005; ER12–2083–005; ER12–2084–005; ER10–2423–006; ER10–2404–006; ER12–2086–005; ER12–2649–003; ER10–1725–003; ER11–2465–007; ER14–2676–002; ER10–2994–013; ER11–2466–006; ER11–2467–006; ER11–2468–006; ER11–2469–006; ER11–2470–006; ER11–2471–006; ER11–2472–006; ER10–3001–004; ER10–3002–003; ER10–3004–004; ER12–308–006; ER12–2108–005; ER12–2097–005; ER12–2101–005; ER10–3162–006; ER12–422–005; ER12–2102–006; ER12–2109–005; ER11–2473–006; ER10–3010–003; ER12–2106–005; ER11–2196–007; ER10–3161–006; ER12–96–005; ER11–2474–008; ER10–3031–003; ER12–2107–005; ER11–2475–006; ER10–2285–005; ER10–2301–003; ER10–2306–003; ER10–3160–002; ER10–2812–013; ER10–1291–020; ER10–2843–012.

Applicants: Atlantic Renewables Projects II LLC, Barton Windpower LLC, Big Horn Wind Project LLC, Big Horn II Wind Project LLC, Blue Creek Wind Farm LLC, Buffalo Ridge I LLC, Buffalo Ridge II LLC, Casselman Windpower LLC, Colorado Green Holdings LLC, Dillon Wind LLC, Elk River Windfarm, LLC, Elm Creek Wind, LLC, Elm Creek Wind II LLC, Farmers City Wind, LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Flying Cloud Power Partners, LLC, Groton Wind, LLC, Hardscrabble Wind Power LLC, Hay Canyon Wind LLC, Iberdrola Arizona Renewables, LLC, Iberdrola Renewables, LLC, Juniper Canyon Wind Power LLC, Klamath Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Klondike Wind Power II LLC, Klondike Wind Power III LLC, Leaning Juniper Wind Power II LLC, Lempster Wind, LLC, Locust Ridge Wind Farm, LLC, Locust Ridge II, LLC, Manzana Wind LLC, MinnDakota Wind LLC, Moraine Wind LLC, Moraine Wind II LLC, Mountain View Power Partners III, LLC, New England Wind, LLC, New Harvest Wind Project LLC, Northern Iowa Windpower II LLC, Pebble Springs Wind LLC, Providence Heights Wind, LLC, Rugby Wind LLC, San Luis Solar LLC, Shiloh I Wind Project, LLC, South Chestnut LLC, Star Point Wind Project LLC, Streator-Cayuga Ridge Wind Power LLC, Trimont Wind I LLC, Twin Buttes Wind LLC, Central Maine Power Company, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation, The United Illuminating Company, GenConn Devon LLC, GenConn Energy LLC, GenConn Middletown LLC.

Description: Notice of Change in Status of the AVANGRID MBR Sellers.

Filed Date: 1/14/16.

Accession Number: 20160114–5314.

Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER12–1895–000; EL12–110–000; ER11–3657–000; EL11–64–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 1/14/16.

Accession Number: 20160114–5336.

Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER15–762–006; ER15–760–005; ER15–1579–004; ER 15–1582–005; ER15–1914–006; ER15–1896–004.

Applicants: Sierra Solar Greenworks LLC, Western Antelope Blue Sky Ranch A LLC, 67RK 8me LLC, 65HK 8me LLC, 87RL 8me LLC, Eden Solar, LLC.

Description: Notice of Non-Material Change in Status of Sierra Solar Greenworks LLC, et. al.

Filed Date: 1/14/16.

Accession Number: 20160114–5315.

Comments Due: 5 p.m. ET 2/4/16.

Docket Numbers: ER16–731–000.

Applicants: Green Country Energy, LLC.

Description: Market-Based Triennial Review Filing: Green Country Energy

Triennial MBR Update in Docket No. ER10–3063 to be effective 3/14/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5363.

Comments Due: 5 p.m. ET 3/14/16.

Docket Numbers: ER16–732–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: Surcharge—Targeted Demand Management Program and Demo Projects to be effective 1/15/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5378.

Comments Due: 5 p.m. ET 2/4/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01114 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14558–001]

KC Lake Hydro LLC; Notice of Surrender of Preliminary Permit

Take notice that KC Lake Hydro LLC (KC Hydro) filed a letter on January 7, 2016, describing its decision to abandon the preliminary permit for the proposed North Hadley Lake Warner Dam Hydropower Project.[1] The permit was issued on June 26, 2014, and would have expired on May 31, 2017.[2] The project would have been located at the outlet of Lake Warner, on the Mill River, near the Town of North Hadley, Hampshire County, Massachusetts.

The preliminary permit for Project No. 14558 will remain in effect until the close of business, February 13, 2016. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[3] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01122 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

[1] While not explicitly stated, KC Hydro's filing constitutes a request to surrender its preliminary permit.

[2] 147 FERC ¶ 62,236 (2014).

[3] 18 CFR 385.2007(a)(2) (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14702–000]

Twain Resources, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 25, 2015, Twain Resources, 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 Scheelite Water Power Project (Scheelite Project or project) to be located along Pine Creek, near the City of Bishop, in Inyo County, California. 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) An intake receiving the water discharge from the Tungstar Redux Water Power Project; (2) an18-inch-diameter, approximately 6,500-foot-long steel penstock, conveying water to; (3) a powerhouse containing a single 810-kilowatt impulse turbine and an 840 kilovolt-ampere generator; (4) a new substation at the powerhouse; (5) an approximately 600-foot-long, 12-kilovolt (kV) transmission line connecting the substation to a 12-kV California Edison-owned transmission line; and (6) appurtenant facilities. The estimated annual generation of the Scheelite Project would be 4,860 megawatt-hours.

Applicant Contact: Mr. Doug Hicks, 280 Floreca Way, Reno, Nevada 89511, phone (775) 997–3429.

FERC Contact: Joseph Hassell; phone: (202) 502–8079.

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–14702–000.

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–14702) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01123 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2533–059]

City of Brainerd Public Utility Commission; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend license.

b. *Project No.:* 2533–059.

c. *Date Filed:* August 5, 2015.

d. *Applicant:* City of Brainerd Public Utility Commission.

e. *Name of Project:* Brainerd Hydroelectric Project.

f. *Location:* The project is located on the Mississippi River in Crow Wing County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Scott Magnuson, Superintendent, Brainerd Public Utilities, 8027 Highland Scenic Rd., P.O. Box 373, Brainerd, MN 56401 (218) 825–3213.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, or *steven.sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the date of issuance of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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. Please include the project number (P–2533–059) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The applicant proposes to add a sixth, 600-kilowatt axial flow modular turbine/generator unit into a bay currently occupied by a non-functional, unlicensed, double-runner Francis turbine within the powerhouse. Installing the new unit would not change project operation and would not require any significant construction or modification to the existing civil works at the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01121 Filed 1–20–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9941–00–OW]

National Coastal Condition Assessment 2010

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final National Coastal Condition Assessment (NCCA) 2010. The NCCA describes the results of a nationwide coastal probabilistic survey that was conducted in the summer of 2010 by the Environmental Protection Agency (EPA) and its state, tribal, and federal partners. Results include estimates of coastal area with good, fair, and poor biological quality, water quality, sediment quality, and ecological fish tissue quality. Results are presented nationally and regionally for the Northeast, Southeast, Gulf of Mexico, West, and Great Lakes coasts. The NCCA 2010 also includes information on how the survey was implemented, and future actions and challenges.

FOR FURTHER INFORMATION CONTACT: Hugh Sullivan, Office of Wetlands, Oceans and Watersheds, Office of Water, Washington DC Phone: 202–564–1763; email: *sullivan.hugh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

To better answer questions about the condition of waters across the country, EPA and its state and tribal partners have embarked on a series of surveys under the National Aquatic Resource Surveys (NARS) program. The NCCA 2010 is the most recent in this series of surveys. The key goals of the NCCA 2010 are to describe the ecological condition of the nation's coastal and Great Lakes nearshore waters, how those conditions are changing, and the key stressors affecting those waters. An important component of the NCCA is collaboration with state, tribal, and

federal partners in developing new monitoring tools and analytical approaches and in advancing the science of coastal monitoring. The survey uses a statistical design to sample 1,104 randomly-selected sites that represent the condition of the larger population of coastal waters in the conterminous United States. This is the first time the nearshore waters of the Great Lakes have been included in a national statistically-based survey.

The report finds that more than half of the nation's coastal and Great Lakes nearshore waters are rated in good condition for biological and sediment quality, while about one third are rated in good condition for water quality and less than one percent are rated in good condition based on the potential harm that fish tissue contaminants pose to predator fish, birds, and wildlife. Excessive phosphorus is the greatest contributor to the poor water quality rating. Selenium is the greatest contributor to the poor rating for potential harm to predator fish, birds and wildlife from fish tissue contaminants. The draft report has undergone peer, state and EPA review.

A. How can I get copies of the NCCA 2010 and other related information?

You may access the NCCA 2010 from EPA's Web site at *http://www.epa.gov/national-aquatic-resource-surveys/ncca.*

Dated: January 13, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–01152 Filed 1–20–16; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 28, 2016, from 9:30 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 10, 2015

B. New Business

- Review of Insurance Premium Rates
- Policy Statement Concerning Alternative Means of Dispute Resolution
- Policy Statement Concerning Appraisals

Dated: January 14, 2016.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2016–01048 Filed 1–20–16; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–40]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the Committee). The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including underserved populations, such as Native Americans, persons living in rural areas, older persons, people with disabilities, and persons for whom English is not their primary language) in proceedings before the Commission.

DATES: February 5, 2016, 9:00 a.m. to 4:00 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room TW–C305, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice or Relay), or email *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 16–40, released January 13, 2016, announcing the Agenda, Date, and Time of the Committee's Next Meeting.

Meeting Agenda

At its February 5, 2016 meeting, the Committee is expected to consider a recommendation regarding the modernization of the Lifeline program to include broadband services and to improve administration presented by its Universal Services Working Group. The Committee will receive briefings from Commission staff and/or outside speakers on issues of interest to the Committee. A limited amount of time will be available for comments from the public. If time permits, the public may ask questions of presenters via the email address *livequestions@fcc.gov* or via Twitter using the hashtag #fcclive. The public may also follow the meeting on *Twitter@fcc* or via the Commission's Facebook page at *www.facebook.com/fcc.* Alternatively, members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee at the address provided below.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and committee roster will be provided on site. Meetings of the Committee are also broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may not be possible to fill. To request an accommodation, send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at

202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Alison Kutler,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2016–01157 Filed 1–20–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Thursday, January 21, 2016, to consider the following matters:

Discussion Agenda

Memorandum and resolution re: Notice of Proposed Rulemaking on Deposit Insurance Assessments for Small Banks.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://fdic.primetime.mediaplatform.com/#!/channel/1232003497484/Board+Meetings* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: January 14, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–01244 Filed 1–19–16; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 26, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceeding, or arbitration.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2016–01298 Filed 1–19–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011284–075.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: Alianca Navegacao e Logistica Ltda.; APL Co. Pte Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Jeffrey F, Lawrence, Esq. and Donald J. Kassilke, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment would add United Arab Shipping Co. as a party to the agreement and update the address of Hapag-Lloyd USA LLC. The parties have requested expedited review.

Agreement No.: 011814–006.

Title: HSDG/King Ocean Space Charter Agreement.

Parties: Hamburg Sud and King Ocean Services Limited, Inc.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment revises provisions relating to the sub-chartering of space.

Agreement No.: 012235–002.

Title: Cool Carriers/Trans Global Shipping NV West Coast Agreement.

Parties: Cool Carriers AB and Trans Global Shipping N.V.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment removes CSVV as a party to the agreement and makes related conforming changes.

Agreement No.: 012362–001.

Title: Hoegh/SC Line Space Charter Agreement.

Parties: Hoegh Autoliners AS and SC Line S.A.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment adds Panama and Colombia to the geographic scope of the agreement and makes the agreement bi-directional. The amendment also changes the name of the agreement and restates the agreement.

Agreement No.: 012383.

Title: Hyundai Glovis/Eukor Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd and Eukor Car Carriers Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes Hyundai Glovis to charter space to Eukor from the U.S. East Coast to Nigeria.

Agreement No.: 012384.

Title: Hyundai Glovis/Hoegh Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd and Hoegh Autoliners AS.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes Hoegh to charter space to Hyundai in the trade from Korea to the U.S. East Coast.

Agreement No.: 012385.

Title: K-Line/Liberty Global Logistics LLC Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; and Liberty Global Logistics LLC.

Filing Party: John P. Meade, Esq.; General Counsel; K- Line America, Inc.; 6199 Bethlehem Road, Preston, MD 21655.

Synopsis: The agreement would authorize the parties to discuss non-rate operational matters worldwide.

By Order of the Federal Maritime Commission.

Dated: January 15, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–01160 Filed 1–20–16; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following information collection:

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Effective Dates: December 31, 2015, June 30, 2016 and September 30, 2016.

Frequency: Annually, semi-annually, quarterly, and monthly.

Respondents: Any top-tier bank holding company (BHC) (other than a foreign banking organization), that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the BHC's total consolidated assets in the four most recent quarters as reported quarterly on the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the BHC's total consolidated assets in the most recent consecutive quarters as reported quarterly on the BHC's FR Y–9Cs, if the BHC has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Federal Reserve.

Estimated annual reporting hours: FR Y–14A: Summary, 65,142 hours; Macro scenario, 2,046 hours; Operational Risk, 396 hours; Regulatory capital transitions, 759 hours; Regulatory capital instruments, 660 hours; Retail repurchase, 1,320 hours; and Business plan changes, 330 hours. FR Y–14Q: Securities, 1,716 hours; Retail, 2,112 hours; Pre-provision net revenue (PPNR), 93,852 hours; Wholesale, 20,064 hours; Trading, 69,336 hours; Regulatory capital transitions, 3,036 hours; Regulatory capital instruments, 6,864 hours; Operational risk, 6,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,152 hours; Supplemental, 528 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,408 hours; Counterparty, 18,288 hours; and Balances, 2,112 hours; FR Y–14M: 1st lien mortgage, 173,040 hours; Home equity, 166,860 hours; and Credit card, 110,160 hours. FR Y–14 On-going automation revisions, 15,840 hours. FR Y–14 Attestation implementation, 43,200 hours; and On-going audit and review, 23,040 hours.

Estimated average hours per response: FR Y–14A: Summary, 987 hours; Macro scenario, 31 hours; Operational Risk, 12 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 20 hours; Retail Repurchase, 20 hours; and Business Plan Changes, 10 hours. FR Y–14Q: Securities, 13 hours; Retail, 16 hours; PPNR, 711 hours; Wholesale, 152 hours; Trading, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 52 hours; Operational risk, 50 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; and Retail FVO/HFS, 16 hours; Counterparty, 508 hours; and Balances, 16 hours; FR Y–14M: 1st lien mortgage, 515 hours; Home equity, 515 hours; and Credit card, 510 hours. FR Y–14 On-Going automation revisions, 480 hours. FR Y–14 Attestation Implementation, 4,800 hours; and On-going audit and review, 2,560 hours.

Number of respondents: 33.

General description of report: The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Act, which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the Bank Holding Company Act authorizes the Federal Reserve to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)), if disclosure would likely have the effect of (1) impairing the government's ability to obtain the necessary information in the future, or (2) causing substantial harm to the competitive position of the respondent. Such exemptions would be made on a case-by-case basis.

Though the Federal Reserve intends to share the information collected under the FR Y–14 with the Department of Treasury's Office of Financial Research, such sharing shall not be deemed a waiver of any privilege applicable to such information, including but not limited to any confidential status (12 U.S.C. 1821(t); 12 U.S.C. 1828(x)).

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are

sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The Capital Assessments and Stress Testing information collection consists of the FR Y–14A, Q, and M reports. The semi-annual FR Y–14A collects information on the stress tests conducted by BHCs, including quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios, and qualitative information on methodologies used to develop internal projections of capital across scenarios.[1] The quarterly FR Y–14Q and the monthly FR Y–14M are used to support supervisory stress test models and for continuous monitoring efforts. The quarterly FR Y–14Q collects granular data on BHCs' various asset classes, including loans, securities and trading assets, and PPNR for the reporting period. The monthly FR Y–14M comprises three retail loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

Current Actions: On September 16, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 55621) requesting public comment for 60 days on the extension, with revision, of the FR Y–14A/Q/M. The Federal Reserve proposed to revise several schedules of the FR Y 14A/Q/M reports effective December 31, 2015, March 31, 2015 and June 30, 2016, and to implement an attestation requirement for LISSC firms as-of June 30, 2016. The comment period for this notice expired on November 16, 2015.

The Board received two comment letters addressing the proposed changes: One from the Financial Services Roundtable, and one from The Clearing House, the Institute of International Bankers, the American Bankers Association, and the Securities Industry and Financial Markets Association. Comments focused on the scope and timing of the proposed attestation requirement, and the timing of proposed modifications to existing items or schedules, in particular the FR Y–14Q Wholesale schedules (Schedule H.1 and H.2). Commenters requested clarification of the instructions for proposed or existing items, or were technical in nature. Responses to these comments are addressed in the attached draft FR Y–14A/Q/M reporting forms and instructions.

The Federal Reserve also received several comments not directly related to the proposed revisions to the FR Y–14 information collection regarding (1) challenges with the frequency and timing of changes, (2) the Frequently Asked Questions (FAQ) process, (3) technical instructions and data submission processes, (4) edit checks and (5) estimate of reporting burden. Although not specifically addressed herein, these comment letters, well as feedback provided in meetings with both individual respondents and industry groups, have assisted the Federal Reserve's effort to continually improve its internal processes and practices. The following section includes a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received substantive comments and an evaluation of, and responses to the comments received.

Detailed Discussion of Public Comments

A. General Comments

In general, commenters expressed concern with the timing of the proposed changes. Specifically commenters stated there was not sufficient time to undertake the changes necessary to implement the proposed revisions and develop appropriate processes and procedures surrounding the attestation requirement. One commenter recommended that the Federal Reserve provide a minimum of sixth months between the finalization of reporting and technical requirements and the effective date of proposed changes to the FR Y–14A/Q/M reports in order for respondents to adhere to standard software development life cycles.

In response to these comments, the final FR Y–14 regulatory report (final FR Y–14) delays the effective date for nearly all proposed changes to reports with a June 30, 2016, as-of date, as detailed in the schedule-specific sections below. This extension provides respondents with approximately six months to make needed system changes. In addition, the final FR Y–14 delays by two quarters, until September 30, 2016, the effective date of certain changes to the wholesale schedules (Schedules H.1 and H.2), as indicated in the schedule-specific section below.

Certain changes in the final FR Y–14 would take effect beginning with the regulatory reports that have a December 31, 2015, as-of date. These changes include the shift in the FR Y–14A as-of date, from September 30 to December 31, in accordance with modifications to the capital plan and stress test rules; formalization of the FR Y–14Q Business Plan Changes schedule as a regulatory report (rather than as a case-by-case supervisory collection of information); elimination of the FR Y–14Q Securities B.2 sub-schedule, and removal of certain items related to tier 1 common capital.[2] These changes align the FR Y–14 reports with changes in the final capital rule that the Board recently approved, better align regulatory reporting requirements with other existing requirements, reduce burden, or formalize information collections that are already reported as part of the supervisory process. In light of the limited comment on, and limited impact of, these proposed changes, they will be implemented, as proposed, with a December 31, 2015, as-of date.

In response to the Federal Reserve's solicitation for feedback regarding burden associated with the FR Y–14A/Q/M, one commenter suggested that the estimates of reporting burden are substantially lower than a good-faith estimate provided by a sample of reporting firms. The commenter outlined the type of effort and resources, and associated burden required to file the FR Y–14A/Q/M reports and offered to engage in further discussion with the Federal Reserve regarding burden estimates. Burden estimates are based on a schedule by schedule calculation while the estimates provided by the commenter are aggregated. This difference makes it difficult to modify the proposed burden estimates without more detailed information from the commenter. For these reasons, the burden estimates remain the same as proposed.

Commenters also suggested several improvements to the current FAQ process, including providing status on a real time basis, establishing a searchable

[1] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[2] *See* 79 **Federal Register** 64026 (October 27, 2014); 80 **Federal Register** 75419 (December 2, 2015).

repository, distributing more frequently, and setting a standard schedule for responding to questions. The Federal Reserve is continually working to improve the FAQ process. As part of these ongoing efforts the Federal Reserve recently implemented a new FAQ system to enhance the Federal Reserve's ability to track and respond to questions. The new system will allow for more insight into the status of FAQs and help ensure more consistent timing on responses. In addition, similar to the effort undertaken in 2013,[3] the Federal Reserve incorporated all relevant historical FAQs into the final instructions associated with this proposal. The Federal Reserve will continue to incorporate relevant comments and questions related to the FR Y–14 into the instructions on a regular basis.

In the proposal, the Federal Reserve notified respondents of the intent to share FR Y–14 data sets with the Office of Financial Research (OFR). One commenter recommended that the OFR publish aggregate summaries of the data so reporting companies, and the public, can gain insights into industry trends and developments.

B. Attestation

Commenters generally expressed concerns about specific elements of the proposed attestation requirement for the FR Y–14 submission and, in particular, the timing necessary to meet the proposed requirements.

Both commenters argued that the proposed effective date of June 30, 2016, would not provide sufficient time to implement several of the proposed attestation requirements. However, one commenter agreed that it would be practical and appropriate for respondents to provide an attestation as to conformance with the FR Y–14 instructions by June 30, 2016, subject to the specific recommendations in the commenter's letter. Both commenters indicated that additional time was needed to adapt to The Committee of Sponsoring Organizations (COSO)-based framework, including materially supplementing and/or modifying existing systems and processes, and establishing policies, documentation, and certification frameworks. One commenter pointed out that, although some respondents may be able to leverage parts of their existing control infrastructure required under the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley), the scope and level of data granularity on the FR Y–14 forms is substantially larger than what is required under Sarbanes-Oxley and therefore beyond the capability of most firms. Finally, one commenter noted that the implementation of the various attestation requirements would require a significant investment in firm personnel, management, and compliance and information technology resources, and additional time for implementation would allow for more deliberate expansion and upgrade of existing processes and systems to support the attestation.

In light of the above, both commenters suggested alternative implementation timelines. One commenter noted that a major consulting firm estimated it would take a company 15 months to implement the controls necessary to assess risk information. The other commenter suggested a phased-in implementation approach, which would provide respondents additional time to make the more substantial alterations to existing systems and processes necessary to support certain components of the proposed attestation. The phased in approach would involve: (i) An attestation solely regarding compliance with the FR Y–14 instructions effective as of June 30, 2016, which is the same timeframe as in the proposal; (ii) an incremental requirement for respondents to demonstrate as part of the supervisory process, by April 2017, that a framework has been put in place to identify, test, and independently validate key control activities to support these attestations; and (iii) an attestation regarding the effectiveness of internal controls and to the material correctness of data as of April 2018.

In addition, one commenter indicated that the proposal appeared to require attestation to internal controls with each annual, quarterly and monthly FR Y–14 report submission, but that doing so would not be feasible at that frequency. The commenter suggested that the effectiveness of internal controls be limited to annual submissions on the FR Y–14A.

The Federal Reserve recognized in the initial **Federal Register** notice the time needed for LISCC firms to ''enhance certain systems and processes'' and ''modify internal control frameworks and data governance committees.'' In response to comments and in order to allow additional time for respondents to put internal controls processes and frameworks in place and complete testing of these processes and frameworks, the initial attestation requirement in the final Y–14 will be delayed until reports with a December 31, 2016, as-of date. In addition, in connection with the initial attestation and to allow time for respondents to develop and test their internal control systems, the initial attestation will relate solely to the effectiveness of internal controls over submissions as of December 31, 2016, rather than with respect to submissions throughout the year. Effective for the monthly, quarterly, and semi-annual FR Y–14 reports submitted as of January 31, 2017, and thereafter, respondents will attest to conformance with the FR Y–14 instructions and to the material correctness of data to the best of the respondent's knowledge, and agree to report material weaknesses and any material errors in the data as they are identified starting January 1, 2017. Effective December 31, 2017, and for all future reporting periods, a respondent's attestation as to the effectiveness of internal controls will be with regard to FR Y–14 submissions filed throughout the year.

To clarify the timing of these staggered attestation requirements, the final Y–14 includes three separate attestation cover pages. First, as indicated, with respect to the monthly, quarterly, and annual FR Y–14 reports with a December 31, 2016, as-of date, respondents will attest to internal controls around the reports submitted as of that date. Second, effective for the monthly, quarterly, and semi-annual FR Y–14 reports submitted beginning January 31, 2017, and thereafter, respondents will attest on a separate cover page to the respondent's conformance with the FR Y–14 instructions and to the material correctness of data to the best of the respondent's knowledge, and agree to report material weaknesses and any material errors in the data as they are identified starting January 1, 2017. Third and finally, effective for reports with a December 31, 2017, as-of date and for all future FR Y–14 submissions as of December 31 of a calendar year, the initial December 31, 2016, cover page will be replaced by a new cover page that will be submitted annually and will include an attestation to the effectiveness of internal controls around the annual FR Y–14A submission and around the FR Y–14Q/M reports that are submitted throughout the year.

Commenters suggested various modifications to the attestation requirement and associated attestation language. One commenter noted that the proposal indicates that the Federal Reserve would not expect to penalize a firm for incorrect reporting where there has been a good faith effort to reasonably interpret the instructions or seek input on a question or interpretation from the Federal Reserve

[3] *See* 78 **Federal Register** 59934.

and requested that similar qualifying language be added to the attestation form. The final FR Y–14 includes these revisions to the attestation form.

Under the proposal, the firm's CFO would have been required to attest to the internal controls over the reporting of actual data as-of the reporting period. A commenter noted that internal controls over financial reporting and risk management data are the joint responsibility of senior management and that the CFO is not individually responsible for internal controls over the reporting of FR Y–14 data. The commenter suggested that the attestation form be modified to indicate that the CFO attests that senior management is responsible for the internal controls over the reporting of the FR Y–14 data. In response, the final FR Y–14 incorporates this modification to the attestation form.

Both commenters addressed the definition of materiality in the attestation language. One commenter expressed concern with the absence of a definition of ''materiality'' which inherently requires each respondent to make an individual determination on materiality. The other commenter requested that the Federal Reserve confirm that respondents would be expected to develop materiality policies based on their own capital plan submission. The Federal Reserve does not generally define materiality within the FR Y–14 reports.

Furthermore, outlining materiality for specific respondents would not be feasible. As stated in the **Federal Register** for the proposal, a BHC would be required to have a policy for determining materiality in the context of quantitative and qualitative considerations for their firm. Accordingly, the final FR Y–14 includes the proposed definition of materiality without change.

One commenter requested that the Federal Reserve make attestation requirements applicable to the intermediate holding company (IHC) subsidiaries of LISCC foreign banking organizations (FBOs) no earlier than April 2018. On February 18, 2014, the Board adopted a final rule implementing enhanced prudential standards for FBOs,[4] which, among other things, requires an FBO with U.S. non-branch assets of greater than $50 billion to establish a U.S. IHC by July 1, 2016, to which it must transfer its entire ownership interest in all U.S. BHCs, U.S. insured depository institutions, and U.S. subsidiaries.[5] The commenter expressed concern that the timing of the implementation of the attestation requirement would be particularly challenging for FBOs currently restructuring to complete the formation of their IHC. Currently, the Board has not proposed reporting requirements for IHCs, which, as noted in the preamble to the final rule implementing enhanced prudential standards for FBOs, would be addressed at a later date.

At such time as the Board proposes reporting requirements for IHCs, the Federal Reserve expects to invite comment through a notice and comment process, and would evaluate the particular circumstances and challenges surrounding IHC formation vis-à-vis the full spectrum of Board regulatory reporting requirements. The Federal Reserve does, however, reiterate that the attestation requirement applies to LISCC firms.

C. Schedule Specific Comments

FR Y–14A

Schedules A.1.c.1 (General RWA) and A.1.d. (Capital)

Related to the proposed modifications to the collection in accordance with revisions to the capital plan and stress test rules, specifically elimination of the use of the tier 1 common ratio, one commenter noted that as of the end of the comment period, the changes to the capital plan and stress test rules had not yet been finalized and asked that the Federal Reserve reflect any changes in the final release of the FR Y–14 forms. On November 25, 2015, the Board approved the final rule to modify the capital plan and stress test rules. Accordingly, and in response to the comment, the final FR Y–14 removes items relating to the reporting of ''tier 1 common capital'' as proposed from the following schedules in order to align with the final rule: FR Y–14A General RWA (Schedule A.1.c.1), Standardized RWA (Schedule A.1.c.2), Capital (Schedule A.1.d), Regulatory Capital Transitions (Schedule D.4), Regulatory Capital Instruments (RCI, Schedule C), and the FR Y–14Q Regulatory Capital Transitions (Schedule D.4) and Regulatory Capital Instruments (Schedule C).[6]

Both commenters supported the removal of items related to tier 1 capital consistent with the rule, however recommended removing the items from the technical instructions in order to limit the number of edit checks respondents are required to respond to, rather than keeping these items in the technical instructions as proposed. The Federal Reserve recognizes the burden of responding to edits, as well as the technical effort by both the Federal Reserve and respondents to incorporate report changes. The Federal Reserve will keep the tier 1 common capital-related items in the FR Y–14A Summary schedule (Schedule A) technical instructions in order to mitigate the operational risk of making changes as proposed; however, to address the commenters concerns and reduce the burden on respondents, edit checks on these items will be eliminated and responses will not be requested.

Schedules A.1.c.2 (Standardized RWA) and D.4 (RCT)

Under the proposal, the Standardized RWA (FR Y–14A, Schedule A.1.c.2) and Regulatory Capital Transitions (FR Y–14A, Schedule D.4 and FR Y–14Q, Schedule D.4) schedules would have been revised by replacing the existing market-risk weight asset portion with the relevant items from the FFIEC 102 and aligning the remaining items with the FR Y–9C Schedule HC–R Part II. Both commenters noted that the aforementioned changes were effective for the Standardized RWA schedule (FR Y–14A, Schedule A.1.c.d) as-of December 31, 2015 and for the Regulatory Capital Instruments schedules (FR Y–14A Schedule D.4, FR Y–14Q Schedule D.4) as-of June 30, 2016. They recommended that the effective dates be consistent and delayed until June 30, 2016. In response, the changes for all three schedules (FR Y–14A, A.1.c.2 (Standardized RWA), D.4 (RCT) and 14Q D.4 (RCT) will be implemented as modified below, effective June 30, 2016.

One commenter expressed concern that these modifications would require an unnecessary level of forecasting granularity around Market Risk RWA and recommended that this level of detail not be included in the final version. The other commenter stated they had no objection to the changes as proposed. In response to the comment received, the Federal Reserve further reviewed the items proposed to be added to these schedule in alignment with the FFIEC 102. In light of these comments, the final FR Y–14 removes the requirement to report projections for certain more granular proposed items from the FR Y14A Standardized RWA (Schedule A.1.c.2) and Regulatory Capital Transitions (Schedule D.4) schedules, while retaining general alignment with the structure of the FFIEC 102 report and reporting of the actual information. These changes will

[4] 79 **Federal Register** 17239 (March 27, 2014).

[5] *See* 12 CFR 252.153.

[6] Effective January 1, 2016, tier 1 common capital has been removed from the Board's capital plan rule (12 CFR 225.8). *See* 80 **Federal Register** 75419 (December 2, 2015).

be implemented as modified effective June 30, 2016.

Schedule A.2.b (Retail Repurchase)

Commenters expressed concern with the proposal to break out the Retail Repurchase schedule from the Summary (Schedule A) and moving the submission date in line with the quarterly schedules given the schedule contains projected data as well as actual data. The commenters were also concerned that the proposed effective date of June 30, 2016 would not allow respondents enough time to implement the necessary controls and processes required to submit the new semi-annual schedule and recommended delaying implementation an additional six months to be effective December 31, 2016. The Federal Reserve agrees that the projected data should remain part of the Summary (Schedule A) and confirms that the new FR Y–14A semi-annual schedule breaks out only the actual data from the existing Retail Repurchase schedule (Schedule A.2.b). Given the information to be collected on both schedules is already reported on the FR Y–14A, the restructuring changes only the submission date for actual not projected data, and that the submission date is more than six months out, the final FR Y–14 proceeds with this change as indicated above, effective June 30, 2016 as proposed.

Schedule A.2.c (ASC 310–30)

The Federal Reserve proposed eliminating this schedule effective as-of June 30, 2016. One commenter recommended that the Federal Reserve eliminate this schedule as-of December 31, 2015. The other commenter noted that although they have previously requested a six month window between the finalization of changes and effective date, it is less burdensome to remove a minor reporting item and therefore supported the change as proposed. In an effort to allow as much time as possible between finalization and the effective date for both the removal and addition of items and in support of limiting the changes effective for the December 31, 2015 as-of date, the final FR Y–14 implements this change as proposed.

Schedule A.7.c (PPNR)

In an effort to reduce burden, the Federal Reserve proposed aligning this schedule with the ''normal environment'' requirement. There were no questions or concerns on the proposed change, however one commenter requested that the Federal Reserve periodically review whether the items to be submitted are still necessary and propose removing those that are not. The Federal Reserve continues to review the FR Y–14 and propose to remove items as they are no longer necessary, as evidenced in this proposal with the removal of two schedules and other items. Upon further review, the final FR Y–14 eliminates three additional variables from the PPNR Metrics schedule (Schedule A.7.c): Merchant Banking/Private Equity—Assets Under Management (Line 27), Sales and Trading—Total Proprietary Trading Revenue (Line 29), and Investment Services—Corporate Trust Deals Administered (Line 43). In addition, a materiality threshold will be added to the investment banking metrics of the PPNR Metrics schedule to further limit the amount of detail required for many firms. The instructions will be updated to indicate that only firms who report greater than $100 million in item 15, Investment Banking, of Schedule A.7.a (PPNR Projections) should report the investment banking metrics (Lines 11 to 26) in Section A of Schedule A.7.c (PPNR Metrics). The Federal Reserve will continue to review the FR Y–14 reports for unnecessary items for potential elimination in future proposals. In addition, in response to the general request for additional time to implement changes, the effective date of all modifications to this schedule will be delayed until June 30, 2016.

Schedule F (Business Plan Changes)

One commenter supported the formalization of the Business Plan Changes (BPC) schedule (Schedule F), but was concerned that the BPC schedule instructions as proposed did not appear consistent with the FR Y–14A summary and did not incorporate previous FAQ guidance. The commenter also requested that clarification on the definition of ''material''. The final FR Y–14 BPC instructions have been updated to identify a limited number of items on the BPC schedule which, for technical reasons, require different instructions. In addition, the final FR Y–14 instructions have been updated to include certain clarifications from the FAQ process. Finally, the requirement to report the BPC schedule is based on whether the BHC includes material business plan changes in their capital plan, as defined in the CCAR instructions. In response, the final FR Y–14 includes updates to the BPC instructions to refer BHCs to the CCAR instructions for a given year for requirements of materiality.

FR Y–14Q

The majority of comments received regarding the FR Y–14Q requested clarification of item definitions and will be addressed in the final instructions. Several substantive comments, particularly on the Wholesale Corporate Loan (Schedule H.1) and Commercial Real Estate (Schedule H.2) schedules, are summarized below.

Schedule A.1–A.10 (Retail)

Commenters requested additional information on the proposed change to the loan population on the Retail schedule. They noted that the initial notice in the **Federal Register** stated that the change would limit the population of the schedule to ''accrual loans'', while the draft instructions indicate a BHC should ''include loans and leases held for investment at amortized cost.'' The language in the **Federal Register** Notice should have stated that the change was to ''restrict the loan population of this schedule to loans held at amortized cost in order to accurately reflect the intention of the schedule and be responsive to industry comments.'' This is in alignment with the language in the draft instructions. In response to the general request to provide additional time to implement changes, the effective date of this change will be delayed until the report as-of June 30, 2016.

Schedule A.8–A.9 (Retail)

One commenter expressed concern with the effective date of the proposal to exclude non-purpose loans for purchasing and carrying securities from this schedule as it requires changes to complex, product-specific loan tagging rules, including for loans already tagged for months in the quarter. The commenter requested that the Federal Reserve make this change effective as-of June 30, 2016. The effective date of this change, as well as the complementary changes to the FR Y–14Q Wholesale (Schedule H.1) and Balances (Schedule M) schedules until the report as-of June 30, 2016.

Schedule C.3 (Regulatory Capital Instruments (RCI)—Issuances During the Quarter)

Both commenters requested clarification on the intended effective date of this change and the nature of the one-time submissions. The additions and modifications will be implemented as proposed, however in response to the general request to provide additional time to implement changes, the effective date of the changes proposed for December 31, 2015 will be delayed until the report as-of June 30, 2016. As a result, all proposed changes to the RCI schedule will be effective June 30, 2016, at which time there will be one separate

one-time submission of all subordinated debt instruments for the effective date. Additionally, any new respondents are required to report the one-time submission.

Schedule D.4 (RCT)

As with the corresponding changes to the FR Y–14A Standardized RWA (Schedule A.1.c.2) and RCT (D.4) schedules, commenters noted the inconsistent effective dates and recommended that the proposed changes to the FR Y–14Q RCT (Schedule D.4) also be effective June 30, 2016. The Federal Reserve agrees with this suggestion and the proposed changes will be made effective as-of June 30, 2016.

As noted in regards to the FR Y–14A, one commenter expressed concern that the proposed modifications would require an unnecessary level of forecasting granularity around Market Risk RWA. Since the FR Y–14Q RCT Schedule (Schedule D.4) does not require any projected data, the changes to the FR Y–14Q RCT schedule will be implemented as proposed effective June 30, 2016.

Schedule G (PPNR)

One commenter noted that the Federal Reserve should not eliminate the deposit funding threshold for submission of the Net Interest Income (NII) worksheet and require all respondents to submit such schedules. Specifically, the commenter stated that requiring firms to submit the NII templates would impose undue burden and offered an alternative of only completing the banking book assets and liabilities rather than both trading book and banking book. The Federal Reserve notes that the schedule separates out specific instructions related to trading and banking book expectations and the trading line items are already required to be completed for other regulatory reporting purposes (FR Y–9C). Furthermore, the underlying NII reporting systems are already required as part of separate supervisory expectations related to interest rate risk identification. Finally, collecting this information will enhance the comparability of assets and liabilities across BHCs and promote greater consistency in supervisory evaluations. Therefore, the changes do not appear to impose unnecessary burden and the final FR Y–14 implements the revisions as proposed.

One commenter stated that the **Federal Register** Notice did not indicate an effective date for the change in the NII worksheet deposit funding threshold. The other commenter added that this change will require sufficient time for newly covered firms to build reporting systems. The effective date was erroneously omitted from the proposal, and changes were intended to be proposed to be effective March 31, 2016. In response to these and the general comments on timing, the effective date of this change will be delayed until June 30, 2016.

Schedule H.1 (Corporate Loan) and H.2 (Commercial Real Estate)

Both commenters expressed concerns with the effective date of the changes to the Corporate Loan and CRE schedules, especially regarding the disposed loan and syndicated pipeline reporting. In particular commenters explained that respondents may need to update systems to capture and report the information required as proposed. They also noted that the non-purpose loans were proposed to be included on the Corporate Loan schedule (H.1) as-of December 31, 2015, but that the new purpose codes associated with those loans were proposed to be effective March 31, 2016 and asked that the changes be implemented concurrently. In response to the aforementioned comments and in consideration of the additional time needed to implement changes, the changes related to disposed loans and the syndicated pipeline will be effective September 30, 2016, and all other changes to the Corporate Loan and Commercial Real Estate schedules effective as-of June 30, 2016.

Commenters requested clarification on the definition and purpose of disposed loans as it relates the expansion of the loan population and the proposed Disposition Flag field. Specifically, they questioned whether facility information should be reported as-of the disposition date and if that means capturing balances and data prior to the actual payoff or charge-off of the facility. The Federal Reserve confirms that the data should be reported as-of the date of disposition, not prior to the payoff or charge-off of the facility.

In addition, one commenter recommended adding Disposition Flag values for when loans fall under the $1M reporting threshold, or shift from one loan schedule to another. In response, the final FR Y–14 adds two options to the Disposition Flag field. In addition, to accommodate the new item for facilities shifting from one schedule to another, the final FR Y–14 adds an additional field to capture to which schedule the facility shifted.

The Federal Reserve proposed expanding the options of the Participation Flag item to include the Shared National Credit (SNC) program. One commenter stated that some respondents are classified as expanded reporters and, therefore, subject to a broader data collection referred to as ''Large Corporate Syndicated Credit'' (LCSC) and therefore recommended that all references to SNCs in the proposal be clarified to include all LCSC eligible credits as well for respondents that are classified as expanded reporters. The Federal Reserve confirms that intent of the new proposed options in the Participation Loan Flag are, in conjunction with the SNC Internal Credit Facility ID, to distinguish whether or not the credit facility is included in the SNC report. Accordingly, the final FR Y–14 implements the change as proposed, effective June 30, 2016.

Both commenters indicated that two items for the Credit Rating Agency Equivalent Rating field (Field 96, 97 of Schedule H.1 and Field 59, 60 of Schedule H.2) were included in the draft instructions but not proposed as changes and therefore had no specified effective date. Commenters had several questions regarding the reporting of these items. The Federal Reserve confirms that these items were erroneously included in the draft instructions, were not proposed to be added, and therefore will not be implemented. These items have been removed from the final FR Y–14 instructions.

Schedule H.1 (Corporate Loan)

Both commenters asked for guidance regarding the intended difference between two of the five categories to be added to the Credit Facility Purpose item, namely (1) non-purpose margin lending collateralized by securities and (2) other non-purpose lending collateralized by securities. One commenter stated that per the definition, a ''non-purpose loan'' cannot be a margin loan. After considering the definition and types of loans to be reported in both proposed categories mentioned in the comment, the final FR Y–14 adds only one consolidated category for ''Non-purpose loans collateralized by securities'' rather than the two categories proposed.

The Federal Reserve proposed expanding the loan population to include non-purpose loans that are not graded in conjunction with complementary changes to FR Y–14Q Schedules A.8, A.9, and M to reflect the intention of the schedule and be response to industry comments. One commenter recommend that the definition of non-purpose loans be revised to ''loans collateralized by securities and that the proceeds of such

loans are not contractually restricted to be used only to purchase or carry securities.'' The same commenter expressed that it was unclear whether non-graded loans for purchasing and carrying securities are to be reported at the facility level, and if so that this information is generally not readily available for reporting.

The corporate loan population was amended to include non-purpose loans collateralized by securities made for any purpose other than purchasing or carrying securities which are reportable in the relevant FR Y–9C categories outlined in the instructions. Loans reported in FR Y–9C, Schedule HC–C, line item 9.b.(1) (Loans for purchasing or carrying securities) should not be reported at the facility level in the Corporate schedule. Accordingly, the final FR Y–14 includes the definition as proposed.

One commenter stated that scored non-purpose loans are currently reported on FR Y–14M report and requested confirmation that scored non-purpose loans are not included within ''non-purpose loans that are not graded.'' The corporate loan population will be expanded as proposed to include both scored and graded non-purpose loans which are reportable in the relevant FR Y–9C line items indicated in the Corporate Loan Schedule (Schedule H.1) instructions. This change is intended to help ensure that non-purpose commercial loans and loans for purchasing or carrying securities are treated consistently across institutions and the Federal Reserve confirms that any non-purpose loans reportable in other FR Y–9C line items not specified in the Corporate Loan schedule instructions should continue to be reported on other FR Y–14 schedules per the instructions of those schedules. As previously indicated, the final FR Y–14 delays the effective date of this proposed change until June 30, 2016.

One commenter asked for further details surrounding the reporting of the new Credit Facility Purpose (Field 22) code ''bridge financing'', including whether this code value only includes real estate financing loans and how it relates to the ''mini-perm'' loan purpose code recently added to the CRE schedule (Schedule H.2). The Federal Reserve clarifies that bridge financing is not limited to only real estate financing loans. Bridge financing is interim financing, typically taken out for a period of 2 weeks to 3 years pending the arrangement of larger or longer-term financing. The ''Bridge Financing'' purpose code on the Corporate schedule (Schedule H.1) is not meant to be related to the mini-perm loan purpose code on the CRE schedule (Schedule H.2).

Both commenters requested clarification as to what was to be reported in the two new credit facility types proposed for Field 20 (Credit Facility Type), ''Fronting Loan'' and ''Swingline''. In response to comments, the final FR Y–14 modifies Field 20 (Credit Facility Type) to include one additional option called ''Fronting Exposure'', as opposed to the two additional options proposed. The Fronting Exposure option should be selected for credit facilities reported in the schedule that represent a BHC's exposure to fund certain obligations (*e.g.,* swinglines or letters of credit) on behalf of other participant lenders. In addition, the instructions are revised to indicate that for credit facilities which include a fronting exposure, BHCs should report their pro-rata share of the stated commitment amount as one facility to the borrower and the fronting obligations as separate credit facilities to each of the lending group participants.

In regards to the proposed changes to the Credit Facility Type field, one commenter also requested guidance on reporting facilities that have both a Swingline and LC Issuance limit. In response to comments, the final FR Y–14 instructions have been revised to indicate that for credit facilities which include a fronting exposure, BHCs should report their pro-rata share of the stated commitment amount as one facility to the borrower and the fronting obligations as separate credit facilities to each of the lending group participants. Fronting exposures are those that represent a BHC's exposure to fund certain obligations (*e.g.,* swinglines or letters of credit) on behalf of other participant lenders. For such exposures, the BHC should report the new Fronting Exposure option in the Credit Facility Type field. To address this, the general instructions will have been updated to include the following example: For example, consider a facility with $400 million committed balance where the BHC is the agent bank and the BHC's pro-rata share of the commitment is 10% or $40 million. Assume further that the credit facility contains a $50 million sublimit that the BHC, as agent, has an obligation to advance on behalf of lending group participants which may include swinglines, letters of credit and other fronting obligations. In this example, the agent BHC would report one credit facility to the borrower with a commitment of $40 million and would report separate facilities to each of the lending group participants with pro-rata commitments totaling $45 million (or 90%).

Both commenters asked for clarification regarding the removal of the requirement to only report legally binding commitments. Specifically, one commenter asked for clarification regarding the definition of ''legally binding'' and asked whether all uncommitted and/or unadvised lines on the FR Y–14Q report should be included or if the change was to allow for the inclusion of exposures in the syndicated loan pipeline. The other commenter asked if by removing the legally binding restriction to the loan population, the Board intended to report all facilities in the syndicated loan pipeline or just those facilities considered commitments to commit based on a reporting company's legal definition. The Federal Reserve confirms that the loan population has been amended to capture commitments as defined in the FR Y–9C, Schedule HC–L. In addition, the FR Y–14Q Corporate Loan schedule (Schedule H.1) has been amended to capture facilities in the syndicated loan pipeline including single-signed exposures, regardless of whether the BHC considers those facilities to be commitments. As per the FR Y–14Q, Corporate Loan schedule instructions, BHCs should not report informal ''advised lines.''

Also in regards to the removal of the requirement to report only legally binding commitments, one commenter noted that the language in the proposed instructions for the Corporate Loan Schedule (H.1) was not consistent with that of the Commercial Real Estate (CRE) Schedule (H.2) and asked if the intention was to eliminate the legally binding restriction from both schedules. The Federal Reserve agrees that there should be consistency between the wholesale schedules, and the CRE schedule (H.2) of the final FR Y–14 has been revised to also remove the legally binding language in alignment with the Corporate schedule (H.1).

Both commenters stated that it was unclear what type of lending is intended to be captured in the syndicated loan population and what is meant by ''closed and settled''. In response, the Federal Reserve confirms that the loan population should include syndicated loan commitments in the various stages of the syndication process, including single-signed exposures where the BHC has signed a commitment letter and has extended the terms to the borrower, even if the borrower has not countersigned. In response to the comment, the final FR Y–14 clarifies the Syndicated Loan Flag field by including the following: ''Closed and settled refers

to the final phase where loan documents are fully executed and fully binding with post-closing selldown to all participants complete. Loans which have closed but are still pending execution of final documentation by all syndicate participants should remain in phase 3 'Closed but not settled'.''

One commenter asked for clarification as to whether only those syndicated loans for which the respondents serves as lead bank should be reported. The Federal Reserve confirms that any BHC which has signed a commitment letter and extended terms to the borrower should report the syndicated loans.

Finally, one commenter stated that information about these syndicated pipeline commitments is generally not captured in a reporting company's loan accounting systems, but is maintained ''offline'' and appears in analytical documents and other artifacts. Thus, reporting companies would face a significant, on-going manual burden to somehow systematically collect the required detail on syndicated pipeline commitments to support the requested reporting, particularly at the level of detail required. Additionally, absent proposed changes for how to populate correctly the Origination Date, Maturity Date, and Committed Exposure Global for pipeline loans, the Board has provided no guidance on which Corporate Loan (Schedule H.l) fields would be required at time of submission. The other commenter requested a delay in implementation of the disposed loans and syndicated pipeline items of two quarters to at least September 30, 2016. In consideration of this feedback, the implementation of changes related to disposed loans and syndicated pipeline in the final FR Y–14 will be delayed until September 30, 2016.

Schedule L (Counterparty)

One commenter asked if it is acceptable for BHCs to use Global Industry Classification Standards (GICS) codes on this schedule as allowed in Schedule H.1 (Corporate Loan), field 8, in place of the North American Industry Classification System (NAICS) codes indicated in the new column instructions. The Federal Reserve notes that the instructions for Schedule H.1, field 8, also indicate that the NAICS code should be provided and only offer alternatives in the case the NAICS code is not available. In addition, prior submissions have shown that it is rare for firms to provide GICS instead of NAICS codes. To capture the greater level of granularity they make available, particularly for financial institutions, the final FR Y–14 retains the requirement that NAICS codes be used and the instructions remain as proposed.

In addition, one commenter pointed out that the current instructions do not reflect changes effective in the second quarter of 2015 that revised the level at which the BHC must report data on schedules L.1 and L.4. The Federal Reserve confirms that there has been no change to this requirement and that the final instructions for these schedules will reflect the requirement as outlined in the current instructions.

All proposed modifications to the Counterparty Schedule (Schedule L) were proposed to be effective December 31, 2015. Given the general request to provide additional time to implement changes, the effective date of all Counterparty schedule changes to the final FR Y–14 will be delayed until June 30, 2016

FR Y–14M

Schedule A (First Lien) and Schedule B (Home Equity)

Generally, commenters supported the addition of the ''Serviced by Others'' flag on the First Lien (Schedule A) and Home Equity (Schedule B) schedules. Both commenters noted, however, that the title of the field, ''SBO Flag'', implied that the ''Y'' code should be defined as serviced by others and the ''N'' code as serviced by the BHC rather than the definitions specified in the instructions. The Federal Reserve agrees that it would be more logical for the flag codes in the instructions to be defined as suggested by the commenter rather than as proposed, and the final FR Y–14 instructions have been adjusted to reflect this change. Given the general request to provide additional time to implement changes, final FR Y–14 delays the effective date of this change until June 30, 2016.

Schedule B (Home Equity)

The Federal Reserve proposed adding a new modification type, proposed code 13 ''HELOC Line Renewal'' in Field 77 (Modification Type) on this schedule. Field 77 instructs that the modification type should be reported for any loan that is currently operating under modified terms and should identify the specific terms that were altered through loss mitigation efforts. Both commenters questioned if all HELOC line renewals should be reported on this line or only those completed through loss mitigation efforts.

The Federal Reserve appreciates this feedback and agrees there is a distinction between these two cases not captured in this item as proposed. The Federal Reserve believes that renewal of a creditworthy borrower is equivalent to prepayment of the existing line and origination of a new line. For a borrower who does not meet current credit standards, the line renewal is equivalent to a type of loan modification: the contractual terms of the line will be changed because the borrower has been identified as one who is likely to default if the bank takes no action. Therefore, those borrowers should be treated as though they did not prepay, but instead, entered the amortization period of the HELOC with modified terms. To capture the distinction between these two cases and in response to the comment, the final FR Y–14 has been modified to add an additional code to the Modification Type field, Code 13 to represent the ''HELOC Line Renewal (Regular)'', and code 14 to represent ''HELOC Line Renewal (loss mitigation strategy)''. The instructions for the final FR Y–14 also will be updated to reflect the additional item codes and their definitions. Given the general request to provide additional time to implement changes, this change will be effective in the final FR Y–14 beginning June 30, 2016

In the initial **Federal Register** Notice, the Federal Reserve specifically requested information on the collection of data related to the performance of a first lien that is related to a junior lien reported on the FR Y–14M Home Equity Schedule (Schedule B), including what standards could make the item easier to report. In response to this request, one commenter recommended that the Performance of the First Lien on the First Lien Schedule (Schedule A) and Performance of Junior Liens on the Home Equity Schedule (Schedule B) fields be removed from the aforementioned FR Y–14M collections and that the Current Credit Bureau Score, which is already being reported, be used as a proxy to monitor any deterioration for evaluating performance and probability of default. The Federal Reserve recognizes the cost and burden expressed by the industry in supplying these items and appreciates the feedback provided in response to the request. The Federal Reserve agrees with the proposed suggestion to use current scores as a reasonably proxy, and accordingly, the above-mentioned fields in the final FR Y–14 have been removed from the applicable schedules. To ensure the information necessary is available given this change, the instructions for the final FR Y–14 also require that the fields 'Current Credit Bureau Score Date' and 'Current Credit Bureau Score' be updated at least one month within the quarter, and refreshed

at least one month within every subsequent quarter. These changes will be effective beginning June 30, 2016.

Technical Clarifications

Commenters asked for a number of technical clarifications regarding specific data items on the FR Y–14 forms. These questions will be addressed in the finalized version of the amended FR Y–14A/Q/M instructions.

Board of Governors of the Federal Reserve System, January 14, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–01043 Filed 1–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068; Docket 2016–0053; Sequence 3]

Information Collection; Economic Price Adjustment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division 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 economic price adjustment.

DATES: Submit comments on or before March 21, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0068, Economic Price Adjustment 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. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0068, Economic Price Adjustment''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0068, Economic Price Adjustment'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0068, Economic Price Adjustment.

Instructions: Please submit comments only and cite Information Collection 9000–0068, Economic Price Adjustment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential 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: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause 16.203, Fixed-price contracts with economic price adjustment and associated clauses at 52.216–2, 52.216–3, and 52.216–4, provide for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Respondents: 4,497.
Responses Per Respondent: 1.
Annual Responses: 4,497.
Hours Per Response: 1.5.
Total Burden Hours: 6,746.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: January 15, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–01194 Filed 1–20–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026; Docket 2016–0053; Sequence 2]

Information Collection; Change Order Accounting

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division 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 change order accounting.

DATES: Submit comments on or before March 21, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0026, Change Order Accounting, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0026, Change Order Accounting'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information 9000–0026, Change Order Accounting''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your

name, company name (if any), and ''Information Collection 9000–0026, Change Order Accounting'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0026, Change Order Accounting.

Instructions: Please submit comments only and cite Information Collection 9000–0026, Change Order Accounting, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential 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: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949, or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 43.205 allows a contracting officer, whenever the estimated cost of a change or series of related changes under a contract exceeds $100,000, to assert the right in the clause at FAR 52.243–6, Change Order Accounting, to require the contractor to maintain separate accounts for each change or series of related changes. Each account shall record all incurred segregable, direct costs (less allocable credits) of work, changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,850.
Responses per Respondent: 12.
Annual Responses: 106,200.
Hours per Response: 1.
Total Burden Hours: 106,200.

C. 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 Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: January 15, 2016.

Lorin S. Curit

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–01192 Filed 1–20–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16KA; Docket No. CDC–2016–0011]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a newly proposed information collection project entitled ''Monitoring and Coordinating Personal Protective Equipment (PPE) in Healthcare to Enhance Domestic Preparedness for Ebola Response''. The development of an ongoing Personal Protective Technology (PPT) sentinel surveillance system in the hospital setting will document data used to evaluate and monitor use and effectiveness for PPE usage in healthcare workers including Ebola protection.

DATES: Written comments must be received on or before March 21, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0011 by any of the following methods:

Federal eRulemaking Portal: *Regulation.gov.* Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Monitoring and Coordinating Personal Protective Equipment (PPE) in Healthcare to Enhance Domestic Preparedness for Ebola Response—New —National Center for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) has the authority under the Occupational Safety and Health Act [29 CFR 671] to ''develop recommendations for health and safety standards'', to ''develop information on safe levels of exposure to toxic materials and harmful physical agents and substances'', and to ''conduct research on new safety and health problems''. There is growing national concern for better understanding of the particular personal protective equipment (PPE) needs of healthcare workers to ensure the health and safety of this workforce during times of pandemic disease or bioterrorist threat. The use and effectiveness of the proper PPE are paramount to the management and mitigation of the effects of a disaster. NIOSH is requesting a three approval from OMB to develop an ongoing PPT sentinel surveillance system in the hospital setting that will document data used to evaluate and monitor use and effectiveness for PPE usage in healthcare workers including Ebola protection.

NIOSH conducted a pilot study and partnered with four hospitals where respirator-related data were collected from a variety of stakeholders (less than 10 respondents) including Infection Control, Occupational Health, Emergency Preparedness, Environmental Health & Safety, and Purchasing. Surveillance metrics were established and shared with pilot participants on a regular basis throughout the pilot. Partners identified key performance indicators that this data might provide, such as the average number of respirators used per isolation order in the hospital, and identification of stakeholders and protocols impacting effective respirator use. Recommendations were made for monitoring schedules and survey improvement. The data collected during the pilot study provided experience and knowledge of respirator selection, availability, fit testing, usage patterns, outcomes, and confounders of respirator use and effectiveness at the four participating hospitals.

NIOSH now seeks approval to execute an approach for a minimum viable product (MVP) multi-hospital (15–20), real-time monitoring phase. The 15–20 facilities shall reflect the tiered approach recommended by CDC involving Frontline Healthcare Facilities, Ebola Assessment Hospitals and Ebola Treatment Centers. The effort shall be built upon the experience and knowledge obtained from the pilot projects, and shall be structured as the next step in the establishment of a national system to monitor usage and training for PPE used to protect against the Ebola virus based on current CDC recommendations. With this effort, the contractor shall develop and deploy the system to include a contingent of the domestic acute healthcare facilities in this three tier approach. The system content shall include status information for all PPE categories identified for protection against the hazards of Ebola exposure. The system will use a general interface engine designed to accept, validate, and process data from multiple, disparate sources.

The system will be developed to identify PPE replenishment needs to facilitate local, state, and eventually regional resource sharing and local purchasing as needed. It will also be compatible with PPE previously used at these facilities to allow seamless continuity of patient care and worker protection. This capacity will offer a much-improved process for monitoring and maintaining appropriate PPE supplies through the constant, real-time monitoring of user demand, thus avoiding the misdirection of tens of millions of dollars' worth of respirators and other PPE to facilities that may not use distributed supplies due to a mismatch between products typically used and the supplies provided.

Respondents targeted for this study include hospital managers (also referred to in some cases as executives, coordinators or supervisors). These individuals are responsible for the day-to-day administration and/or implementation of the MVP. It is estimated that a sample of up to 20 hospitals will agree to participate among a variety of Ebola and Frontline treatment facilities. Participation will require no more than 255 minutes of workers' time per quarter. The hospitals will complete a baseline form and will also send quarterly and annual response as explained in the table below.

The Emergency and Crisis surveys are administered to hospitals via text message. The emergency survey is designed for an event spanning multiple weeks (*e.g.,* pandemic). There are 3 preset questions that are related to Ebola and PPT supply concerns. The crisis survey is designed for an unanticipated scenario in which we may need to push ad hoc questions on a daily basis to hospitals. They will only be administered in a non-routine situation. During the 3 year approval period, we will test/train hospitals on each survey. However, they will not be part of the regular data collection.

Estimated Annualized Burden Hours

The following is an explanation of the number of respondents for the annualized burden table. The baseline form is completed once by each hospital as they come onboard (20/3 = 7 rounded up). The annual form is completed by the hospitals in each year following their onboarding. Example: Year one, 5 hospitals onboarded; year two 6 new + 5 from previous year; year three 9 new + 11 from previous years. Thus, taking the sum of the previous year hospitals leads to 16 total (16/3 = 5 rounded down). The quarterly form is completed by all onboarded hospitals four times a year. The emergency and crisis forms are completed on all onboarded hospitals as needed but at least once for training and use the annualized number in the baseline form.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden per respondent (hours)
Hospital	Baseline	7	1	8	56
Hospital	Annual	5	1	3	15
Hospital	Quarterly	12	4	3	144
Hospital	Emergency	7	4	15/60	7
Hospital	Crisis	7	7	10/60	8
Total					230

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. 2016–01040 Filed 1–20–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-16–16KB; Docket No. CDC–2016–0010]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project entitled ''Measuring Perceived Self-Escape Competencies among Underground Mineworkers''. The purpose of this two-year information collection is to gather survey data from up to 800 underground coal miners to measure their perceived competence in the critical knowledge, skills, and abilities that could be required for successful escape from an underground mine emergency.

DATES: Written comments must be received on or before March 21, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0010 by any of the following methods:

Federal eRulemaking Portal: *Regulation.gov.* Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Measuring Perceived Self-Escape Competencies among Underground Mineworkers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety & health at work for all people through research and prevention. The Federal Mine Safety & Health Act of 1997, Public Law 91–173 as amended by Public Law 95–164, enables NIOSH to carry out research that is relevant to health and safety of workers in the underground coal industry. After a thorough review of United States' underground coal mine emergency escape preparedness and

response, the National Academy of Sciences (NRC, 2013) has emphasized the need to improve underground mineworkers' ability to successfully escape a mine emergency. Specifically, several mine disasters of 2006 raised a number of issues about mine emergency preparedness and response particularly as they relate to self-escape competencies. The resulting federal regulations under the MINER Act of 2006, now require all underground coal miners receive Self Contained Self Rescuer (SCSR) and escape way training quarterly throughout the year and new emergency communications and tracking systems have been mandated and installed in underground coal mines.

NIOSH proposes this exploratory two-year study to better characterize the current state of miner self-escape competence and to answer the following questions:

- What gaps exist between what miners are required to do for self-escape and their perceptions of their actual capabilities?
- How might miner demographics and mine-specific characteristics (*e.g.,* size, mining method, and geographic location) relate to perceived competence in self-escape knowledge, skills, abilities, and other characteristics?

Based on the results of this and other concurrent exploratory work, interventions to increase mine escape competencies will be improved and/or developed and assessed which could lead to more standardized self-escape training and assessment throughout the industry.

The information collected will have practical utility in efforts to enhance the ability of miners to successfully escape from underground coal mines in the event of an emergency by identifying gaps in perceived competence in specific knowledge and skills in moving through the mine, avoiding dangers, and using protective equipment. This information collections will contribute to our understanding of actual miner capabilities from the perspective of the mineworkers themselves.

Data collection will occur above ground at a variety of coal mines (and other above ground facilities) to gather information from a diverse sample of mines to better reflect the variability (*e.g.,* size, mining method, geographic location) that exists among mines and could impact self-escape procedures and resource availability. Variability in mineworker and mining site characteristics is key to generating a cross-sectional snapshot of current mineworkers' perceived self-escape competence and may reveal any potential relationships among these characteristics and perceived competence in a variety of self-escape KSAOs. This data collection will occur once for each mine site over the next 2 years (after OMB approval) and is designed to gather information not previously available. The results produced are expected to lead to recommendations for emphasis in new and/or existing KSAO training and preparation as well as to inform future self-escape training and research development.

Descriptive and inferential statistics on data obtained from the survey will be used to quantify miner self-escape competence and to identify any statistically significant relationships among aggregated miner characteristics and perceived competence. Finally, the data will serve as a gross baseline measure of miner self-escape competence to be directly compared to future data collection utilizing the identical data collection instrument.

NIOSH researchers will visit up to 20 underground coal mine sites to obtain informed consent from volunteer participants and administer a short paper and pencil survey. The survey will include demographic questions and 25 questions related to participants' perceived confidence in their own ability to escape their mine in the event of an emergency.

Participants will be mining personnel drawn from multiple operating underground coal mines to represent the variety within the industry. The timing of the data collection schedule will be flexible and modified as needed to minimize disruption to mine operations. No more than 800 miner volunteers will participate in the study over two years. Minimal time (< 5 minutes each) will be spent in recruitment and obtaining informed consent. The survey is expected to take no longer than 10 minutes to complete

The total estimated annualized burden hours are 101.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Mine Operator	Mine Recruitment Script	10	1	5/60	1
Mine Worker	Individual Miner Recruitment Script	400	1	5/60	33
Mine Worker	Survey	400	1	10/60	67
Total					101

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. 2016–01041 Filed 1–20–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket CDC–2016–0001; NIOSH–260–A]

Draft Current Intelligence Bulletin: Health Effects of Occupational Exposure to Silver Nanomaterials; Notice of Public Meeting; Availability of Document for Comment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting and availability of draft document for public comment.

SUMMARY: On December 19, 2012, the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention announced in the **Federal Register** *http://www.gpo.gov/fdsys/pkg/FR-2012-12-19/pdf/2012-30515.pdf* plans to evaluate the scientific data on silver nanomaterials and to issue its findings on the potential health risks. A draft document entitled, *Health Effects of Occupational Exposure to Silver Nanomaterials,* has been developed which contains a review and assessment of the currently available scientific literature on the toxicological effects of exposure to silver nanoparticles in experimental animal and cellular systems, and on the occupational exposures to silver dust and fume and the associated health effects. An emphasis area of this review is evaluating the scientific evidence on the role of particle size on the toxicological effects of silver, including the evidence basis to evaluate the adequacy of the current NIOSH recommended exposure limit (REL) for silver (metal dust and soluble compounds, as Ag) [available at: *http://www.cdc.gov/niosh/npg/npgd0557.html*].

Recommendations are provided for the safe handling of silver nanoparticles, and research needs are proposed to fill important data gaps in the current scientific literature on the potential adverse health effects of occupational exposure to silver nanoparticles. NIOSH is seeking comments on the draft document and plans to have a public meeting to discuss the document. To view the notice and related materials, visit *www.regulations.gov* and enter CDC–2016–0001 in the field and click ''Search.'' This draft document does not have the force or effect of the law.

DATES: The public meeting will be held on March 23, 2016, 9:00 a.m.–3:00 p.m. Eastern Time, or after the last public commenter has spoken, whichever occurs first. Comments must be received on or before March 21, 2016.

ADDRESSES: The public meeting will be held at the NIOSH/CDC Robert A. Taft Laboratories, Auditorium, 1150 Tusculum Avenue, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Charles Geraci, NIOSH, Education and Information Division, Nanotechnology Research Center, Robert A. Taft Laboratories, 1090 Tusculum Avenue, Cincinnati, OH 45226, (513) 533–8339 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background: To discuss and obtain comments on the draft document, *''NIOSH Current Intelligence Bulletin: Health Effects of Occupational Exposure to Silver Nanomaterials''.* Special emphasis will be placed on discussion of the following:

- Whether the health hazard identification, risk estimation, and discussion of health effects of silver and silver nanomaterials are a reasonable reflection of the current understanding of the scientific literature;
- Workplaces and occupations where exposure to silver and silver nanomaterials may occur; and studies on health effects associated with occupational exposure to silver dust and fume;
- Current strategies for controlling or preventing exposure to silver and silver nanomaterials (*e.g.,* engineering controls, work practices, personal protective equipment);
- Current exposure measurement methods and challenges in measuring workplace exposures to silver nanomaterials; and
- Areas for future collaborative efforts (*e.g.,* research, communication, development of exposure measurement and control strategies).

II. Public Meeting: NIOSH will hold a public meeting on the *NIOSH Draft Current Intelligence Bulletin: Health Effects of Occupational Exposure to Silver Nanomaterials* to allow commenters to provide oral comments on the draft document, to inform NIOSH about additional relevant data or information, and to ask questions on the draft document and NIOSH recommendations.

The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public. Attendance is limited only by the space available. The meeting room accommodates 100 people. The meeting will be open to limited number of participants through a conference call phone number and Webcast live on the Internet. Due to the limited spaces, notification of intent to attend the meeting must be made to the NIOSH Docket Office, at *nioshdocket@cdc.gov,* (513) 533–8611, or fax (513) 533–8285, no later than March 9, 2016. Priority for attendance will be given to those providing oral comments. Other requests to attend the meeting will then be accommodated on a first-come, first-served basis.

Registration is required. Because this meeting is being held at a Federal site, pre-registration is required on or before March 9, 2016 and a government-issued photo ID (driver's license, military ID or passport) will be required to obtain entrance to the facility. There will be an airport type security check. Non-US citizens need to register by February 12, 2016 to allow sufficient time for mandatory facility security clearance procedures to be completed. Additional personal information will be required. This information will be transmitted to the CDC Security Office for approval. An email confirming registration will be sent from NIOSH for both in-person participation and audio conferencing participation.

Oral presentations will be limited to 15 minutes per presenter. If additional time becomes available, presenters will be notified. All requests to present should contain the name, address, telephone number, and relevant business affiliations of the presenter, topic of the presentation, and the approximate time requested for the presentation. An email confirming registration will be sent from the NIOSH Docket Office and will include details needed to participate. Oral comments given at the meeting will be recorded and included in the NIOSH Docket 260–A.

After reviewing the requests for presentations, NIOSH will notify the presenter that his/her presentation is scheduled. If a participant is not in attendance when his/her presentation is scheduled to begin, the remaining participants will be heard in order. After the last scheduled speaker is heard, participants who missed their assigned times may be allowed to speak, limited by time available.

Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity after the scheduled speakers are heard, at the discretion of the presiding officer and limited by time available.

You may submit comments, identified by CDC–2016–0001 and NIOSH 260–A, by either of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2016–0001; NIOSH 260–A]. All relevant comments received will be posted without change to *www.regulations.gov* including any personal information provided. All information will be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, Ohio 45226.

Non-U.S. Citizens: Because of CDC Security Regulations, any non-U.S. citizen wishing to attend this meeting must provide the following information in writing to the NIOSH Docket Officer at the address below no later than February 12, 2016.

Name:
Gender:
Date of Birth:
Place of Birth (city, province, state, country):
Citizenship:
Passport Number:
Date of Passport Issue:
Date of Passport Expiration:
Type of Visa:
U.S. Naturalization Number (if a naturalized citizen):
U.S. Naturalization Date (if a naturalized citizen):
Visitor's Organization:
Organization Address:
Organization Telephone Number:
Visitor's Position/Title within the Organization:

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained.

Public Review

The external review of the draft document has been (1) developed in accordance with OMB guidelines, (2) is consistent with NIOSH peer review practice, and (3) is meant to ensure that credible and appropriate science is reflected within the draft document.

Dated: January 14, 2016.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2016–01112 Filed 1–20–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–15BEB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Balance After Baby Intervention—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC Division of Reproductive Health (DRH) is focused on understanding and preventing complications due to pregnancy and the development of chronic diseases in reproductive age women. Similarly, the CDC established the National Diabetes Prevention Program (NDPP), administered through the Division of Diabetes Translation (DDT), to make strategies for preventing type 2 diabetes broadly available to individuals at high risk of developing diabetes. Gestational diabetes mellitus (GDM) is one of the most common pregnancy complications in the US, affecting approximately 3–13% of pregnancies, or approximately 200,000 cases annually. As defined by the American Diabetes Association (2003), GDM is glucose intolerance that first presents during pregnancy after the first trimester. Women with a history of GDM have a substantially increased risk of developing type 2 diabetes mellitus (T2DM) within 5 to 16 years after their index pregnancy. It has also been shown that many women with a history of GDM gain weight after pregnancy, increasing their risk for obesity, which itself is a strong risk factor for repeat GDM and T2DM. Because of this, as US obesity prevalence continues to increase, there is a concurrent rise in the incidence and prevalence of GDM and T2DM, resulting in a large disease burden on individuals, families, and society. To assist in reducing this national disease burden, it is critical to develop and implement successful interventions that reduce the annual number of newly diagnosed T2DM cases, especially in increased risk populations, such as women with a history of GDM. As part of this Healthy People 2020 objective, the Diabetes Prevention Program (DPP) demonstrated that an intensive lifestyle intervention (16 face-to-face sessions over a 24-week period) promoting physical activity, healthy eating, and weight reduction significantly decreased T2DM incidence by 58% in high risk patients. However, the DPP included predominantly older individuals whose ability to attend group meetings and adopt healthy lifestyle changes is different than younger postpartum women. For this reason, successful adaptations of the DPP that address barriers in postpartum women with recent GDM, such as limited time and resources, fatigue, and childcare demands, must be identified and tested.

This Balance After Baby Intervention (BABI) data collection request aims to collect information that can be used to evaluate an intervention that addresses

these barriers through the conduct of a randomized, controlled intervention trial of a Web site-based lifestyle program, Balance after Baby (BAB), that is adapted from the DPP and tailored specifically for postpartum women with recent GDM.

The project aims to screen 293 (98 annualized over 3 years) women with a recent GDM pregnancy for enrollment into the study, followed by assessments at the following five post-partum time points: 6-Weeks, 6-months, 12-months, 18-months, and 24-months. Of the estimated 190 (63 annualized) women who are anticipated to meet eligibility requirements and attend the first study visit, approximately half will be assigned to the control group and the other half will be assigned to the intervention group. Women in the control group will have access to a ''control version'' of the BABI Web site, containing post-partum information such as the ''It's Never too Early to Prevent Diabetes'' tip sheet and links to other related public Web sites. Those assigned to the intervention group will have access to the full, interactive version of the BABI Web site and will be instructed to log-on once a week to view educational modules regarding healthy lifestyle options and to enter and track their weight and physical activity against their self-appointed goals. They will also have access to a web-based Lifestyle Coach who will communicate with them throughout the first year of their participation.

All participants will be required to complete clinical assessment visits involving the completion of visit-specific questionnaires with integrated food frequency questionnaires, laboratory testing, and the collection of physical measurements such as height and weight. The results of the two study arms, intervention and control, will be compared to assess whether the intervention significantly increased postpartum weight loss and decreased glucose tolerance for women at increased T2DM risk.

For the calculation of the estimated burden hours per study visit detailed in the table below, a constant 5% rate of exclusion and attrition was applied between visits. The burden table provides a participant estimate, which will be evenly distributed across control and intervention groups for each information collection step (both groups complete the same questionnaires), annualized over a 3-year clearance period. Therefore, of the 190 women (63 annualized) who attend the 6-week visit, the estimated number of participants returning for the 6-month visit is reduced to 180 (60 annualized), followed by 172 (57 annualized), 162 (54 annualized), and 154 (51 annualized) for the 12-, 18-, and 24-month visits respectively. The average burden per questionnaire ranges from 8 minutes for the BABI Screener Questionnaire up to 18 minutes for the BABI 6-Month Questionnaire. The average burden hours per response for the 6-Week, 6-, 12-, 18-, 24-Month Questionnaires, and Block© Food Frequency Questionnaire (FFQ) are shown in the table below. Participation is voluntary and there are no costs to respondents other than their time.

The total estimated annualized burden hours are 183.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs.)
Women with a recent history GDM	BABI Screener Questionnaire	98	1	8/60
	BABI 6-Week Questionnaire	63	1	17/60
	BABI 6-Month Questionnaire	60	1	18/60
	BABI 12-Month Questionnaire	57	1	14/60
	BABI 18-Month Questionnaire	54	1	14/60
	BABI 24-Month Questionnaire	51	1	15/60
	Block FFQ	63	5	18/60

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. 2016–01099 Filed 1–20–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children And Families

[CFDA Number: 93.508]

Announcing the Award of Six Single-Source Program Expansion Supplement Grants From the Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Notice of the award of six single-source program expansion supplement grants to grantees of the Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Care (OCC), Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program, announces the award of single-source program expansion supplement grants to the Confederated Salish and Kootenai Tribes in Pablo, MT; Confederated Tribes of Siletz Indians in Siletz, OR; Inter-Tribal Council of Michigan in Sault Ste. Marie, MI; Red Cliff Band of Lake Superior Chippewa in Bayfield, WI; the Choctaw Nation of Oklahoma in Durant, OK; and the Cherokee Nation of Oklahoma in Tahlequah, OK.

The Fiscal Year 2015 single-source program expansion supplement grants will support the expansion of the Tribal Early Learning Initiative (TELI) program.

DATES: The period of support is September 30, 2015—September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Rachel Schumacher, Director, Office of Child Care, 901 D Street, SW., Washington, DC 20024. Telephone: (202) 401–6984; Email: *rachel.schumacher@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In response to the success of the TELI pilot, the Office of Child Care has awarded single-source program expansion supplement awards to six Tribal MIECHV grantees for expansion of the TELI program.

Objectives of the TELI Expansion

1. Identify and analyze systems issues, including obstacles that could block efforts to build and maintain partnerships, fully and effectively coordinate tribal early childhood development programs, and develop a menu of alternative interventions and strategies in line with tribal community values, traditions, and priorities.

2. Develop tribally driven goals and concrete objectives in each local tribal community for building effective and efficient early childhood systems, high-quality programs, and improved outcomes for young children and families.

3. Develop and carry out concrete community plans for supporting and strengthening cooperation, coordination, resource sharing and leveraging, and integration among programs that support young children and families in the tribal community.

4. Share plans of action, barriers and challenges, opportunities and solutions, and the results of action plans with other tribal communities in an effort to further develop peer-learning relationships.

Applications received from the grantees underwent objective review using criteria such as the applicants' ability to clearly describe the early learning and development programs that will participate in the TELI; their ability to describe existing challenges and strengths to collaboration across their participating early learning and development programs; and whether the submitted budget and budget justification narrative provided for reasonable project costs.

The Following Awards Are Made

A single-source program expansion supplemental grant of $96,000 to the Confederated Salish and Kootenai Tribes in Pablo, MT, to support the development of a shared data system for its early childhood programs that include Head Start, Child Care, and Home Visiting that will allow programs to improve client services by increasing accessibility and reducing wait time and travel time between agencies; a more efficient client information system; promotion of long-term, cross-agency communication and collaboration; improved management systems; and expansion of deliverables such as service reports, outcome analysis, evaluation, assessment success, and other data-driven tools that in turn help to demonstrate the program's viability and value to community funding agencies.

A single-source program expansion supplemental grant of $96,000 to the Confederated Tribes of Siletz Indians in Siletz, OR, to support the identification and analysis of systems issues, including the identification of obstacles that could block efforts to build and maintain partnerships; coordination of Siletz tribal early childhood development programs, and the development of a menu of alternative interventions and strategies, that honor tribal community values, traditions, and priorities; and the development of tribally driven goals and concrete objectives in each local tribal community that support building effective early childhood systems and the development of specific community plans that support and strengthen cooperation, coordination, resource-sharing and leveraging, and the integration of programs in the Siletz Service Area.

A single-source program expansion supplemental grant of $120,000 to the Inter-Tribal Council of Michigan in Sault Ste. Marie, MI, to improve and increase the positive impact of services on families throughout the state through an early childhood system that will provide support and services across the full range of needs from the prenatal period through kindergarten entry; reflect and build on the strengths and wisdom of tribal community values and culture; maximize the use of resources to foster efficiency, yielding maximum impact for each investment; and ensure sustainability, consistency, and ease-of-access at the community level through referral and transition processes that will effectively engage parents as key stakeholders.

A single-source program expansion supplemental grant of $96,000 to the Red Cliff Band of Lake Superior Chippewa in Bayfield, WI, to support the identification and analysis of systems issues to develop a menu of alternative interventions and strategies that honor tribal community values, traditions, and priorities; development of tribally driven goals and concrete objectives in each local tribal community to build effective and efficient early childhood systems, high-quality programs, and improved outcomes for children and families; identification of service providers that support families with young children; provision of training that will deepen the understanding of Trauma-Informed Care and education on the identification and support for individuals experiencing a mental health crisis; and the development of a 5-year plan that identifies data needs for collection, storage, and data protection to improve the coordination and sharing of key child and family data.

A single-source program expansion supplemental grant of $96,000 to the Choctaw Nation of Oklahoma in Durant, OK, for its coordinated effort between the following Choctaw Nation programs: Chahta Inchukka, Chahta Vlla Apela, Child Care Assistance (Child Care Development Fund), Head Start, Early Head Start (Early Head Start-Child Care Partnership), and the Child Development Day Care Program. Through this initiative, program directors will coordinate their programs to create and support a seamless, high-quality, early-childhood system; raise the quality of services to children and families across the pregnancy-to-kindergarten-entry continuum; and identify and break down barriers to collaboration and systems improvement. The Choctaw Nation will commit a TELI coordinator to work across all of Choctaw's early childhood TELI programs; host a shared training for all early learning program staff that will provide professional development on a relevant early childhood topic and offer the opportunity for staff to learn about other programs and network; and complete research about potential data systems that will better coordinate the sharing of relevant child and family data across programs.

A single-source program expansion supplemental grant of $96,000 to the Cherokee Nation of Oklahoma in Tahlequah, OK, to support collaboration between Cherokee PARENTS, Head Start, Early Head Start, and Child Care, and develop a holist approach to child development. The Cherokee Nation plans to develop a strategic work team comprised of a diverse group of stakeholders; share professional development between each program, including conferences and trainings; hold monthly parent/cultural/community meetings; develop a unified assessment tool for assessing the needs of children and families; build a unified resource guide; give priority in referrals

between programs by identifying gaps, weaknesses, and shortfalls in program design; and focusing on shared resources to reduce duplicative and burdensome processes.

Statutory Authority: Section 511 of the Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), and amended by the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93) and the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10).

Mary M. Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–01033 Filed 1–20–16; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0839]

Target Animal Safety Data Presentation and Statistical Analysis; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry (GFI) #226 entitled ''Target Animal Safety Data Presentation and Statistical Analysis.'' The purpose of this document is to provide recommendations to industry regarding the presentation and statistical analyses of target animal safety (TAS) data submitted to the Center for Veterinary Medicine (CVM) as part of a study report to support approval of a new animal drug. These recommendations apply to TAS data generated from both TAS and field effectiveness studies conducted in companion animals (*e.g.,* dogs, cats, and horses) and food animals (*e.g.,* swine, ruminants, fish, and poultry).

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–0839 for Target Animal Safety Data Presentation and Statistical Analysis. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper 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.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Virginia Recta, Center for Veterinary Medicine (HFV–160), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0840, *virginia.recta@fda.hhs.gov,*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 31, 2015 (80 FR 17047), FDA published the notice of availability for a draft guidance entitled ''Target Animal Safety Data Presentation and Statistical Analysis'' giving interested persons until June 1, 2015, to comment on the draft guidance. FDA received two comments on the draft guidance and those comments were considered as the guidance was finalized. Some of the suggested changes were incorporated, and additional editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated March 2015.

This GFI provides recommendations to industry regarding the presentation

and statistical analyses of target animal safety (TAS) data submitted to CVM as part of a study report to support approval of a new animal drug. These recommendations apply to TAS data generated from both TAS and field effectiveness studies conducted in companion animals (*e.g.,* dogs, cats, and horses) and food animals (*e.g.,* swine, ruminants, fish, and poultry).

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Target Animal Safety Data Presentation and Statistical Analysis. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: January 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01098 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0119]

Determination That THORAZINE (Chlorpromazine Hydrochloride) Tablets and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6207, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book''. Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed.

Application No.	Drug	Applicant
NDA 009149	THORAZINE (chlorpromazine hydrochloride (HCl)) Tablet; Oral, 10 milligrams (mg); 25 mg; 50 mg; 100 mg; 200 mg.	GlaxoSmithKline.
NDA 016793	CYTARABINE (cytarabine) Injectable; Injection, 100 mg/vial; 500 mg/vial; 1 gram (g)/vial; 2 g/vial.	Teva Pharmaceuticals USA, Inc.
NDA 018343	CAPOTEN (captopril) Tablet; Oral, 37.5 mg; 75 mg; 150 mg	Par Pharmaceutical, Inc.
NDA 020845	INOMAX (nitric oxide) Gas; Inhalation, 100 parts per million	Ino Therapeutics, Inc.
NDA 021178	GLUCOVANCE (glyburide; metformin HCl) Tablet; Oral, 1.25 mg; 250 mg	Bristol-Myers Squibb
NDA 050443	BLENOXANE (bleomycin sulfate) Injectable; Injection, EQ 15 units base/vial; EQ 30 units base/vial.	Bristol-Myers Squibb
NDA 050526	STATICIN (erythromycin) Solution; Topical, 1.5%	Westwood-Squibb Pharmaceuticals, Inc.
NDA 050675	VANTIN (cefpodoxime proxetil) For Suspension; Oral, EQ 50 mg base/5 mL; EQ 100 mg base/5 mL.	Pharmacia & Upjohn Co.
NDA 203595	SUCLEAR (magnesium sulfate, polyethylene glycol 3350, potassium chloride, potassium sulfate, sodium bicarbonate, sodium chloride, sodium sulfate) Solution; Oral, 1.6 g, 210 g, 0.74 g, 3.13 g, 2.86 g, 5.6 g, 17.5 g.	Braintree Laboratories, Inc.
ANDA 061827	CLEOCIN (clindamycin palmitate HCl) For Solution; Oral, EQ 75 mg base/5 mL	Pharmacia & Upjohn Co.

Application No.	Drug	Applicant
ANDA 062436	T–STAT (erythromycin) Solution; Topical, 2%	Westwood-Squibb Pharmaceuticals, Inc.
ANDA 080439	CHLORPROMAZINE HCl (chlorpromazine HCl) Tablet; Oral, 10 mg; 25 mg; 50 mg; 100 mg; 200 mg.	Sandoz Inc.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01097 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 16, 2016 from 1 p.m. to 5 p.m.

Location: FDA White Oak Conference Center, rm 1503. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Janie Kim or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 301–796–9016 or 240–402–8072, *janie.kim@fda.hhs.gov* or *Rosanna.Harvey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On February 16, 2016, the committee will meet by teleconference. In open session, the committee will hear updates of research programs in the Tumor Vaccines and Biotechnology Branch and the Cellular and Tissue Therapy Branch of the Division of Cellular and Gene Therapies, Office of Cellular, Tissue and Gene Therapy, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On February 16, 2016, from 1:00 p.m. to 3:55 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 1, 2016. Oral presentations from the public will be scheduled between approximately 2:55 p.m. to 3:55 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 22, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 25, 2016.

Closed Committee Deliberations: On February 16, 2016, from 3:55 p.m. to 5:00 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Janie Kim at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/*

AboutAdvisoryCommittees/ucm111462.htm for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 15, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–01165 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0002]

Conditional Approval of a New Animal Drug No Longer In Effect; Masitinib Mesylate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of conditional approval no longer in effect.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that the conditional approval of an application for masitinib mesylate tablets, a new animal drug for a minor use, is no longer in effect.

DATES: Conditional approval is no longer in effect as of December 15, 2015.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann III, Center for Veterinary Medicine (HFV–108), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0652, *herman.schoenemann@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Minor Use and Minor Species Animal Health Act of 2004 (Pub. L. 108–282), permits conditional approval of new animal drugs for minor uses. Conditional approval of a new animal drug is effective for a 1-year period, and may be renewed for up to four additional 1-year periods. The holder of a conditionally approved new animal drug is required to submit all information necessary to support a complete new animal drug application (NADA) under section 512(b)(1) of the FD&C Act (21 U.S.C. 360b(b)(1) by 180 days before the termination of the fifth 1-year period of conditional approval. If FDA does not approve an NADA for the new animal drug by the termination date of the conditional approval, then pursuant to section 571(h) of the FD&C Act (21 U.S.C. 360ccc(h)) the conditional approval is no longer in effect.

AB Science, 3 Avenue George V, 75008 Paris, France, filed an application for conditional approval (141–308) that provided for veterinary prescription use of KINAVET–CA1 (masitinib mesylate) Tablets for the treatment of recurrent (post-surgery) or nonresectable Grade II or III cutaneous mast cell tumors in dogs that have not previously received radiotherapy and/or chemotherapy except corticosteroids. That application was conditionally approved on December 15, 2010.

On December 15, 2014, application 141–308 received the fourth and final renewal of its conditional approval. That final renewal terminated on December 15, 2015. As of that date, FDA did not approve an NADA for KINAVET–CA1 under section 512 of the FD&C Act. Consequently, as of December 15, 2015, the conditional approval of application 141–308 is no longer in effect.

Because the conditional approval is no longer in effect, KINAVET–CA1 Tablets is now an unapproved new animal drug product with no legal marketing status. Further marketing, sales, and distribution of the product are illegal.

This notice is issued under section 571 of the FD&C Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine.

Elsewhere in this issue of the **Federal Register,** FDA is amending the animal drug regulations to reflect that the conditional approval of an application for this new animal drug is no longer in effect.

Dated: January 14, 2016.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2016–01104 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0749]

Implanted Blood Access Devices for Hemodialysis; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Implanted Blood Access Devices for Hemodialysis.'' This guidance was developed to support the reclassification of the implanted blood access devices for hemodialysis into class II (special controls) and to assist industry in preparing premarket notification (510(k)) submissions for implanted blood access devices for hemodialysis.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–

2013–D–0749 for ''Implanted Blood Access Devices for Hemodialysis.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper 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.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Implanted Blood Access Devices for Hemodialysis'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance provides recommendations to assist manufacturers in developing their premarket submissions of implanted blood access devices for hemodialysis regulated under 21 CFR 876.5540(a)(1). The draft of this guidance document was issued concurrently with the proposed reclassification of implanted blood access devices under § 876.5540(a)(1). FDA published a proposed order to reclassify this device in the **Federal Register** of June 28, 2013 (78 FR 38867) and announced the availability of the draft guidance elsewhere in the same issue of the **Federal Register** (78 FR 38994). The comment period for the draft guidance closed on August 27, 2013. FDA also held a meeting of the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee (the Panel), on June 27, 2013 (78 FR 25747, May 2, 2013), to discuss whether implanted blood access devices should be reclassified or remain in class III. The draft guidance supported the proposed reclassification.

In response to the draft guidance, FDA received comments from one commenter. The comments, in addition to the feedback from the Panel, were considered and discussed in the final order reclassifying this device type into class II (special controls) (79 FR 43241, July 25, 2014). This final guidance references the special controls for this device type, and the recommendations in the draft guidance were modified to be consistent with revisions to the special controls as codified in the final order.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on implanted blood access devices for hemodialysis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Implanted Blood Access Devices for Hemodialysis'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1781 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 50 and 56 have been approved under OMB control number 0910–0130.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01094 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0294]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Contact Substance Notification Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 22, 2016.

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 0910–0495. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Contact Substance Notification Program;—21 CFR 170.101, 170.106, and 171.1 OMB Control Number 0910–0495—Extension

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) We determine that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) we and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact substance notification (FCN) includes Form FDA 3480 and (2) a notification for a food contact substance formulation includes Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480 whether it is submitted in electronic or paper format. We estimate that the amount of time for respondents to complete Form FDA 3480 will continue to be the same.

In addition to its required use with FCNs, Form FDA 3480 is recommended to be used to organize information within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to FDA, thus minimizing paperwork burden for food contact substance authorizations. We estimate that the amount of time for respondents to complete the Form FDA 3480 for these types of submissions is 0.5 hours.

Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, FDA's guidance document entitled, ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to us that their plastic products are safe for food contact.

Description of Respondents: The respondents to this information collection are manufacturers of food contact substances.

In the **Federal Register** of October 8, 2015 (80 FR 60911), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section or other category	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
170.106 [2] (Category A)	FDA 3479	10	2	20	2	40
170.101 [3 7] (Category B)	FDA 3480	6	1	6	25	150
170.101 [4 7] (Category C)	FDA 3480	6	2	12	120	1,440
170.101 [5 7] (Category D)	FDA 3480	42	2	84	150	12,600
170.101 [6 7] (Category E)	FDA 3480	38	1	38	150	5,700

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section or other category	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pre-notification Consultation or Master File (concerning a food contact substance).[8]	FDA 3480	190	1	190	0.5	95
Amendment to an existing notification (170.101), amendment to a Pre-notification Consultation, or amendment to a Master File (concerning a food contact substance).[9]	FDA 3480A.	100	1	100	0.5	50
171.1 Indirect Food Additive Petitions	N/A	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations.	N/A	10	1	10	25	250
Total						31,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 ("Notification for a Food Contact Substance Formulation") only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of Form FDA 3480.
[8] These notifications recommend the submission of Form FDA 3480.
[9] These notifications recommend the submission of Form FDA 3480A.

The estimates in table 1 are based on our current experience with the food contact substance notification program and informal communication with industry.

Beginning in row 1 we estimate 10 respondents will submit two notifications annually for food contact substance formulations (Form FDA 3479), for a total of 20 responses. We calculate a reporting burden of 2 hours per response, for a total of 40 hours. In row 2 we estimate six respondents. We believe the hourly burden for preparing these notifications will primarily consist of the manufacturer or supplier completing Form FDA 3480, verifying that a previous notification is effective and preparing necessary documentation. We estimate one submission for each respondent, for a total of six responses. We calculate a reporting burden of 25 hours per response, for a total of 150 hours.

In rows 3, 4, and 5 we identify three tiers of FCNs that reflect different levels of burden applicable to the respective information collection items (denoted as Categories C, D, and E). We estimate 6 respondents will submit 2 Category C submissions annually, for a total of 12 responses. We calculate a reporting burden of 120 hours per response, for a total burden of 1,440 hours. We estimate 42 respondents will submit 2 Category D submissions annually, for a total of 84 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 12,600 hours. We estimate 38 respondents will submit 1Category E submission annually, for a total of 38 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 5,700 hours.

In row 6 we estimate 190 respondents will submit information to a pre-notification consultation or a master file in support of FCN submission using Form FDA 3480. We calculate a reporting burden of 0.5 hours per response, for a total burden of 95 hours. In row 7 we estimate 100 respondents will submit an amendment (Form FDA 3480A) to a substantive or non-substantive request of additional information to an incomplete FCN submission, an amendment to a pre-notification consultation, or an amendment to a master file in support of an FCN. We calculate a reporting burden of 0.5 hours per response, for a total burden of 50 hours.

In row 8 we estimate one respondent will submit one indirect food additive petition under § 171.1, for a total of one response. We calculate a reporting burden of 10,995 hours per response, for a total burden of 10,995 hours.

Finally, in row 9 we estimate ten respondents will utilize the recommendations in the guidance document entitled, ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' to develop the additional information for one such submission annually, for a total of 10 responses. We calculate a reporting burden of 25 hours per response, for a total burden of 250 hours.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01102 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–P–3319]

Determination That MEVACOR (Lovastatin) Tablets, 20 Milligrams and 40 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that MEVACOR (lovastatin) tablets, 20 milligrams (mg) and 40 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Kate Greenwood, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 51, Rm. 6286, Silver Spring, MD 20993–0002, 240–402–1748.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

MEVACOR (lovastatin) tablets, 20 mg and 40 mg, are the subject of NDA 19–643, held by Merck & Co. Inc., and initially approved on August 31, 1987. MEVACOR is indicated: (1) To reduce the risk of myocardial infarction, unstable angina, and coronary revascularization procedures in individuals without symptomatic cardiovascular disease, average to moderately elevated total cholesterol (total-C) and low-density lipoprotein cholesterol (LDL–C), and below average high-density lipoprotein cholesterol; (2) to slow the progression of coronary atherosclerosis in patients with coronary heart disease as part of a treatment strategy to lower total-C and LDL–C to target levels; and (3) as an adjunct to diet for the reduction of elevated total-C and LDL–C levels in patients with primary hypercholesterolemia (Types IIa and IIb), when the response to diet restricted in saturated fat and cholesterol and to other nonpharmacological measures alone has been inadequate. MEVACOR is also indicated as an adjunct to diet to reduce total-C, LDL–C, and apolipoprotein B levels in adolescent boys and girls who are at least 1 year post-menarche, 10–17 years of age, with heterozygous familial hypercholesterolemia if, after an adequate trial of diet therapy, the following findings are present: (1) LDL–C remains >189 mg/deciliter (dL) or (2) LDL–C remains >160 mg/dL and there is a positive family history of premature cardiovascular disease (CVD) or two or more other CVD risk factors are present in the adolescent patient.

MEVACOR (lovastatin) tablets, 20 mg and 40 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Winifred M. Begley submitted a citizen petition dated September 10, 2015 (Docket No. FDA–2015–P–3319), under 21 CFR 10.30, requesting that the Agency determine whether MEVACOR (lovastatin) tablets, 20 mg and 40 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that MEVACOR (lovastatin) tablets, 20 mg and 40 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that MEVACOR (lovastatin) tablets, 20 mg and 40 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of MEVACOR (lovastatin) tablets, 20 mg and 40 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list MEVACOR (lovastatin) tablets, 20 mg and 40 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to MEVACOR (lovastatin) tablets, 20 mg and 40 mg. Additional ANDAs that refer to these products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01096 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0611]

Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile.'' This guidance updates and clarifies the information regarding sterilization processes that FDA recommends sponsors include in 510(k)s for devices labeled as sterile. This guidance document also provides details about the pyrogenicity information that FDA recommends sponsors include in a 510(k) submission.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time. The recommendations in this guidance will be implemented on March 21, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2008–D–0611 for ''Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile; Guidance for Industry and Food and Drug Administration Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper 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.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002.

Alternatively, you may submit written requests for single copies of the guidance document to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993–0002, 301–796–6527; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, FDA has received an increasing number of 510(k)s for devices labeled as sterile that are sterilized during the manufacturing process by methods other than the traditionally used methods (*i.e.,* steam, dry heat, ethylene oxide (EO), and radiation). FDA has experience with some of the other methods and now considers them to be established methods. However, there may be alterations to the more recently developed methods. In addition, original, innovative sterilization technologies are being developed and proposed. FDA considers these to be novel methods, which carry a substantial risk of inadequate sterility assurance. Consequently, devices sterilized using these technologies may not comply with Good Manufacturing Practice. Failure to assure sterility presents a serious risk to human health because of the risk of infection. Therefore, we intend to inspect the manufacturing facility before clearing a 510(k) for a device that is sterilized by a novel sterilization process. We believe inspecting the manufacturing facility for devices sterilized using these novel sterilization technologies will help ensure the safety and effectiveness of these devices and mitigate the risks to human health.

This guidance document updates and clarifies the information regarding sterilization processes that we recommend sponsors include in 510(k)s for devices labeled as sterile. This guidance document also provides details about the pyrogenicity information that we recommend sponsors include in a 510(k) submission. In the **Federal Register** of December 12, 2008 (73 FR 75724), FDA announced the availability of the draft of this guidance. Interested persons were invited to comment by March 12, 2009. FDA considered the public comments received and revised the guidance, where applicable. This

document supersedes ''Updated 510(k) Sterility Review Guidance K90–1'' dated August 30, 2002.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on submission and review of sterility information in 510(k)s for devices labeled as sterile. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1615 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01093 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0372]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 22, 2016.

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 0910–0635. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act—21 U.S.C. 379aa–1(b)(1) OMB Control Number 0910–0635—Extension

The Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) (Pub. L. 109–462, 120 Stat. 3469) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting and recordkeeping for dietary supplements and non-prescription drugs marketed without an approved application. Section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa–1(b)(1)) requires the manufacturer, packer, or distributor whose name under section 403(e)(1) of the FD&C Act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States to submit to us all serious adverse event reports associated with the use of a dietary supplement, accompanied by a copy of the product label. The manufacturer, packer, or distributor of a dietary supplement is required by the DSNDCPA to use the MedWatch Form FDA 3500A when submitting a serious adverse event report to FDA. In addition, under section 761(c)(2) of the FD&C Act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a follow-up report of any related new medical information the responsible person receives within 1 year of the initial report.

Section 761(e)(1) of the FD&C Act (21 U.S.C. 379aa–1(e)(1)) requires that responsible persons maintain records related to the dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years.

As required by section 3(d)(3) of the DSNDCPA, we issued guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. In the **Federal Register** of July 14, 2009 (74 FR 34024), we announced the availability of guidance entitled ''Guidance for Industry: Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act''. The guidance discusses how, when, and where to submit serious adverse event reports for dietary supplements and follow-up reports. The guidance also provides our recommendation on records maintenance and access for serious and non-serious adverse event reports, and related documents.

The guidance recommends that the responsible person document their attempts to obtain the minimum data elements for a serious adverse event report. Along with these records, the guidance recommends that the responsible person keep the following other records: (1) Communications between the responsible person and the initial reporter of the adverse event and

between the responsible person and any other person(s) who provided information about the adverse event; (2) the responsible person's serious adverse event report to us with attachments; (3) any new information about the adverse event received by the responsible person; (4) any reports to us of new information related to the serious adverse event report.

In the **Federal Register** of October 21, 2015 (80 FR 63797), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 U.S.C. Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
21 U.S.C. 379aa–1(b)(1)—serious adverse event reports for dietary supplements	170	17	2,860	2	5,720
21 U.S.C. 379aa–1(c)(2)— follow-up reports of new medical information	42	17	715	1	715
Total					6,435

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on our experience with similar adverse event reporting programs and the number of serious adverse event reports and follow-up reports received in the past 3 years. All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event mandatory reporting.

We received 2,435 initial serious adverse event reports in Fiscal Year (FY) 2012, 3,414 in FY2013, and 2,745 in FY2014. We averaged these figures (2,860 rounded to the nearest ten) as a basis for our estimated number of annual reports. We also used an average of the number of firms filing reports (170 rounded to the nearest ten). Finally, we estimate that it will take respondents an average of 2 hours per report to collect information about a serious adverse event associated with a dietary supplement and report the information to us on Form FDA 3500A. Thus, the estimated burden associated with submitting initial dietary supplement serious adverse event reports is 5,720 hours (2,860 responses × 2 hours) as shown in row 1 of table 1.

If a respondent that has submitted a serious adverse event report receives new information related to the serious adverse event within 1 year of submitting the initial report, the respondent must provide the new information to us in a follow-up report. We estimate that 25 percent of serious adverse event reports related to dietary supplements will have a follow-up report submitted, resulting in approximately 715 follow-up reports submitted annually (2,860 × 0.25 = 715). Dividing the annual number of reports among the 170 firms reporting results in approximately 17 reports for 42 respondents. We estimate that each follow-up report will require an hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the guidance. Thus the estimated burden for follow-up reports of new information is 715 hours (715 responses × 1 hour) as shown in row 2 of table 1.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 U.S.C. Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Dietary supplement adverse event records (21 U.S.C. 379aa–1(e)(1))	1,700	74	125,800	0.5	62,900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

All dietary supplement manufacturers, packers, or distributors are subject to serious adverse event recordkeeping. We estimate that there are 1,700 such respondents, based on the figure 1,460 as provided in our final rule of June 25, 2007 (72 FR 34751), on the Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, and factoring a two percent annual growth rate. Estimating that each recordkeeper will keep approximately 74 records per year results in an annual burden of 125,800 records. Estimating that assembling and filing these records, including any necessary photocopying, will take approximately 30 minutes, or 0.5 hours, per record, results in an annual burden of 62,900 hours (125,800 records × 0.50 hours = 62,900 total hours.

Once the documents pertaining to an adverse event report have been assembled and filed pursuant to the Safety Reporting Portal, we expect the records retention burden to be minimal, as we believe most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice.

Dated: January 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01103 Filed 1–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations of qualified candidates to fill expected vacancies on the Advisory Council on Blood Stem Cell Transplantation (ACBSCT).

The ACBSCT was established pursuant to Public Law 109–129 as amended by Public Law 111–264; 42 U.S.C. 274k; Section 379 of the Public Health Service Act. In accordance with Public Law 92–463, the ACBSCT was chartered on December 19, 2006.

DATES: The agency will receive nominations on a continuous basis.

ADDRESSES: Nominations should be submitted to the Executive Secretary, ACBSCT, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08N182, Rockville, MD 20857. Federal Express, Airborne, or UPS, mail delivery should be addressed to Executive Secretary, ACBSCT, Healthcare Systems Bureau, HRSA, at the above address. Nominations submitted electronically should be emailed to *PStroup@hrsa.gov* and *PTongele@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Stroup, M.B.A., M.P.A., Executive Secretary, ACBSCT, at (301) 443–1127 or email *PStroup@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The Council was established to implement a statutory requirement of the Stem Cell Therapeutic and Research Act of 2005 (Pub. L. 109–129). The Council is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The ACBSCT advises the Secretary and the Administrator, HRSA on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory Program.

The ACBSCT shall, as requested by the Secretary, discuss and make recommendations regarding the Program. It shall provide a consolidated, comprehensive source of expert, unbiased analysis and recommendations to the Secretary on the latest advances in the science of blood stem cell transplantation. The ACBSCT shall advise, assist, consult and make recommendations, at the request of the Secretary, on broad Program policy in areas such as the necessary size and composition of the adult donor pool available through the Program and the composition of the National Cord Blood Inventory; requirements regarding informed consent for cord blood donation; accreditation requirements for cord blood banks; the scientific factors that define a cord blood unit as high quality; public and professional education to encourage the ethical recruitment of genetically diverse donors and ethical donation practices; criteria for selecting the appropriate blood stem source for transplantation; Program priorities; research priorities; and the scope and design of the Stem Cell Therapeutic Outcomes Database. It also shall, at the request of the Secretary, review and advise on issues relating more broadly to the field of blood stem cell transplantation, such as regulatory policy pertaining to the compatibility of international regulations, and actions that may be taken by the state and federal governments and public and private insurers to increase donation and access to transplantation. The ACBSCT also shall make recommendations regarding research on emerging therapies using cells from bone marrow and cord blood.

The ACBSCT consists of up to 25 members, including the Chair. Members of the ACBSCT shall be chosen to ensure objectivity and balance, and reduce the potential for conflicts of interest. The Secretary shall establish bylaws and procedures to prohibit any member of the ACBSCT who has an employment, governance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank from participating in any decision that materially affects the center, recruitment organization, transplant center, or cord blood bank; and to limit the number of members of the ACBSCT with any such affiliation.

The members and chair shall be selected by the Secretary from outstanding authorities and representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists; hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

In addition, representatives from HRSA's Division of Transplantation, the Department of Defense Marrow Recruitment and Research Program operated by the Department of the Navy, the Food and Drug Administration, the National Institutes of Health, the Centers for Medicare & Medicaid Services, and the Centers for Disease Control and Prevention serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for voting members of the ACBSCT in these categories: Marrow donor centers and transplant center representatives; cord blood banks and participating hospitals' representatives; recipients of cord blood transplant; family members of bone marrow transplant and cord blood transplant recipients or family members of a patient who has requested assistance by the Program in searching for an unrelated donor; persons with expertise in bone marrow or cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in social sciences; basic scientists with expertise in the biology of adult stem cells; researchers in hematology and transfusion medicine with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public. Nominees will be invited to serve a 2-year term, beginning the date of appointment, with the possibility of additional 2-year terms, not to exceed 6 years consecutively.

HHS will consider nominations of all qualified individuals to ensure that the ACBSCT includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the ACBSCT. Nominations shall state that the nominee is willing to serve as a member of the ACBSCT. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the ACBSCT to

permit evaluation of possible sources of conflicts of interest. In addition, nominees will be asked to provide detailed information concerning any employment, governance, or financial affiliation with any donor centers, recruitment organizations, transplant centers, and/or cord blood banks.

A nomination package should be sent in as hard copy, email communication, or on compact disc. A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, return address, email address, and daytime telephone number at which the nominator can be contacted.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented, consistent with the committee's authorizing statute and charter. Appointment to the ACBSCT shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Department encourages nominations of qualified candidates from all groups and locations.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–01127 Filed 1–20–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ TransplantationRequest for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of request for nominations.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Organ Transplantation (ACOT). The ACOT was established by the Amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR part 121) and, in accordance with Public Law 92–463, was chartered on September 1, 2000.

DATES: The agency must receive nominations on a continuous basis.

ADDRESSES: All nominations should be submitted to the Executive Secretary, ACOT, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08N182, Rockville, Maryland 20857. Federal Express, Airborne, UPS, etc., mail delivery should be addressed to Executive Secretary, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, at the above address, or via email to: *PStroup@hrsa.gov* and *PTongele@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Stroup, M.B.A., M.P.A., Executive Secretary, ACOT, at (301) 443–1127 or email *PStroup@hrsa.gov.*

SUPPLEMENTARY INFORMATION: As provided by 42 CFR 121.12, the Secretary established the ACOT. The ACOT is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The ACOT advises the Secretary on all aspects of organ procurement, allocation, and transplantation, and on other such matters that the Secretary determines. One of its principal functions is to advise the Secretary on federal efforts to maximize the number of deceased donor organs made available for transplantation and to support the safety of living organ donation.

The ACOT consists of up to 25 members, who are Special Government Employees, and 6 ex-officio, non-voting members. Members and the Chair shall be appointed by the Secretary from individuals knowledgeable in such fields as deceased and living organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, living organ donors, and family members of deceased and living organ donors. Members shall not serve while they are also serving on the OPTN Board of Directors. To the extent practicable, Committee members should represent minority, gender and geographic diversity of transplant candidates, transplant recipients, organ donors and family members served by the OPTN. The ex-officio, non-voting members shall include the Directors of the National Institutes of Health, the Centers for Disease Control and Prevention, and the Agency for Healthcare Research and Quality; the Administrator of the Centers for Medicare & Medicaid Services; the Commissioner of the Food and Drug Administration; and the Chair, Advisory Committee on Blood and Tissue and Safety Availability—or their designees.

Specifically, HRSA is requesting nominations for voting members of the ACOT representing: Health care public policy; transplantation medicine and surgery, including pediatric and heart/lung transplantation; critical care medicine; nursing; epidemiology and applied statistics; immunology; law and bioethics; behavioral sciences; economics and econometrics; organ procurement organizations; transplant candidates/recipients; transplant/donor family members; and living donors. Nominees will be invited to serve up to a 4-year term.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with a view to ensuring that the ACOT includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the ACOT. Nominations shall state that the nominee is willing to serve as a member of the ACOT and appears to have no conflict of interest that would preclude the ACOT membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the ACOT to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee:

(1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACOT), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of

points of view represented, consistent with the committee's authorizing charter. Appointment to the ACOT shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Department encourages nominations of qualified candidates from all groups and locations.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–01126 Filed 1–20–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office for Human Research Protections, Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is seeking four (4) nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, through the Assistant Secretary for Health on issues pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of four qualified candidates to fill positions on the Committee membership that will be vacated during the 2016 calendar year, including the position of Chair.

DATES: Nominations for membership on the Committee must be received no later than March 21, 2016.

ADDRESSES: Nominations should be mailed or delivered to Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations will not be accepted by email or by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by accessing the SACHRP Web site at *www.hhs.gov/ohrp/sachrp,* or requesting via email at *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, individuals and populations in international studies, investigator conflicts of interest and populations in which there are individually identifiable samples, data or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, issues relating to the Notice of Proposed Rulemaking (NPRM) titled ''Federal Policy for the Protection of Human Subjects'' that appeared in the **Federal Register** on September 8, 2015, Vol 80, No 173:53933. In addition, SACHRP may review matters pertaining to the assurance system, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The OHRP is requesting nominations to fill four (4) positions for voting members of SACHRP that will become vacant in October 2016. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: Public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research, as well as the necessary time and dedication to devote to responsible membership on a working federal advisory committee.

The individuals selected for appointment to the Committee may be invited to serve a term of up to four years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate. Nominations may be retained and considered for future vacancies.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the

selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Dated: January 14, 2016.

Julia Gorey,

Executive Director, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2016–01049 Filed 1–20–16; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging for Evaluation of Response to Cancer Therapies (U01).

Date: February 25, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 5W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892–9750, 240–276–6385, *lovingeg@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Technologies for Cancer-Relevant Biospecimen Science.

Date: March 2, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W904, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division Of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W238, Bethesda, Md 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–6.

Date: March 7–8, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Dona Love, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W236, Rockville, MD 20850, 240–276–5264, *donalove@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Outstanding Investigator Award I.

Date: March 22–24, 2016.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Michael B. Small, Ph.D., Chief, Program and Review Extramural Staff Training Office, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Rockville, MD 20850, 240–276–6438, *smallm@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Outstanding Investigator Award II.

Date: March 22–24, 2016.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Bethesda, MD 20892–8328, 240–276–6442, *ss537t@nih.gov,*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01068 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group—Cellular Aspects of Diabetes and Obesity Study Section.

Date: February 9–10, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6166, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group—Macromolecular Structure and Function A Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group—Community Influences on Health Behavior Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle Hotel, 1400 6th Ave., Seattle, WA 98101.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301–435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group—Somatosensory and Chemosensory Systems Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Long Beach Hotel, 111 East Ocean Blvd., Long Beach, CA 90802.

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group—Nursing and Related Clinical Sciences Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Sung Sug Yoon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 3152, Bethesda, MD 20892, *sungsug.yoon@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group—Nanotechnology Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group—Skeletal Biology Development and Disease Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Rowe Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group—Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group—Macromolecular Structure and Function B Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Villa Florence Hotel, 225 Powell Street, San Francisco, CA 94102.

Contact Person: C–L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group—Molecular Neurogenetics Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 2nd Ave., San Diego, CA 92101.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group—Interventions to Prevent and Treat Addictions Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, (301) 523–0646, *mintzermz@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group—Integrative Nutrition and Metabolic Processes Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, RKL2 BG RM 6156, 6701 Rockledge Dr., Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group—Basic Mechanisms of Cancer Therapeutics Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahman-sesayl@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group—Biomaterials and Biointerfaces Study Section.

Date: February 11–12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton La Jolla Hotel, 3299 Holiday Court, La Jolla, CA 92037.

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group—Cognition and Perception Study Section.

Date: February 11–12, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Mark D. Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–915–6298, *lindnermd@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group—Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: February 11–12, 2016.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group—Neuroscience and Ophthalmic Imaging Technologies Study Section.

Date: February 11–12, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group—Social Sciences and Population Studies B Study Section.

Date: February 11–12, 2016.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group—Genomics, Computational Biology and Technology Study Section.

Date: February 11–12, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:*Barbara J. Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01069 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, NIDCR Second Data Analysis.

Date: February 17, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: NIDCR,Democracy 1,Conference Room 602,6701 Democracy Blvd.,Bethesda, MD 20892.

Contact Person: Guo He Zhang, MPH, Ph.D.,Scientific Review Officer,Scientific Review Branch,Natl Institute of Dental and Craniofacial Research, National Institutes of Health,6701 Democracy Boulevard Suite 672,Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 14, 2016.

Natasha M. Copeland,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01065 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Council for Human Genome Research.

The meetings will be open to the public as indicated below, 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.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 8–9, 2016.

Closed: February 8, 2016, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Open: February 8, 2016, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Closed: February 8, 2016, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Closed: February 9, 2016, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 16–17, 2016.

Closed: May 16, 2016, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Open: May 16, 2016, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Closed: May 16, 2016, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Closed: May 17, 2016, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 12–13, 2016.

Closed: September 12, 2016, 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20852.

Open: September 12, 2016, 10:00 a.m. to 4:00 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20852.

Closed: September 12, 2016, 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20852.

Closed: September 13, 2016, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Terrace Level Conference Room, 5635 Fishers Lane, Bethesda, MD 20852.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 13, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01066 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 16, 2016, 10:00 a.m. to February 16, 2016, 1:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W122, Rockville, MD 20850 which was published in the **Federal Register** on January 5, 2016, 81 FR 245.

The meeting is amended to change the date of the meeting to February 17, 2016 from 10:00 a.m. to 3:00 p.m. The meeting is closed to the public.

Dated: January 14, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01067 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Host Interactions with Bacterial Pathogens Study Section.

Date: February 11, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Long Beach Downtown, 500 East First Street, Long Beach, CA 90802.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Neurobiology of Learning and Memory Study Section.

Date: February 11, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle Hotel, 1400 6th Avenue, Seattle, WA 98101.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group Development—1 Study Section.

Date: February 11, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: February 11, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: February 11–12, 2016.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal St., New Orleans, LA 70130.

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Musculoskeletal Rehabilitation Sciences Study Section.

Date: February 12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott Redondo Beach, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Molecular Oncogenesis Study Section.

Date: February 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group Hypertension and Microcirculation Study Section.

Date: February 16–17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: February 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group Drug Discovery and Molecular Pharmacology Study Section.

Date: February 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Circle Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group Macromolecular Structure and Function D Study Section.

Date: February 16, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Arthritis, Connective Tissue and Skin Study Section.

Date: February 16–17, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Sensorimotor Integration Study Section.

Date: February 16–17, 2016.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Risk Prevention and Health Behavior AREA Review.

Date: February 16, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John H Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01076 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: National Institute on Minority Health and Health Disparities Research Endowments

SUMMARY: 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 National Institute on Minority Health and Health Disparities (NIMHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Nathan Stinson, Jr., Ph.D., MD, MPH, Director, Division of Extramural Scientific Programs, National Institute on Minority Health

and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892–5465, or call non-toll free number (301–594–8704 or email your request including your address to: *stinsonn@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received March 21, 2016.

Proposed Collection: National Institute on Minority Health and Health Disparities Research Endowments—0925—NEW—Existing Collection In Use without an OMB Number- National Institute on Minority Health and Health Disparities (NIMHD), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIMHD Research Endowment Program builds research capacity and research infrastructure in order to facilitate minority health research and research regarding other health disparity populations at eligible institutions under sections 736 and 464z–4 of the Public Health Service Act (PHS Act). NIH regulations contains requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35). Title 45 of the CFR, sections 52i.3(b)(2), 52i.4(a), 52i.4(c), 52i.5(a), 52i.9(b), 52i.11(b), and 52i.11(d) contain reporting and information collection requirements that are subject to OMB approval under the Paperwork Reduction Act. Title 45 of the CFR, sections 52i.10, 52i.11(a)(1), 52i.11(a)(2), 52i.11(a)(3), 52i.11(a)(4), and 52i.11(b) contain recordkeeping requirements that are subject to OMB review under the Paperwork Reduction Act. The respondents for this notice consist of institutions currently funded under Section 736 or Section 464z–4 of the PHS Act.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 548.

ESTIMATED ANNUALIZED BURDEN HOURS

Citations	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total burden hours
Reporting:				
52i.3(b)(2)	4	1	4	16
52i.4(a)	4	1	1	4
52i.4(c)	4	1	1	4
52i.5(a)	4	1	22	88
52i.9(b)	4	1	4	16
52i.11(b)	12	1	15	180
52i.11(d)	12	1	2	24
Subtotal			49	332
Recordkeeping:				
52i.10	12	1	2	24
52i.11(a)(1)	12	1	2	24
52.i11(a)(2)	12	1	2	24
52i11(a)(3)	12	1	2	24
52i11(a)(4)	12	1	2	24
52.i11(b)	12	1	8	96
Subtotal			18	216
Total			67	548

Dated: January 11, 2016.

Eliseo Pérez-Stable,

Director, NIMHD.

[FR Doc. 2016–01080 Filed 1–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Pipeline Operator Security Information

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0055, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Specifically, the collection involves the submission of data concerning pipeline security incidents.

DATES: Send your comments by March 21, 2016.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0055; Pipeline Operator Security Information. Under the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71, 115 Stat. 597 (November 19, 2001)) and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.'' In executing its responsibility for modal security, TSA produced the Pipeline Security Guidelines in December 2010.

As the lead Federal agency for pipeline security, TSA desires to be notified of all incidents which are indicative of a deliberate attempt to disrupt pipeline operations or activities that could be precursors to such an attempt. The Pipeline Security Guidelines encourage pipeline operators to notify the Transportation Security Operations Center (TSOC) via phone at 866–615–5150 or email at *TSOC.ST@dhs.gov* as soon as possible if any of the following incidents occurs or if there is other reason to believe that a terrorist incident may be planned or may have occurred:

- Explosions or fires of a suspicious nature affecting pipeline systems, facilities, or assets.
- Actual or suspected attacks on pipeline systems, facilities, or assets.
- Bomb threats or weapons of mass destruction (WMD) threats to pipeline systems, facilities, or assets.
- Theft of pipeline company vehicles, uniforms, or employee credentials.
- Suspicious persons or vehicles around pipeline systems, facilities, assets, or right-of-way.
- Suspicious photography or possible surveillance of pipeline systems, facilities, or assets.
- Suspicious phone calls from people asking about the vulnerabilities or security practices of a pipeline system, facility, or asset operation.
- Suspicious individuals applying for security-sensitive positions in the pipeline company.
- Theft or loss of Sensitive Security Information (SSI) (detailed pipeline maps, security plans, etc.).
- Actual or suspected cyber-attacks that could impact pipeline Supervisory Control and Data Acquisition (SCADA) or enterprise associated IT systems.

When contacting the TSOC, the Guidelines request pipeline operators to provide as much of the following information as possible:

- Name and contact information (email address, telephone number).
- The time and location of the incident, as specifically as possible.
- A description of the incident or activity involved.
- Who has been notified and what actions have been taken.
- The names and/or descriptions of persons involved or suspicious parties and license plates as appropriate.

In addition to the reporting of security incident data to the TSOC, the Pipeline Security Guidelines previously included collecting information on recommendations for the voluntary submission of pipeline operator security manager contact information to TSA. TSA is revising the collection of information and will no longer collect the security manager contact information as that information is now available through data maintained by TSA; however, the agency will continue to collect information on the reporting of security incident data to TSOC.

TSA expects reporting of pipeline security incidents will occur on an irregular basis. TSA estimates that approximately 40 incidents will be reported annually, requiring a maximum of 30 minutes to collect, review, and submit event information. The potential burden to the public is estimated to be 20 hours. (40 incidents × 30 minutes = 20 hours)

Dated: January 14, 2016.

Christina A. Walsh

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–01174 Filed 1–20–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–04]

30-Day Notice of Proposed Information Collection:Form HUD–92266 Application for Transfer of Physical Assets (TPA)

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: February 22, 2016.*

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, QMAC, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at(800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on November 4, 2015 at 80 FR 68331.

A. Overview of Information Collection

Title of Information Collection: Form HUD–92266 Application for Transfer of Physical Assets (TPA).

OMB Approval Number: 2502–0275.

Type of Request: Extension of currently approved collection.

Form Number: : HUD–92266.

Description of the need for the information and proposed use: When the sale andconveyance by deed to an insured mortgage necessitates a substitution of mortgagors, HUD approval of the substitution is required.

Respondents (*i.e.* affected public): Multifamily property owners with loans insured or held by HUD.

Estimated Number of Respondents: 14,734.

Estimated Number of Responses: 295.

Frequency of Response: Once per transfer of physical assets.

Average Hours per Response: 83.
Total Estimated Burdens: 24,485.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: *January 13, 2016.*

Colette Pollard,

Department Reports Management Officer,Office of the Chief Information Officer.

[FR Doc. 2016–01151 Filed 1–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2015–0182; FXES11120500000–167–FF05E00000]

Draft Environmental Assessment, Habitat Conservation Plan, and Application for an Incidental Take Permit for Piping Plover, Massachusetts Division of Fisheries and Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), have received an application from the Massachusetts Division of Fisheries and Wildlife (MADFW) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing a 25-year permit to the applicant that would authorize take of the federally threatened piping plover incidental to otherwise lawful activities, specifically recreational activities and beach operations on piping plover breeding beaches in Massachusetts. Pursuant to the ESA and the National Environmental Policy Act (NEPA), we announce the availability of the MADFW's ITP application and draft habitat conservation plan (HCP), as well as the Service's draft environmental assessment (EA), for public review and comment. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before February 22, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Standard Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2015–0182, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.

By hard copy: Submit by U.S. mail or hand-delivery to Public Comments Processing, Attn: Docket No. FWS–R5–ES–2015–0182, Division of Policy, Performance and Management; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, ABHC–PPM; Falls Church, VA 22041–3803.

We request that you send comments by only one of the methods described above. We will post all information received on the Web site at: *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Thomas Chapman, by mail at U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301; or by phone at (603) 223–2541.

SUPPLEMENTARY INFORMATION: We received an application from the MADFW for an ITP to take the federally threatened piping plover (*Charadrius melodus*) over a 25-year period. The ITP would authorize take resulting from recreational activities and beach operations that deviate from State and Federal guidelines for avoiding take (*Guidelines for Managing Recreational Use of Beaches to Protect Piping Plovers, Terns and Their Habitats in Massachusetts* (MADFW 1993; *http://www.mass.gov/eea/docs/czm/stormsmart/beaches/barrier-beach-guidelines.pdf,* accessed December 21, 2015); *Guidelines For Managing Recreational Activities In Piping Plover Breeding Habitat On The U.S. Atlantic Coast To Avoid Take Under Section 9 Of The Endangered Species Act* (USFWS 1994; *http://www.fws.gov/northeast/pipingplover/pdf/recguide.pdf,* accessed December 21, 2015)). A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by the MADFW as described in the draft Massachusetts Division of Fisheries and Wildlife Habitat Conservation Plan for Piping Plover.

To comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA), we prepared an EA that describes the proposed action, issuance of an ITP to the MADFW, and possible alternatives and analyzes the effects of the proposed action and alternatives on the human environment. We will evaluate whether the EA's analysis is adequate to support a Finding of No Significant Impact.

Availability of Documents

You may obtain copies of the proposed HCP and draft EA on the internet at the New England Field Office's Web site at *http://www.fws.gov/newengland/* or at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2015–0182. Copies of the proposed HCP and draft EA will also be available for public review during regular business hours at the New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301. Those who do not have access to the internet or cannot visit our office can request copies by telephone at (603) 223–2541, or by letter to the New England Field Office.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(2)(A) of the ESA requires an ITP

applicant to submit an HCP that specifies the steps the applicant will take to minimize and mitigate the impacts of the taking. Regulations governing ITPs for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The MADFW is seeking a permit for the incidental take of the piping plover for a term of 25 years. Incidental take of this species may occur as a result of recreational activities and beach operations that deviate from State and Federal guidelines for managing piping plovers. The proposed covered activities include: (1) The use of roads and parking lots in the vicinity of unfledged piping plover chicks; (2) recreational activities and beach operations associated with reduced symbolic fencing around nests (temporary stake and twine or rope with signage erected around piping plover nests and habitat to delineate no entry areas for over-sand vehicles (OSVs) and pedestrians); (3) recreational activities and beach operations associated with reduced proactive symbolic fencing of piping plover habitat; (4) the moving of piping plover nests for recreational access and beach operations; and (5) OSV use in the vicinity of unfledged piping plover chicks. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the piping plover. The HCP's stated purpose is to advance piping plover conservation and recovery in Massachusetts while maintaining and improving recreational beach access and beach operations.

To achieve plover conservation and limited flexibility for recreational activities and beach operations, the HCP identified broad program goals, including: (1) A framework to maintain a ''viable and robust'' piping plover population in Massachusetts; (2) community support for piping plover conservation; and (3) streamlining the State and Federal permitting processes for site-level management flexibility. The MADFW intends to extend its take authorization to issue Certificates of Inclusion (COIs) to approved landowners and beach managers (referred to as Plan participants) who: (1) Engage in the covered activities described in the HCP; (2) meet the COI eligibility and application requirements described in the HCP; and (3) agree to implement the HCP, required ITP conditions, and the MADFW conservation and management permit (required for State-listed species, including the piping plover). Plan participants are required to develop implementation avoidance and minimization plans (IAMPs) that are based on conservation measures outlined in the HCP and to implement mitigation to offset the take of piping plover adults, chicks, and nests. The HCP conservation strategy's primary avenue for mitigation is selective predator management that would be implemented on site or off site. Additional education, outreach, and law enforcement efforts could be implemented by Plan participants, but because the impacts of these measures are not quantifiable, these measures are not considered to offset the anticipated take.

The HCP outlines a sliding scale for estimating the annual allowable take of broods, nests, or territories based on the 3-year running statewide population average. The scale ranges from 0 take if the statewide population is below 500 breeding pairs to a maximum take exposure of 7 percent of the statewide population if the statewide population is at or exceeds 655 breeding pairs. Therefore, the annual amount of take over the 25-year permit duration could range from a low of no nests, broods, or territories exposed to take to a high of 7 percent of the statewide population's nests, broods, or territories exposed to take. The Service has estimated the potential take to be the highest level of annual take, 70 broods per year, based on a statewide population estimate of 1,000 breeding pairs. This estimate is based on the estimated Massachusetts carrying capacity of 1,100 breeding pairs and the assumption that carrying capacity is unlikely to be reached during the permit term.

The proposed action is the issuance of an ITP and implementation of the proposed HCP. The MADFW considered two alternatives to the proposed action in its HCP: A reduced take alternative under which expanded OSV use in the presence of unfledged plover chicks would not be included, thereby reducing the amount of take allocated under the HCP, and an activity-by-activity alternative whereby the MADFW and beach landowners or managers of recreational beaches would apply to the Service for individual ITPs for take associated with recreational activities and beach operations.

National Environmental Policy Act

In compliance with NEPA, we analyzed the impacts of the proposed project, issuance of an ITP and implementation of the HCP, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment, we will determine if there are any significant impacts caused by the proposed action. We have prepared a draft EA on the proposed action and have made it available for public inspection online or in person at the New England Field Office (see Availability of Documents).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives: A no action alternative, the proposed action, and a shorter permit term alternative.

Next Steps

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and draft EA during a 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES**.

Public Availability of Comments

We will post all public comments and information received electronically or via hard copy on our Web site at: *http://regulations.gov.* All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hard copy comment that includes personal identifying information, you may request at the top of you document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: January 13, 2016.

Paul Phifer,

Assistant Regional Director, Ecological Services, Northeast Region.

[FR Doc. 2016–01111 Filed 1–20–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2015–0149; FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Application for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for permit; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before February 22, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2015–0149.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2015–0149; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Application

Endangered Species

Applicant: Yerkes National Primate Research Center, Atlanta, GA; PRT–69024B

On October 15, 2015, we published a **Federal Register** notice inviting the public to comment on an application for a permit to conduct a certain activity with endangered species (80 FR 62089). We are now reopening the comment period to allow the public the opportunity to review additional information submitted for the issuance of a permit to export two male and six female captive-bred chimpanzees (*pan troglodytes*) to Wingham Wildlife Park, Wingham, United Kingdom, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–01095 Filed 1–20–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16EN05ESB0500]

Reopening of Nomination Period for State Government Members of the Advisory Committee on Climate Change and Natural Resource Science

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: On October 19, 2015, the U.S. Department of the Interior published a notice inviting nominations for non-Federal members of the Advisory Committee on Climate Change and

Natural Resource Science (Committee). The closing date for nominations was January 15, 2016. This **Federal Register** Notice reopens the nomination and comment period for an additional 30 days, for state government nominees only. If you have already submitted information to be considered for appointment to the Committee you do not have to resubmit it.

DATES: Written nominations must be received by February 22, 2016.

ADDRESSES: Send nominations to: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *romalley@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *romalley@usgs.gov.*

SUPPLEMENTARY INFORMATION: On October 19, 2015, the U.S. Department of the Interior (DOI) published a notice inviting nominations for the Advisory Committee on Climate Change and Natural Resource Science (Committee), for members whose initial terms expired in May 2016. The Committee provides advice on matters and actions relating to the establishment and operations of the U.S. Geological Survey National Climate Change and Wildlife Science Center and the DOI Climate Science Centers. See: *https://nccwsc.usgs.gov/acccnrs* for more information.

Contacts with potential nominees from state government have indicated that additional time to secure management approval of their nomination is required. Because state governments are a key partner, the Department is reopening the nomination period, for state government nominees only.

Nominations should include a resume that describes the nominee's qualifications in enough detail to enable us to make an informed decision regarding meeting the membership requirements of the Committee and to contact a potential member.

The Committee is composed of approximately 25 members from the Federal Government, and the following interests: (1) State and local governments, including state membership entities; (2) Non-governmental organizations, including those whose primary mission is professional and scientific and those whose primary mission is conservation and related scientific and advocacy activities; (3) American Indian tribes and other Native American entities; (4) Academia; (5) Landowners, businesses, and organizations representing landowners or businesses.

In addition, the Committee may include scientific experts, and will include rotating representation from one or more of the institutions that host the DOI Climate Science Centers.

The Committee will meet approximately 2–4 times annually, and at such times as designated by the DFO. The Secretary of the Interior will appoint members to the Committee. Members appointed as special Government employees are required to file on an annual basis a confidential financial disclosure report.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee.

Robin O'Malley,

Designated Federal Officer, ACCCNRS.

[FR Doc. 2016–01149 Filed 1–20–16; 8:45 am]

BILLING CODE 4311–MP–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Salt River Pima-Maricopa Indian Community of the Salt River Reservation Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Salt River Pima-Maricopa Indian Community of the Salt River Reservation Liquor Ordinance (Ordinance). The Ordinance certifies the Salt River Pima-Maricopa Indian Community's Liquor licensing laws to regulate and control the possession, sale and consumption of liquor within the jurisdiction of the Salt River Pima-Maricopa Indian Community. The Ordinance repeals and replaces the previous liquor control ordinance published in the **Federal Register** on July 13, 2010 (75 FR 39960), and any and all previous statutes.

DATES: This ordinance becomes effective February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlot Johnson, Tribal Government Services Officer, Western Regional Office, Bureau of Indian Affairs, 2600 North Central Avenue, Phoenix, AZ 85004, Phone: (602) 379–6786; Fax: (602) 379–379–4100, or Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Office of Indian Services, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Salt River Pima-Maricopa Indian Community adopted Resolution Number: SR–3349–2015 (Liquor Control Ordinance) on June 24, 2015. The statute repeals and replaces the previous liquor control ordinance published in the **Federal Register** on July 13, 2010 (75 FR 39960).

Dated: January 6, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

Chapter 14 ALCOHOLIC BEVERAGES AND PROHIBITED SUBSTANCES (Articles I–III)

ARTICLE I. IN GENERAL

Sec. 14–1. Sovereign immunity.

Nothing in this chapter is intended to be or shall be construed as a waiver of the sovereign immunity of the Community.

(Code 1981, § 14–1; Code 2012, § 14–1; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–1, 5–30–2012)

Secs. 14–2—14–20. Reserved.

ARTICLE II. ALCOHOLIC BEVERAGE CONTROL

DIVISION 1. GENERALLY

Sec. 14–21. Title; authority; purpose; etc.

(a) Title. This article shall be known as the Salt River Pima-Maricopa Indian Community Alcoholic Beverage Control Ordinance.

(b) Authority. This article is enacted pursuant to the Act of August 15, 1953, (Public Law 83–277, 67 stat. 588, 18 U.S.C. 1161) and article VII of the Community Constitution.

(c) Purpose. The purpose of this article and article III of this chapter is to regulate and control the possession, consumption, and sale of liquor or alcoholic beverages within the boundary of the Community. The enactment of an ordinance governing liquor or alcoholic

beverage possession and sale on the reservation will increase the ability of the Community government to control alcoholic beverage sale, distribution, and possession while at the same time providing an important source of revenue for the continued operation and strengthening of the Community government and its delivery of Community government services.

(d) Application of 18 U.S.C. 1161. All acts and transactions under this article shall be in conformity with this article and in conformity with the laws of the State of Arizona, to the extent required by 18 U.S.C. 1161.

(e) Effective date. This article shall be effective as a matter of Community law upon approval by the Community Council and effective as a matter of federal law when the Assistant Secretary of Indian Affairs certifies and publishes this article in the **Federal Register**.

(Code 1981, § 14–2; Code 2012, § 14–2; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–2, 5–30–2012)

Sec. 14–22. Scope.

This chapter constitutes the entire statutory law of the Community in regard to the sale, possession and/or distribution of alcoholic beverages within the Community.

(Code 1981, § 14–3; Code 2012, § 14–3; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–3, 5–30–2012)

Sec. 14–23. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: Aggrieved party means a person, an applicant, a Community member or the Community. Alcoholic beverage means beer, wine or other spirituous liquor (including but not limited to brandy, whiskey, rum, tequila, mescal, gin, porter, ale any malt liquor beverage, absinthe, a compound mixture of these or a compound mixture of these with any other substance which produces intoxication, fruits preserved in ardent spirits and beverages containing more than one-half of one percent of alcohol by volume).

Applicant means any partnership, corporation, limited liability company or Community enterprise as well as any natural person that is or are requesting approval of a Community liquor license.

Broken package means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed, except that ''broken package'' does not include when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

Community means the Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribe.

Controlling person means a person directly or indirectly possessing control of an applicant or licensee. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten percent or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten percent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in ten percent or more of the liabilities of the licensee or controlling person.

Director means director of the Community regulatory agency who is also the director. Gross revenue means the revenue derived from all the sales of food and alcoholic beverages on the licensed premises, regardless of whether the sales of alcoholic beverages are made under a restaurant license issued pursuant to this article.

Hearing officer means a person designated by the Community manager to hear an appeal of a decision made by the director.

License means a license issued pursuant to the provisions of this article by the Community.

Licensed premises or premises means a place from which a licensee is authorized to sell alcoholic beverages under the provisions of this article.

Licensee means any partnership, corporation, limited liability company or Community enterprise, as well as any natural person who has been authorized to sell alcoholic beverages for consumption at a particular premises by the Community.

Minibar means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

Office means the alcohol beverage control office or persons within the Community regulatory agency that regulate alcoholic beverage and/or liquor sales and distribution transactions within the Community as created in section 14–24.

Off-sale retailer means any person operating a bona fide regularly established retail liquor store selling alcoholic beverages and any established retail store selling commodities other than alcoholic beverages that is engaged in the sale of alcoholic beverages only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

On-sale retailer means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

Person means any partnership, corporation, limited liability company, or Community enterprise, as well as any natural person.

Possess means to have any item or substance within the control of a person or to have any alcoholic beverage within a person's body, regardless of where the consumption may have taken place.

Private residence means a place where an individual or a family maintains a habitation.

Public patio enclosure means a contiguous patio or a patio that is not contiguous to the remainder of the licensed premises if the noncontiguous patio is separated from the remainder of the premises or licensed premises by a public or private walkway or driveway not to exceed 30 feet, subject to the rules that the office may adopt to establish criteria for a noncontiguous premises.

Public place means any place that is not a private residence, including within operational motor vehicles or nonresidential structures, and not licensed, pursuant to this article, for the possession of alcoholic beverages.

Restaurant (excluding the provisions in this article that govern casino or golf course licenses) means an establishment that derives at least 40 percent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount

of these sales included in the calculation of gross revenue from the sale of food does not exceed 15 percent of all gross revenue of the restaurant.

(Code 1981, § 14–4; Code 2012, § 14–4; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–4, 5–30–2012; Ord. No. SRO–451–2015, § 14–23, 10–1–2014)

Sec. 14–24. Office of alcohol beverage control; director.

(a) Office. The office of alcohol beverage control (office) is hereby established within the Community's regulatory agency. The director of the Community regulatory agency is hereby designated as the alcohol beverage control officer (director) who will be responsible to the Community manager and whose duties may be delegated from time to time to other employees of the office. All of the positions of the office will be filled and conducted in accordance with the Community's established policies and procedures.

(b) Authority of the office. The office shall have the following authority:

(1) Grant and deny applications in accordance with this article;

(2) Adopt rules and regulations to implement this article;

(3) Hold hearings and make determinations on whether to grant or deny licenses;

(4) Employ necessary personnel;

(5) Maintain a public record open to the public containing the names and addresses of each licensee and any person who is a controlling person;

(6) Liaison between the office and the Community police department to ensure enforcement of this article and article III of this chapter and any relevant regulations issued pursuant to this chapter;

(7) Investigate and enforce compliance of this article and article III of this chapter and any relevant regulations that also pertain to the selling of alcoholic beverages within the Community; and

(8) Inspect, during the hours in which a premises is occupied, the premises of a licensee.

(9) To conduct a state and federal criminal history check pursuant to Arizona Revised Statute 41–1750 and Public Law 92–544 on all applicants for a license under this chapter; and that all applicants must submit a full set of fingerprints to the office who shall submit the fingerprints to the Arizona Department of Public Safety, who may then exchange the fingerprint data with the Federal Bureau of Investigation.

(c) Inspection of premises, enforcement and investigations. The office shall receive complaints of alleged violations of this article and article III of this chapter and is also responsible for the investigation of allegations of violations of, or noncompliance with, the selling of alcoholic beverages pursuant to this article and article III of this chapter or any relevant regulations issued pursuant to this chapter.

(1) The office shall establish a separate investigation unit which has as its responsibility the investigation of compliance within this article.

(2) A complete record of all applications, actions taken thereon, and any licenses issued shall be maintained by the office and shall be open for public inspection at the office.

(3) Office staff that are authorized to investigate pursuant to this article shall have the authority to investigate and issue a notice of a violation of noncompliance with this chapter.

(4) The office or the Community police department may cite a licensee to appear before the office or the hearing officer for a hearing upon allegations of violations of this article and article III of this chapter or any relevant law or regulation issued pursuant to this chapter.

(5) The office or the director may take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken and require by subpoena duces tecum for the production of books, papers and other documents which are necessary for the enforcement of this article and article III of this chapter.

(6) The office, including the director, may, in enforcing the provisions of this article, inspect the premises.

(Code 1981, § 14–5; Code 2012, § 14–5; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–5, 5–30–2012; Ord. No. SRO–410–2013, § 14–5, 12–5–2012; Ord. No. SRO–439–2014, § 14–5(b)(9), 3–5–2014)

Sec. 14–25. Lawful commerce, possession or consumption.

(a) Alcoholic beverages may be possessed and consumed only at private residences, and licensed premises pursuant to this chapter, and may be transported in unbroken containers to such places. For purposes of this provision, ''unbroken container'' includes when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(b) Wine may be purchased, stored, distributed and consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise of an organized church and in a manner not dangerous to public health or safety.

(c) The purchase, storage and use of alcoholic beverages solely for the purpose of cooking or preparing food and in a manner not dangerous to public health and safety are authorized.

(d) Alcoholic beverages may also be served and consumed at a premises licensed pursuant to a business ancillary license if the following conditions have been met; a business serves alcoholic beverages as part of a cooking demonstration or cooking class; or is an accredited school offering degree programs in the culinary arts.

(e) Alcoholic beverages may be sold at licensed premises only under the conditions under which the license is issued.

(Code 1981, § 14–6; Code 2012, § 14–6; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–6, 5–30–2012; Ord. No. SRO–451–2015, § 14–25, 10–1–2014)

Secs. 14–26—14–53. Reserved.

DIVISION 2. LICENSES

Sec. 14–54. Designated area.

The director may issue a license for premises located within the designated area identified in the December 9, 2009, approved Community liquor licensing area corridor (attached to the ordinance from which this article is derived, and incorporated herein by reference).

(1) The December 9, 2009, approved Community liquor licensing area corridor shall be kept with the official records of the Community in the office of the council secretary.

(2) Upon majority vote by the Community Council and publication in the Community's newspaper, the Community Council may amend the December 9, 2009, approved Community liquor licensing area corridor and any future amendments thereof.

(Code 1981, § 14–7(a); Code 2012, § 14–7(b); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–366–2010, § 14–7(b), 7–14–2010; Ord. No. SRO–402–2012, § 14–7(b), 5–30–2012)

Sec. 14–55. Premises that may be licensed.

Licenses may only be issued for premises listed and defined as follows:

(1) Hotel-motel license.

a. The director may issue a hotel-motel license to any hotel or motel that operates either a restaurant or a bar in the hotel or motel, provided that the

applicant is otherwise qualified to hold a license.

b. The holder of a hotel-motel license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section, the term ''licensed premises'' includes all minibars located within guestrooms, accommodations, public bar rooms, outdoor patio enclosures, outdoor pool areas, public restaurant rooms, facilities, areas, and private banquet or meeting rooms located within the hotel-motel premises or connected to the hotel-motel premises.

(2) Casino license.

a. The director may issue a casino license to any casino authorized to operate as a casino by the Community.

b. The holder of a casino license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this section, the term ''licensed premises'' includes all public bar rooms, gaming areas, private banquet or meeting rooms, restaurants, other food service facilities, outdoor patio enclosures, and land contiguous to the casino facility.

(3) Golf course clubhouse license.

a. The director may issue a golf course clubhouse license to any golf course clubhouse.

b. The holder of a golf course clubhouse license is authorized to sell and serve alcoholic beverages solely for consumption on the licensed premises and only to patrons of the golf course facility. For the purpose of this section, the term ''licensed premises'' includes all restaurants and other food service facilities, private banquet or meeting rooms, bar rooms, outdoor patio enclosures, lounge facilities within the golf course clubhouse, and golf course enclosure. For purposes of this section, the term ''golf course clubhouse'' means a clubhouse located on a golf course. For purposes of this section, the term ''golf course enclosure'' means substantially undeveloped land, including amenities such as landscaping, irrigation systems, paths and golf greens and tees, that may be used for golfing or golfing practice by the public or by members and guests of a private club.

(4) Restaurant license.

a. The director may issue a restaurant license to any restaurant that is regularly open for the serving of food to guests for compensation and that has suitable kitchen facilities connected with the restaurant for keeping, cooking and preparing foods required for ordinary meals.

b. The restaurant shall be regularly open for the serving of food to guests for compensation and is an establishment which derives at least 40 percent of its gross revenue from the sale of food (which includes nonalcoholic beverages), including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed 15 percent of all gross revenue for the restaurant. For purposes of meeting the gross revenue requirements, a restaurant license applicant may request that the licensed premises include less than the entire establishment in which the applicant operates its business; provided that alcoholic beverages are restricted to the licensed premises.

c. The holder of a restaurant license may sell and serve alcoholic beverages solely for consumption on the licensed premises. For the purpose of this subsection, the term ''licensed premises'' may include rooms, areas or locations in which the restaurant normally sells or serves alcoholic beverages or spirituous liquors pursuant to regular operating procedures and practices and that are contiguous to the restaurant or a public patio enclosure. For the purposes of this subsection, a restaurant licensee must submit proof of tenancy or permission from the landlord for all property to be included in the licensed premises.

d. The holder of a restaurant license shall be required upon request of the office to submit an audit of the records for the premises to demonstrate compliance with subsection (4)b of this section. An establishment that averages at least 40 percent of its gross revenue from the sale of food during a 12-month audit period shall be deemed to comply with the gross revenue requirements of subsection (4)b of this section. The 12-month audit period shall fall within the 16 months immediately preceding the beginning of the audit. The office shall not require an establishment to submit to such an audit more than once a year after the initial 12 months of operation. When conducting an audit, the office shall use generally accepted auditing standards.

1. If the audit reveals that the licensee did not meet the definition of a restaurant as prescribed in subsection (4)b of this section and the percentage of food sales was less than 37 percent, then the office shall deem the license to have been revoked or the office may recommend that the licensee be granted an additional 12-month period to attempt to increase their food percentage to at least 37 percent.

2. If the audit reveals that the licensee did not meet the definition of a restaurant as prescribed in subsection (4)b of this section and the percentage of food sales was more than 37 percent and less than 40 percent, then the office shall allow the licensee to continue to operate under the restaurant license for a period of one year, during which the licensee shall attempt to increase the food percentage to at least 40 percent. If the licensee does not increase the percentage of food sales to at least 40 percent, then the license issued pursuant to this article shall be revoked or the office may recommend that the licensee be granted an additional 12-month period to attempt to increase their food percentage to at least 40 percent.

(5) Government license.

a. The director may issue a government license to any Community governmental entity or commercial enterprise upon application by the governing board of that Community governmental or commercial enterprise entity for the sales of alcoholic beverages for consumption.

b. The holder of a government license may sell and serve alcoholic beverages solely for consumption on the licensed premises. The holder of the government license may sell and serve alcoholic beverages for consumption on the premises for which the license is issued, including a stadium.

c. Any agreement entered into by a Community governmental entity to a concessionaire to sell or serve alcoholic beverages pursuant to this subsection shall contain the following provisions:

1. A provision that fully indemnifies and holds harmless the Community and any of its agencies, boards, commissions, officers, and employees against any liability for loss or damage incurred either on or off Community property and resulting from the negligent serving of alcoholic beverages by the concessionaire or the concessionaire's agents or employees.

2. A provision that either posts a surety bond in favor of the Community in an amount determined by the Community to be sufficient to indemnify the Community against the potential liability or that names the Community as an additional insured in a liability policy that provides sufficient coverage to indemnify the Community as determined by the Community.

(6) Business ancillary license and/or special event license.

a. The director may issue a business ancillary license to a business that serves alcoholic beverages as part of a cooking demonstration or cooking class; or a school offering degree programs in the culinary arts.

1. A business ancillary license shall be issued pursuant to the process prescribed in sections 14–56 through 14–68; provided that certain provisions, as determined by the director (in a written form), may not be applicable as a business ancillary licensee is generally considered a social host and not engaged in the selling of alcoholic beverages.

2. A business ancillary license shall only be available to a business that is not in the primary business of selling food or alcohol.

3. The holder of a business ancillary license is authorized to serve alcoholic beverages solely for consumption on the licensed premises and only to guests of the business or in the case of a school, to students enrolled at the school.

4. The holder of a business ancillary license shall not be authorized to sell alcoholic beverages separately or by the drink.

b. The director may issue a special event license for a business for the purpose of holding a bona fide business-related networking function for its customers, clients, employees or business partners; or for the purpose of a bona fide charitable, civic, or religious organization to hold a special fundraising event; provided that any license issued as a special event license meets the following conditions:

1. A special event license is only issued for one day for a duration that shall not exceed eight hours;

2. A special event license may only be issued no more than once a year and shall only be issued to an applicant that has obtained a special event license pursuant to the requirements of the State of Arizona; and

3. A special event license shall only be available to a business that is not in the primary business of selling food or alcohol.

c. A person applying for a special event license must make application to the office at least 45 days prior to the special event. The director in his or her administrative discretion, without a public hearing, shall consider the following factors in determining whether to approve or disapprove the special event license:

1. Whether the event will be open to the public;

2. The criminal history of the applicant;

3. The nature of the event;

4. The security measures taken by the applicant;

5. The type of alcoholic beverages to be sold at the event;

6. How the alcoholic beverages will be served at the event;

7. Whether the applicant, within the past three years, has held an event that created a Community disturbance or whether the event site has generated Community disturbance complaints;

8. The potential for noise, traffic, lack of parking, and other related concerns;

9. The length of the event;

10. The sanitary facilities available to the participants;

11. The anticipated number of participants at the event;

12. The availability of the Community's police and fire departments to provide coverage at the event (if deemed reasonably necessary by the Community);

13. Proof of adequate insurance (as deemed reasonably necessary by the director) by the applicant for this event; and

14. The nature of the sound amplification of the event.

d. In addition to the special event license issued pursuant to this article, the applicant must obtain a special use permit from the Community, and pay for any associated costs, including any overtime costs, for police, fire, or other Community departments whose presence is determined necessary, by the Community, for the special event.

(Code 1981, § 14–7(b); Code 2012, § 14–7(b); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–366–2010, § 14–7(b), 7–14–2010; Ord. No. SRO–402–2012, § 14–7(b), 5–30–2012)

Sec. 14–56. Applicant and licensee qualifications.

(a) Every alcoholic beverage licensee shall be a citizen of the United States.

(b) The office shall require an applicant and may require any controlling person to furnish background information and to submit a full set of fingerprints to the office.

(c) Each applicant or licensee shall designate a person who shall be responsible for managing the premises. The manager shall be a natural person and shall meet all the requirements for licensure pursuant to this article.

(d) No license shall be issued to any person who, within one year before application, has had a license revoked in any jurisdiction.

(e) No license shall be issued to or renewed for any person who, within five years before the application, has been convicted of a felony in any jurisdiction; provided that for a conviction of a corporation, LLC or partnership to serve as a reason for denial, conduct which constitutes the offense and was the basis for a felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation, LLC or partnership or by a high managerial agent acting within the scope of employment. For purposes of this subsection, the term ''high managerial agent'' means an officer, partner or member of a corporation, LLC or partnership in a position of comparable authority with respect to the formulation of company policy.

(f) No corporation shall be issued a license or a renewal of that license unless on file with the office is a list of all of the corporation's officers and directors and any stockholders who own ten percent or more of the corporation. The office shall not issue or renew a license for any person who at the request of the director fails to provide the office with complete financial disclosure statements indicating all financial holdings of any controlling person. Provided that, publicly traded companies are exempt from the requirements set forth in this subsection.

(g) An alcoholic beverage license shall be issued only after a satisfactory showing of the capability, qualifications and reliability of the applicant; and that the public convenience requires and that the best interest of the Community will be substantially served by the issuance of the license.

(h) The license shall be to sell or deal in alcoholic beverages only at the place and in the manner provided in the license. A separate license shall be issued for each specific premises.

(i) All applications for an original license, the renewal of a license or the transfer of a license pursuant to this article shall be filed with and determined by the director, unless an appeal is filed and then the hearing officer will approve or disapprove of such license.

(j) A person who assigns, surrenders, transfers or sells control of a business which has an alcoholic beverage license shall notify the office within 15 business days after the assignment, surrender, transfer or sale. An alcoholic beverage license shall not be leased or subleased. A concessional agreement is not considered a lease or a sublease in violation of this article.

(k) If a person other than those persons originally licensed acquires control of a license or licensee, the person shall file notice of the acquisition with the office within 15 business days after such acquisition of

control. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed in this article. On the request of the licensee, the director shall conduct a preinvestigation prior to the assignment, sale or transfer of control of a license or licensee; the reasonable costs of such investigation shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this article are met.

(Code 1981, § 14–8(a); Code 2012, § 14–8(a); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(a), 5–30–2012)

Sec. 14–57. Application.

A person desiring a license to sell or deal alcoholic beverages shall make application to the office on a form prescribed by the office.

(Code 1981, § 14–8(b); Code 2012, § 14–8(b); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(b), 5–30–2012)

Sec. 14–58. Notice.

Within 30 days of receipt of the license application, the office shall hold a hearing on such application. Upon receipt of such application, the office shall post a copy of the completed application in a conspicuous place on the front of the premises where the business is proposed to be conducted and in this posting, the notice shall contain the following provisions: ''A hearing on a liquor license application shall be held at the following date, time and location _____ [insert date, time and address]. Any person owning or leasing property within a one-mile radius may contact the office in writing to register as a protestor. To request information regarding procedures before the office and notice of any office hearings regarding this application, contact the office at _____ [insert office contact information].''

(Code 1981, § 14–8(c); Code 2012, § 14–8(c); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(c), 5–30–2012)

Sec. 14–59. Applicant's burden.

Licenses will be issued by the director after a hearing and upon a determination by the director that the following criteria have been met by a satisfactory showing by the applicant that:

(1) The public convenience requires the issuance of the license; and

(2) The best interests of the Community will be substantially served by the issuance of the license.

(Code 1981, § 14–8(d); Code 2012, § 14–8(d); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(d), 5–30–2012)

Sec. 14–60. Evidence.

Evidence that may be considered when determining whether the public convenience requires and the best interest of the Community is substantially served by the issuance of a license are the following:

(1) Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in the Community, or own or lease property located within the Community that is in close proximity to the proposed premises.

(2) The number and series of licenses in close proximity.

(3) Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.

(4) The residential and commercial population of the Community and its likelihood of increasing, decreasing or remaining static.

(5) The Community's residential and commercial population density in close proximity.

(6) Evidence concerning the nature of the proposed business, its potential market, and its likely customers.

(7) Effect on vehicular traffic in close proximity.

(8) The compatibility of the proposed business with other activity in close proximity.

(9) The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.

(10) The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing.

(11) Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.

(12) Proximity to licensed child care facilities and K through 12 schools.

(Code 1981, § 14–8(e); Code 2012, § 14–8(e); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(e), 5–30–2012)

Sec. 14–61. Inappropriate purpose.

In order to prevent the proliferation of licenses, the office may deny a license to an applicant after determining that the applicant's business is inappropriate for the sale of spirituous liquor. An inappropriate applicant or business is one that cannot clearly demonstrate that the sale of spirituous liquor is directly connected to its primary purpose and that the sale of liquor is not merely incidental to its primary purpose.

(Code 1981, § 14–8(f); Code 2012, § 14–8(f); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(f), 5–30–2012)

Sec. 14–62. Public hearing.

The director shall determine after a hearing has been held whether and under what conditions a license shall be issued.

(1) The hearing shall be announced by notice in the Community newspaper.

(2) Notice shall be given no less than ten business days prior to such hearing.

(3) The hearing shall be conducted by the director in an informal manner with rules adopted pursuant to this article calculated to ensure full disclosure of all relevant information.

(4) Professional attorneys may be permitted to represent parties at any administrative hearing before the office, the director or the hearing officer pursuant to this article.

(5) The director shall hear all relevant issues and, within 30 days after the hearing is concluded, shall issue a written decision.

(6) The decision will contain the findings of fact relied on by the director for the decision as well as the decision.

(7) The applicant shall be provided notice of the hearing via standard and certified mail.

(8) The director shall enter an order recommending approval or disapproval of the license within 60 days after the filing of the application.

(Code 1981, § 14–8(g); Code 2012, § 14–8(g); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(g), 5–30–2012)

Sec. 14–63. Appeals.

A decision of the director may be appealed by any aggrieved party to the Community manager. The Community manager shall appoint a hearing officer to hear the appeal. The hearing officer shall be a member in good standing of the Arizona state bar and shall have previous experience serving in a judicial capacity.

(1) Appeal process. Appeals of any decision of the director shall follow this process:

a. A notice of appeal shall be filed with the Community manager within 15 business days after notice of the decision by the director.

b. The notice of appeal shall state all the grounds for appeal relied on by the appellant.

c. The appellee may file a short written response to the grounds for appeal within 15 business days after the notice of appeal is filed.

d. The notice of appeal and response shall be mailed to the opposing party within two business days after it was filed.

e. If the appellant is the applicant for the license, the appellee shall in all cases be the director. If the appellant is a person who filed a notice of appearance or the Community, the appellee shall in all cases be the applicant.

f. In the event there is more than one notice of appeal filed, the appeals shall be consolidated and only one response shall be filed to the consolidated appeals.

(2) Status of initial determination. The decision of the director shall be suspended until a final determination of the appeal is issued by the hearing officer.

(3) Grounds for appeal.

a. An aggrieved party may appeal any final decision of the director regarding applications or licenses based on a contention that the decision was any of the following:

1. Founded on or contained errors of law;

2. Unsupported by any competent evidence as disclosed by the record;

3. Materially affected by unlawful procedures;

4. Based on a violation of any Community constitutional provision; or

5. Arbitrary or capricious.

b. The hearing officer shall conduct a hearing and may accept any relevant and material evidence and testimony.

c. An official record of the hearing shall be prepared. Persons, at their own costs, may request that the hearing record be transcribed and may be provided a copy of the transcribed record.

d. The hearing officer shall determine whether the decision is supported by the findings of fact and the law.

e. The hearing officer may affirm, reverse or modify any decision issued by the director.

f. The hearing officer's decision shall be final and not subject to rehearing, review or appeal.

(Code 1981, § 14–8(h); Code 2012, § 14–8(h); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–8(h), 5–30–2012)

Sec. 14–64. Terms; fees.

Licenses shall be issued for a period of one year and are renewable on application to the office which will renew upon payment of the appropriate fee.

(1) A licensee who fails to renew the license on or before the due date shall pay a penalty of $500.00.

(2) If the due date falls on a Saturday, Sunday or a legal holiday, the renewal shall be considered timely if it is received by the office on the next business day.

(3) A licensee who fails to renew the license on or before the due date may not sell, purchase, or otherwise deal in alcoholic beverages until the license is renewed.

(4) A license that is not renewed within 60 days after its due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee as to why the license was not renewed on its due date or the 60 days following the due date.

(5) Issuance fees for an original license and the renewal thereof shall be the following (excluding applicable surcharges):

Licenses	Original	Renewal
a. Hotel-motel	$2,000.00	$500.00
b. Golf course	2,000.00	500.00
c. Casino	2,500.00	750.00
d. Restaurant	2,000.00	500.00
e. Government	200.00	100.00
f. Business ancillary	200.00	100.00
g. Special event	200.00	.....

(6) The office may assess a surcharge on the annual renewals of licenses to be used to help defray the costs of an auditor and support staff to review compliance of the requirements of the licensees.

(7) The office may assess a surcharge to assist in the costs of enforcement programs that respond to complaints filed under this article.

(8) For purposes of this article only, licensee shall keep records of licensee's business activity and all persons employed at the licensed premises in a manner and location and for such duration as prescribed by the director for a period of at least two years. Business activity shall include invoices, records, bills or other papers and/or documents relating to the purchase, sale and delivery of alcoholic beverages, and in the case of a restaurant or hotel-motel licensee, such documentation shall also be kept for the purchase, sale and delivery of food.

(9) Licenses issued under this article are nontransferable without the prior written approval of the director after the application process has been completed.

a. The transfer fee of a license from one person to another person is $300.00 (excluding an application fee).

b. The transfer fee of license from one location to another location shall be $100.00 (excluding an application fee).

c. The office may issue an interim permit to the transferee of a transferable license pursuant to regulations established by the office.

(Code 1981, § 14–9(a); Code 2012, § 14–9(a); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–9(a), 5–30–2012; Ord. No. SRO–410–2013, § 14–9(a), 12–5–2012)

Sec. 14–65. Beverage restrictions.

(a) Licenses may only be issued for premises operated under the following classifications as defined herein; and such licenses may be restricted to the sale of:

(1) All alcoholic beverages;

(2) Only beer;

(3) Only wine; or

(4) Only beer and wine.

(b) Licenses may be restricted based on the type of license sought by the applicant.

(Code 1981, § 14–9(b); Code 2012, § 14–9(b); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–9(b), 5–30–2012; Ord. No. SRO–410–2013, § 14–9(b), 12–5–2012)

Sec. 14–66. Reasons for revocation, suspension; grounds not to renew.

After notice and a hearing, the director may revoke, suspend or refuse to renew any license issued pursuant to this article for the following reasons:

(1) There occurs on the licensed premises repeated acts of violence or disorderly conduct.

(2) The licensee fails to satisfactorily maintain the capability, qualifications and reliability requirements of an applicant for a license prescribed pursuant to this article.

(3) The licensee or controlling person knowingly files with the office an application or other document which contains material information which is false or misleading or while under oath knowingly gives testimony in an investigation or other proceeding under this article which is false or misleading.

(4) The licensee or the controlling person is habitually intoxicated while on the premises.

(5) The licensed business is delinquent for more than 90 days in the payment of taxes, penalties or interest to the Community.

(6) The licensee or the controlling person obtains, assigns, transfers or sells an alcoholic beverage license in a manner that is not compliant with this article and article III of this chapter.

(7) The licensee fails to keep for two years and make available to the office upon reasonable request all invoices, records, bills or other papers and/or documents relating the purchase, sale and delivery of alcoholic beverages, and in the case of a restaurant or hotel-motel license, all invoices, records, bills or other papers and/or documents relating to the purchase, sale and delivery of food.

(8) The licensee or controlling person violates or fails to comply with this article and article III of this chapter, any rule or regulation adopted pursuant to this chapter or any alcoholic beverage law of the Community.

(9) The licensee or an employee of a licensee fails to take reasonable steps to protect the safety of a customer of the licensee entering, leaving or remaining on the licensed premises when the licensee knew or reasonably should have known of the danger to such person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of such acts of violence or altercations.

(10) The licensee or controlling person lacks good moral character.

(11) The licensee or controlling person knowingly associates with a person who has engaged in racketeering or has been convicted of a felony, and the association is of such a nature as to create a reasonable risk that the licensee will fail to conform to the requirements of this article or of any Community law.

(12) The licensee or controlling person is convicted of a felony provided that for a conviction of a corporation, LLC or partnership to serve as a reason for any action by the office, conduct which constitutes the offense and was the basis for the felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation, LLC or partnership or by a high managerial agent acting within the scope of employment. For purposes of this subsection, the term ''high managerial agent'' means an officer, partner or member of a corporation, LLC or partnership or any other agent of the corporation, LLC or partnership in a position of comparable authority with respect to the formulation of company policy.

(Code 1981, § 14–9(c); Code 2012, § 14–9(c); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–9(c), 5–30–2012; Ord. No. SRO–410–2013, § 14–9(c), 12–5–2012)

Sec. 14–67. Suspension; revocation; refusal to renew; sanctions.

(a) The director may suspend, revoke or refuse to issue, transfer or renew a license based solely on the unrelated conduct or fitness of any officer, director, managing agent or other controlling person if that officer, director, managing agent or controlling person retains any interest in or control of the license after 60 days following a written notice to the licensee.

(b) The director may refuse to transfer any license or issue a new license at the same location if the director has filed a complaint against a licensee or the location which has not been resolved that alleges a violation of any of the grounds identified in this article and article III of this chapter until such time as the complaint has been finally adjudicated.

(c) The director may cause a complaint and notice of hearing to be directed to the licensee setting forth the violations alleged against the licensee.

(Code 1981, § 14–9(d); Code 2012, § 14–9(d); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–9(d), 5–30–2012; Ord. No. SRO–410–2013, § 14–9(d), 12–5–2012)

Sec. 14–68. Response; appeal.

(a) Upon receipt of a complaint, the licensee shall have ten business days to respond to the allegations by filing a written response to the director.

(b) Failure by the licensee to respond to the compliant within ten business days shall be considered an admission by the licensee of the allegations. The director may then vacate a hearing and impose appropriate sanctions on the licensee.

(c) In lieu of or in addition to any suspension, revocation or refusal to renew a license, the director may impose a civil penalty of not less than $200.00 and no more than $3,000.00 for each violation and/or require the licensee and its employees to attend certain training.

(d) The licensee may appeal the decision by the director to fine, revoke or not renew their license to the Community manager who will appoint a hearing officer pursuant to the requirements of this article. The hearing officer may affirm, modify or reverse the decision of the director to impose the civil penalty.

(Code 1981, § 14–9(e)—(h); Code 2012, § 14–9(e)—(h); Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–9(e)—(h), 5–30–2012; Ord. No. SRO–410–2013, § 14–9(e)—(h), 12–5–2012)

Sec. 14–69. Injunction.

If the office or the director has reasonable grounds to believe that a person owns, operates, leases, manages or is controlling a business establishment or business premises that is not properly licensed pursuant to this article, then the office or the director may apply to the Community court for a temporary restraining order or other injunctive relief prohibiting the specific acts complained of by the office or the director.

(Code 1981, § 14–10; Code 2012, § 14–10; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–10, 5–30–2012)

Sec. 14–70. Amendment.

This chapter may be amended by a majority vote of the Community Council or by the Community initiative or referendum process.

(Code 1981, § 14–11; Code 2012, § 14–11; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–11, 5–30–2012)

Sec. 14–71. Coordination with the Community police department.

In order to effectively enforce the regulatory and law enforcement provisions of this chapter, any report of violence or disorderly conduct occurring at an licensed premises that is received by either the office or the Community police department shall be immediately reported by the receiving department to the other department. In addition to the reporting of the incident, the department receiving the report of violence or disorderly conduct shall also share any relevant information with the other department unless the sharing of such information is prohibited by Community law or policy.

(Ord. No. SRO–410–2013, § 14–12, 12–5–2012)

Secs. 14–72—14–100. Reserved.

ARTICLE III. UNLAWFUL ACTS

Sec. 14–101. Chapter violations.

(a) Civil sanctions and penalties. A person who violates any provision of this chapter may have their license revoked, suspended or may be assessed other civil sanctions.

(b) Criminal penalties. Persons who come within the criminal jurisdiction of the Community, and are guilty of violations of this chapter, are subject to criminal penalties and upon conviction shall be sentenced to imprisonment for a period not to exceed six months or to

a fine not to exceed $5,000.00 or both such imprisonment and fine, with costs.

(Code 1981, § 14–17; Code 2012, § 14–17; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–402–2012, § 14–17, 5–30–2012)

Sec. 14–102. Unlawful acts.

(a) It shall be unlawful for any person to buy, sell or distribute alcoholic beverages in any manner not allowed by this chapter.

(b) It shall be unlawful to employ a person under the age of 19 years in any capacity connected with the handling of alcoholic beverages.

(c) It shall be unlawful for a licensee or other person to give, sell or cause to be sold or otherwise distribute alcoholic beverages to a person under the age of 21 years.

(1) If a licensee, an employee of a licensee or any other person questions or has reason to question that a person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person shall do the following:

a. Demand identification from the person.

b. Examine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced.

c. Examine the photograph in the identification and determine that the person reasonably appears to be the same person in the identification.

d. Determine that the date of birth in the identification indicates the person is not under the legal drinking age.

(2) If a licensee or an employee of a licensee who follows the procedures prescribed above in subsections (c)(1)a through d of this section, records and retains a record of the person's identification on this particular visit, the licensee or employee of the licensee shall not be in violation of subsections (c) through (e) of this section.

(3) Proof that a licensee or employee followed the entire procedure proscribed above in subsections (c)(1)a through d of this section, but did not record and retain a record of the identification is an affirmative defense to a violation of this subsections (c) through (e) of this section.

(4) A licensee or employee of a licensee who has not recorded and retained a record of the identification prescribed by subsections (c)(1)a through d of this section, is presumed not to have followed any of the elements of subsections (c)(1)a through d of this section.

(d) It shall be unlawful for a person under the age of 21 years to buy, possess, or consume alcoholic beverages.

(e) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit any person on or about the licensed premises to give or furnish alcoholic beverages to any person under the age of 21 or knowingly permit any person under the age of 21 to have in the person's possession alcoholic beverages on the licensed premises.

(f) It shall be unlawful for a licensee or an employee of the licensee to consume alcoholic beverages on or about the licensed premises during such periods as when such person is working at the licensed premises, except that:

(1) An employee of an on-sale retailer, during the employee's working hours in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine not to exceed four ounces per day or distilled spirits not to exceed two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of sampling.

(2) An employee of an on-sale retailer, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits not to exceed two ounces per educational session or beer/wine not to exceed four ounces per educational session, and provided that a licensee shall not have more than two educational sessions in any 30-day period.

(3) An unpaid volunteer of a special event may purchase and consume alcoholic beverages while not engaged in waiting on or serving alcoholic beverages to customers at the special event. This subsection does not apply to unpaid volunteers whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.

(4) A licensee or employee of a licensee of a business ancillary licensee may consume alcoholic beverages as part of a meal prepared in connection with a cooking demonstration.

(g) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages to a disorderly or obviously intoxicated person, or for a licensee or employee of a licensee to allow or permit a disorderly or obviously intoxicated person to remain on the premises except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for period of time of not to exceed 30 minutes after the state of obvious intoxication is known or should have been known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises. For purposes of this article, the term ''obviously intoxicated'' means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significant uncoordinated physical action or physical dysfunction that would have been obvious to a reasonable person.

(h) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages that are in a broken package (all wine and alcoholic beverages shall have their seal broken by the licensee or their employee before serving such alcoholic beverage to the customer).

(i) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages as an off-sale retailer.

(j) It shall be unlawful for a licensee or an employee of the licensee to sell alcoholic beverages within the Community without being also licensed by the State of Arizona to sell alcoholic beverages.

(k) It shall be unlawful for a licensee or an employee of the licensee to sell, dispose of, deliver or give alcoholic beverages to a person between the hours of 2:00 a.m. and 6:00 a.m.

(l) It shall be unlawful for a licensee or an employee of the licensee to allow a person to consume or possess alcoholic beverages on the premises between the hours of 2:30 a.m. and 6:00 a.m.

(m) It shall be unlawful for a person to consume alcoholic beverages in a public place, thoroughfare or gathering. Any licensee or employee of the licensee permitting violations of this section shall be subject to license revocation. This subsection does not apply to the sale of alcoholic beverages on the premises of and by an on-sale retailer.

(n) It shall be unlawful for an on-sale retailer or an employee of the licensee to allow a person under the age of 21 years to remain in an area on the licensed premises during those hours in which the primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees know or should have known that the person is under the age of 21 years. This subsection does not apply if the person under the legal

drinking age is accompanied by a spouse, parent or legal guardian who is of legal drinking age, is an on-duty employee of the licensee, or to the area of the premises used primarily for the serving of food when food is being served.

(o) It shall be unlawful for an on-sale retailer or employee of the licensee to conduct drinking contests, to sell or deliver to a person an unlimited number of alcoholic beverages during any set period of time for a fixed price, to deliver more than 40 ounces of beer, one liter of wine or four ounces of distilled spirits in any alcoholic beverage drink to one person at one time for that person's consumption or to advertise any practice prohibited by this subsection.

(p) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises.

(q) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit prostitution or the solicitation of prostitution on the premises.

(r) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit unlawful gambling on the premises.

(s) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.

(t) It shall be unlawful for a licensee or an employee of the licensee to fail or refuse to make the licensed premises or records available for inspection and examination or so to comply with a lawful subpoena issued under this chapter.

(u) It shall be unlawful for any person other than a law enforcement officer, the licensee or an employee of the licensee acting with the permission of the licensee to be in the possession of a firearm while on the licensed premises of an on-sale retailer.

(v) It shall be unlawful for a licensee or an employee of the licensee to knowingly permit a person in possession of a firearm, other than a law enforcement officer, the licensee or the employee of the licensee (acting with the permission of the licensee) to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer.

(w) It shall be unlawful for a person under the age of 21 to drive or be in physical control of a motor vehicle while there is any alcoholic beverage in the person's body.

(x) It shall be unlawful for a licensee or employee of the licensee to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on Election Day.

(y) It shall be unlawful for a licensee to fail to report an occurrence of an act of violence, within three business days, to either the office or the Community police department.

(z) It shall be unlawful for any person to consume or be in the possession of any open container of alcoholic beverages while operating or while within the passenger compartment of a motor vehicle that is located on any roadways or public parking lots within the Community. This subsection does not apply to a passenger on any bus, limousine or a passenger in the living quarters of a mobile home.

(1) Motor vehicle means any vehicle that is driven or drawn by mechanical power and that is designated for primary use on public roadways.

(2) Open container means any bottle, can, jar or other receptacle that contains alcoholic beverages and that has been opened, has had its seal broken or that the contents of which have been partially removed, except that it does not mean when a person removes a bottle of wine that has been partially consumed in conjunction with a purchased meal from a licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.

(3) Passenger compartment means the area of a motor vehicle designed for seating of the driver and other passengers of the vehicle. Passenger compartments include any unlocked glove compartment and any unlocked portable devices within the immediate reach of the driver or any passengers.

(aa) It shall be unlawful for any person over the age of 18 who lawfully exercises dominion and control within any private residence or the surrounding premises to knowingly permit any person under the age of 21 to possess or consume alcoholic beverages within the private residence or within the immediate surrounding premises.

(bb) It shall be unlawful for a licensee to sell alcoholic beverages in any manner not provided for by this chapter or any regulations issued pursuant to this chapter.

(Code 1981, § 14–18; Code 2012, § 14–18; Ord. No. SRO–355–2010, 9–12–2009; Ord. No. SRO–366–2010, § 14–18, 7–14–2010; Ord. No. SRO–402–2012, § 14–18, 5–30–2012; Ord. No. SRO–410–2013, § 14–18, 12–5–2012; Ord. No. SRO–451–2015, § 14–102, 10–1–2014)

Secs. 14–103—14–132. Reserved.

[FR Doc. 2016–01156 Filed 1–20–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L14400000.EQ0000 15XL1109AF]

Notice of Temporary Closure of Public Land in Sierra County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and pursuant to regulation, certain public land near Truth or Consequences, New Mexico, in Sierra County will be temporarily closed to all public use to provide for public health and safety during remediation work of a formerly used defense site (FUDS) by the U.S. Army Corps of Engineers (COE).

DATES: The temporary closure period is effective from February 1, 2016 to June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony Hom, Lead Realty Specialist, Multi-Resources Division, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005; by telephone at 575–525–4331; or by email at *ahom@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.,* the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and pursuant to 43 CFR 8364.1, certain public land near Truth or Consequences, New Mexico, in Sierra County will be temporarily closed to all public use to provide for public health and safety during remediation work of a formerly used defense site (FUDS) by

the U.S. Army Corps of Engineers (COE).

This closure applies to all public use. The public land affected by this closure is described as follows:

New Mexico Principal Meridian, New Mexico

T. 15 S., R. 6 W.,
Sec. 33, S½NW¼NE¼, S½NE¼, and NE¼SE¼;
Sec. 34, NE¼, SE¼NW¼, E½SW¼, NW¼SW¼, and SE¼;
Sec. 35.
T. 16 S., R. 6 W.,
Sec. 3, lots 1, 2, 7, and 8.
The area described contains 1,365.40 acres.

The subject FUDS is known as the Deming Precision Bombing Range No. 24. Detonation of on-site military munitions may occur, which requires that no personnel other than COE personnel or contractors are in the area during the remedial investigation/feasibility study (RI/FS) activities. Accordingly, public safety is the key issue during the RI/FS, necessitating closure of the affected public land. Without this closure, the public could inadvertently enter the subject area and endanger themselves.The closure notice and map of the closure area will be posted at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico, and on the District Web site at *www.blm.gov/nm/lascruces.* Signs will be posted along roads leading into the area to notify the public of the closure. Under the authority of Section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), Section 104 of CERCLA (42 U.S.C. 9604), 43 CFR 8364.1 and 43 CFR 8360.0–7, the BLM will enforce the following use in the area described above: All public use, whether motorized, non-motorized, or otherwise, is prohibited.

Exceptions: Closure restrictions do not apply to BLM authorized rights-of-way holders, lessees, COE staff and contractors, fire personnel, medical and rescue personnel, law enforcement personnel, and agency personnel monitoring the remediation work. Authorized users will need to coordinate entry with the COE and the BLM.

Enforcement: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violation of New Mexico law.

Andrew Archuleta,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–01175 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–P040–2016–1711–PH–1000–241A]

Notice of Intent To Amend the Resource Management Plan for the Sonoran Desert National Monument, Arizona, and Prepare an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Lower Sonoran Field Office, Phoenix, Arizona, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Impact Statement (EIS) for the Sonoran Desert National Monument (SDNM). This notice announces the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment with an associated EIS. Comments on issues may be submitted in writing until March 21, 2016. The date(s) and location(s) of scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at *http://on.doi.gov/1JayaFm.* In order to be included in the analysis, all comments must be received prior to the close of the 60-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the SDNM Amendment and EIS addressing Recreational Target Shooting in the SDNM by any of the methods outlined below:

- *Email: BLM_AZ_SDNMtargetshooting@blm.gov*
- *Fax:* 623–580–5623
- *Mail:* BLM, Sonoran Desert National Monument, 21605 North 7th Avenue, Phoenix, AZ 85027

Documents pertinent to this proposal may be examined at the Phoenix District Office, 21605 North 7th Avenue, Phoenix, AZ 85027.

FOR FURTHER INFORMATION CONTACT: Dave Scarbrough, Monument Manager, telephone 623–580–5651; address 21605 North 7th Avenue, Phoenix, AZ 85027; email *dscarbro@blm.gov.* Contact Mr. Scarbrough to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Lower Sonoran Field Office, Phoenix, Arizona, intends to prepare an RMP amendment addressing recreational target shooting in the SDNM with an associated EIS, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Maricopa and Pinal counties, Arizona and encompasses approximately 486,400 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel and include: (1) Direct, indirect, and cumulative impacts from target shooting on monument objects and other resources; (2) impacts to surrounding areas resulting from displacement of recreational target shooters if areas are closed; (3) impacts to natural and cultural resources related to noise and litter associated with recreational target shooting; and (4) identification of opportunities to apply hierarchical mitigation strategies for avoiding, minimizing, and, where compensatory mitigation is appropriate, considering on-site, nearby, and regional locations as it relates to recreational target shooting. Preliminary planning criteria requires the BLM to ensure that there are no unnecessary data collection and analyses; that the process is based on applicable law; that the actions will be available for public comment; and that the BLM will be flexible in making adjustments as situations and assessments warrant.

You may submit comments on issues in writing to the BLM at any public scoping meeting, or you may submit

them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 60-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108), as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area of potential effect of the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the EIS as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in categories 2 or 3. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: National Conservation Lands designations, outdoor recreation, archaeology, wildlife and fisheries, rangeland management, minerals and geology, lands and realty, hydrology, soils, sociology, and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Edward J. Kender,

Field Manager.

[FR Doc. 2016–01187 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY921000, L14300000.ET0000; WYW–155144]

Public Land Order No. 7849; Withdrawal of Public Land for the Protection of the Red Gulch Dinosaur Tracksite; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,359.25 acres of public land from location and entry under the United States mining laws for a period of 20 years to protect important paleontological resources within the Red Gulch Dinosaur Tracksite located in Bighorn County, Wyoming. The land has been and will remain open to the public land laws and mineral and geothermal leasing.

DATES: *Effective Date:* January 21, 2016.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, Realty Officer, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6257 or via email at *jwrigley@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 at normal business hours. The FIRS is available 24 hours per day, 7 days per week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management will manage the land to protect the important paleontological resources and investments associated with development and maintenance of the Red Gulch Dinosaur Tracksite.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral or geothermal leasing laws, for the Bureau of Land Management to protect and preserve significant paleontological resources associated with the Red Gulch Dinosaur Tracksite.

Sixth Principal Meridian

T. 52 N., R. 91 W.,
Sec. 17, S½NE¼ and SE¼;
Sec. 20, lots 1 to 12, inclusive, and SE¼NE¼;
Sec. 21, NE¼, W½, N½SE¼, and SW¼SE¼.

The area described contains 1,359.25 acres in Big Horn County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of land under lease, license or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: December 23, 2015.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–01164 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X.LLID990000 L14400000.EU0000 LXSSD0190000 241A 4500057150; IDI–37482]

Notice of Realty Action: Proposed Competitive Sealed-Bid, Oral Auction Sale and Segregation of Public Land in Owyhee County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer a parcel of public land totaling 120.84 acres in Owyhee County, Idaho, by competitive sealed-bid and oral auction sale for a price not less than the fair market value (FMV) of $ 77,000. The sale will be subject to applicable provisions of Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, and applicable BLM regulations.

DATES: Submit written comments via email, hand delivery, or mail. Comments must be received by the BLM Boise District Office on or before March 7, 2016. The period to submit sealed-bids and the sale date will be no earlier than March 21, 2016, which will be a minimum of 30 days prior to the sale date, through publication in a local newspaper, online media, and by mail to interested parties who submit a written request for information regarding the sale. The BLM must be in receipt of your request for information by the deadline for submission of written comments. The sale date will be no earlier than April 20, 2016.

ADDRESSES: Submit written comments concerning this notice to BLM Boise District, 3948 Development Avenue, Boise, ID 83705. Email comments to *hemingway@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Bluma, Realty Specialist, 208–384–3348, or email *jbluma@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 Mr. Bluma. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Mr. Bluma. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to offer the following parcel of public land for a competitive sale:

Boise Meridian, Idaho

T. 1 S., R. 3 W.,
Sec. 11, lots 1 through 3.

The area described contains 120.84 acres.

The map delineating the sale parcel is available for public review at the Boise District Office. The lands are not suitable for management by other Federal agencies. A mineral potential report concludes that the sale parcel has known mineral values; therefore, the mineral estate will be reserved to the United States pursuant to 43 CFR 2720.0–6. The competitive sale is consistent with the 1999 Owyhee Resource Management Plan (RMP), Record of Decision, dated, December 30, 1999. The sale parcel conforms to the RMP decision ''Land 2,'' and the land is suitable for sale under the authority of Section 203 of FLPMA in the approved RMP.

Upon publication of this Notice in the **Federal Register** the subject land is segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

This segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation or January 22, 2018, unless extended by the BLM Idaho State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Until completion of the sale, the BLM will no longer accept land use applications affecting the sale parcel, except applications for the amendment of previously filed right-of-way (ROW) applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15.

Prior to patent issuance, the BLM will notify valid existing right-of-way holder of record of their ability to convert their existing ROW to a new term, including perpetuity, if applicable, or conversion to an easement. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization. The conveyance document would be subject to the following terms, covenants, conditions, and reservations:

1. A reservation to the United States of a ROW for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A reservation to the United States of all minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. The parcel will be subject to all valid existing rights;

4. By accepting patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction;

5. Pursuant to the requirements in Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act U.S.C. 9620 (h), notice is hereby given that the sale parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor have any hazardous substances been disposed of or released on the subject property; and

6. No warranty of any kind, express or implied, is given by the United States or its officers or employees, as to title, access to or from the above sale parcel of land, whether or to what extent the land may be developed, its physical condition, or past, present, or future use, or any other circumstances or condition. The conveyance of any such

parcel will not be on a contingency basis.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions may be made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that the units of local government may not endorse or approve these assumptions.

Sale Procedures: The parcel will be sold by sealed-bid followed by an oral auction. Sealed-bid envelopes must be clearly marked on the front lower left corner with: ''SEALED–BID BLM LAND SALE IDI–37482.'' Sealed-bids must include 20 percent of the bid amount and their bid payment in the form of a certified check, postal money order, bank draft, or cashier's check or any combination thereof, and made payable in U.S. dollars to the Department of the Interior—Bureau of Land Management. Personal or company checks will not be accepted. In addition to the deposit, the sealed-bid envelope must contain a completed and signed ''Certificate of Eligibility'' form stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility forms are available at the BLM Boise District Office at the address listed in the **ADDRESSES** section of this notice.

Sealed-bids will be opened and recorded on the sale date to determine the high bid among the qualified bids received. The highest qualified sealed-bid will become the starting point for subsequent oral bidding. Any bids in an amount less than the federally approved FMV will not be considered. The BLM will send the successful high bidder(s) a letter with information regarding full payment.

All funds submitted with an unsuccessful bid will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the BLM Boise District Office or by certified mail. If a bidder defaults on the sale parcel, the BLM may retain the bid deposit and cancel the sale of that parcel. If a high bidder is unable to consummate the transaction for any other reason, the second highest bid at or above the FMV may be considered. If there are no acceptable bids, the parcel may remain available for over-the counter sale on a continuing basis in accordance with competitive sale procedures without further legal notice.

Federal law requires that bidders must be: (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity legally capable of conveying and holding lands or interests therein under the laws of the State of Idaho within which the lands to be conveyed are located; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the BLM Boise District Office prior to 30 days before the prospective patentee's scheduled closing date. There will be no exceptions.

All name changes and supporting documentation must be received at the BLM Boise District Office by 3 p.m., Mountain Time (MT) no later than 30 days from the date noted on the high-bidder letter. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Boise District Office.

The remainder of the full bid price for the parcel must be paid no later than 3 p.m. MT on the 180th day following the sale date. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft, cashier's check, or made available by electronic fund transfer made payable in U.S. dollars to the ''Bureau of Land Management'' to the BLM Boise District Office. Personal or company checks will not be accepted. Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. The BLM will not accept the remainder of the bid price after the 180th day following the sale date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. Forfeiture of the bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day following the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of an exchange is the bidder's responsibility. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), within 30 days following the date of the sale, the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale if, in the opinion of the BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable laws or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands would be subject to any applicable laws, regulations, and policies of the applicable local government for future uses. It is the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any local approvals for future uses. Buyers should make themselves aware of any Federal or State laws or regulations that may affect the future use of the property. Any public land lacking access from a public road or highway would be conveyed as such, and future access acquisition would be the responsibility of the buyer.

Information concerning the sale, encumbrances of record, appraisals, reservations, sale procedures and conditions, the CERCLA, and other environmental documents that may appear in the BLM public files for the sale parcel are available for review at the BLM Boise District Office during business hours, 8:30 a.m. to 3:30 p.m. MT, Monday through Friday, except during Federal holidays.

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 any 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. Any adverse comments regarding this sale will be reviewed by the Idaho BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR part 2710.

Michelle Ryerson,

Field Manager, BLM Owyhee Field Office.

[FR Doc. 2016–01188 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORL05000; L19900000.EX0000; 15XL1109HF; HAG 15–0214]

Notice of Intent To Prepare an Environmental Impact Statement for Expanding an Existing Perlite Mining Operation; Lake County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Lakeview Resource Area, Lakeview, Oregon intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until February 22, 2016. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/or/districts/lakeview/index.php.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the EIS for Expanding an Existing Perlite Mining Operation; Lake County, Oregon by any of the following methods:

- *Mail:* Todd Forbes, Field Manager, Lakeview Resource Area, Bureau of Land Management, 1301 South G Street, Lakeview, Oregon 97630.
- *Email: pdamo@blm.gov.*
- *Fax:* 541–947–6399; Attn: Phil D'Amo.

FOR FURTHER INFORMATION CONTACT: Phil D'Amo, Geologist, telephone: 541–947–6114; address: Lakeview Resource Area, Bureau of Land Management, 1301 South G Street, Lakeview, OR 97630; email: *pdamo@blm.gov.* Contact Mr. D'Amo to have your name added to the BLM's mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Cornerstone, Inc., has requested to modify its existing Plan of Operation by expanding its existing 70-acre quarry by up to an additional 340 acres on Tucker Hill, located approximately 35 miles northwest of the town of Lakeview, Oregon. The BLM will consider issues and concerns identified during the scoping process during the preparation of the EIS. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. The preliminary issues identified include potential impacts to soils, vegetation, noxious weeds, traditional Native American uses, archaeological sites, wildlife habitat, visual quality, and socio-economics. The BLM will identify, analyze, and require mitigation, as appropriate, to address the reasonably foreseeable impacts to resources from the expansion of this mine. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensatory mitigation, and may be considered at multiple scales, including the landscape-scale. Those individuals, organizations, tribal governments, and agencies with a known interest in the proposal have been sent a scoping letter requesting comments. At this time there is no formal scoping meeting planned, though one could be scheduled if there is sufficient interest.

The comment period on the draft EIS will last 45 days from the date the U.S. EPA Notice of Availability appears in the **Federal Register**. Because of recent court rulings, it is very important that interested parties participate during the scoping and draft EIS review processes, so that any substantive comments are provided at a time when the BLM can meaningfully consider them.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed EIS for Expanding an Existing Perlite Mining Operation; Lake County, Oregon that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment letter, 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 to have your personal identifying information withheld from public review, we cannot guarantee that we will be able to do so.

Todd Forbes,

Field Manager, Lakeview Resource Area.

[FR Doc. 2016–01176 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–P040–2016–1711–PH–1000–241A]

Notice of Enforcement of Temporary Court-Ordered Closure To Target Shooting on Public Lands in the Sonoran Desert National Monument, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Court-Ordered Closure.

SUMMARY: Notice is hereby given that enforcement of a temporary court-ordered closure to target shooting is in effect on public lands within the Sonoran Desert National Monument (SDNM), administered by the Lower Sonoran Field Office, Bureau of Land Management (BLM).

DATES: Implementation of the temporary court-ordered closure within the described area commenced on September 15, 2015, and will remain in effect and enforced until a land use planning decision(s) regarding recreational target shooting for the SDNM is completed.

FOR FURTHER INFORMATION CONTACT: David Scarbrough, Manager; SDNM; Bureau of Land Management, Phoenix District Office, 21605 North 7th Avenue, Phoenix, Arizona 85027; 623–580–5500.

SUPPLEMENTARY INFORMATION: This temporary closure affects public lands within the SDNM, Maricopa County, Arizona. A map of this closure can be viewed online at *http://www.blm.gov/style/medialib/blm/az/NLCS/SD_NM/maps.Par.40841.File.dat/AZ_SonoranDesert_NM.pdf.*

The temporary closure is the result of a Federal Court Order. On March 27, 2015, the Court issued a ruling in the case of National Trust for Historic Preservation et al v. Raymond Suazo, BLM, and Department of the Interior (docket #CV–13–01973–PHX–DGC). The Court found that the BLM violated the Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act (NEPA) when making its decision to designate the SDNM as open to recreational target shooting.

The Court vacated portions of the Record of Decision, Resource Management Plan, and Final Environmental Impact Statement (EIS) that permit recreational target shooting throughout the SDNM and remanded the decision to BLM for reconsideration. The Court also required the BLM to ensure the Final EIS's analysis of mitigation measures and cumulative impacts are consistent with the order.

On July 17, 2015, the Court granted the plaintiffs' request for injunctive relief and ordered the BLM to close approximately 10,599 acres (2.1%) of the SDNM to recreational target shooting pending compliance with the Court's March 27, 2015, Order. Closure of this area is expected to disperse shooters to other areas and eliminate potential impacts to SDNM resources and monument objects until the land use plan amendment to address recreational target shooting on the SDNM is completed. The July 17, 2015, Order also provided a deadline of September 15, 2015, to implement the closure, and a deadline of September 30, 2017, to address the planning shortfalls discussed in the Court's March 27, 2015, Order.

This temporary closure affects the following public lands within the SDNM, Maricopa County, Arizona:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 1 W.,
- Sec. 18, lot 4;
- Sec. 19, lots 1 thru 3, S½NE¼, SW¼NW¼, NE¼SW¼;
- Sec. 20, W½SW¼, and SE¼SW¼;
- Sec. 28, W½SW¼;
- Sec. 29, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
- Sec. 30, NE¼NE¼;
- Sec. 32, E½NE¼ and E½SE¼;
- Sec. 33, W½NW¼ and S½SE¼;
- Sec. 34, S½SW¼.

T. 4 S., R. 1 W.,
- Sec. 2, SW¼NW¼ and SW¼;
- Sec. 3, lots 1 thru 4, S½NE¼, and NE¼SE¼;
- Sec. 4, lots 1 thru 4;
- Sec. 5, lot 1;
- Sec. 11, NE¼, NE¼NW¼, and NE¼SE¼;
- Sec. 12, W½NW¼ and SW¼;
- Sec. 13, N½NE¼ and SE¼NE¼.

T. 2 S., R. 2 W.,
- Sec. 31, lots 3 and 4, SE¼SW¼, and SW¼SE¼.

T. 3 S., R. 2 W.,
- Sec. 5, lot 2, SW¼NE¼, S½NW¼, and SE¼;
- Sec. 6, lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 8, lots 1 thru 6;
- Sec. 9, lots 1, 2, 4, and 8, NE¼, N½NW¼, SE¼NW¼, and NE¼SE¼;
- Sec. 10, lot 1, SW¼NE¼, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, and SE¼;
- Sec. 11, NW¼SW¼, SW¼SW¼, SE¼SW¼, and SW¼SE¼;
- Sec. 13, SW¼NE¼, NW¼NW¼, S½NW¼, SW¼, and SE¼;
- Sec. 14, lots 1, 3, and 4, NE¼, NW¼, and SE¼;
- Sec. 15, lots 1, 2, 5, 6, 8, and 10, N½NE¼, and SE¼NE¼;
- Sec. 16, lot 4;
- Sec. 17, lots 2 and 7;
- Sec. 20, lot 4;
- Sec. 21, lot 3;
- Sec. 23, lots 1, 2, and 6, and NE¼NE¼;
- Sec. 24, lots 1, 2, 3, and 5, NE¼, and NW¼.

T. 2 S., R. 3 W.,
- Sec. 33, N½NE¼;
- Sec. 34, NE¼, N½NW¼, and SE¼;
- Sec. 35;
- Sec. 36, SW¼NE¼, S½NW¼, SW¼, and SE¼.

T. 3 S., R. 3 W.,
- Sec. 1;
- Sec. 2;
- Sec. 3, lots 1 and 2, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 9, SE¼SE¼;
- Sec. 10, lots 2, 3, 4, 7, and 8, E½NW¼, and SW¼;
- Sec. 15, lots 2, 3, 6 and 7, NW¼, and SW¼;
- Sec. 16, E½NE¼, and E½SE¼;
- Sec. 19, SE¼SW¼, and S½SE¼;
- Sec. 20, S½SW¼, and S½SE¼;
- Sec. 21, lot 1, NE¼NE¼, S½NE¼, SW¼, N½SE¼, and SW¼SE¼;
- Sec. 22, lots 2, 3, 7, 8, and 10, NW¼, and N½SW¼;
- Sec. 23, lot 4;
- Sec. 26, lot 4;
- Sec. 28, lots 1, 3, 5, and 7;
- Sec. 29, lots 1, 2, 3, and 5;
- Sec. 30, lots 1, 5, 7, 9, and 10;
- Sec. 32, lots 2, 6, and 9;
- Sec. 33, lots 1, 4, 5, and 6.

T. 3 S., R. 4 W.,
- Sec. 25, lots 1 thru 5, 12, 17, 19, 21, and 24;
- Sec. 26, lots 1, 8, and 9.

The BLM has now posted closure signs at main entry points to the affected area and at approximately 1/10-mile intervals along the closure boundary and road access points. In addition to the signs, a map showing the extent of the closure and a notice from the BLM advising the public of the Court's Order has also been posted at these locations and in the Phoenix District Office. Maps of the affected area and other documents associated with this closure are available at the BLM Phoenix District Office located at 21605 North 7th Avenue, Phoenix, Arizona 85027.

Under the authority of Section 303(a) of the FLPMA of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360–7, and 43 CFR 8364.1, the BLM will enforce the following rule within the SDNM: You must not target shoot in the closed area. Any person who violates the above rule and/or restriction may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Edward J. Kender,

Field Manager.

[FR Doc. 2016–01186 Filed 1–20–16; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–20044; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before December 26, 2015, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 5, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 26, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

MASSACHUSETTS

Essex County

Ridgewood Cemetery, 177 Salem St.,North Andover, 15001049

NEW JERSEY

Cumberland County

CASHIER (oyster schooner),2800 High St.,Commercial Township, 15001050

Somerset County

Neshanic Station Historic District, Maple Ave., Fairview Dr., Woodfern Rd., Elm, Olive, Pearl, Main & Marshall Sts.,Branchburg Township, 15001051

OREGON

Deschutes County

Pilot Butte Canal Historic District,Roughly bounded by Cooley, Overtree & Yeoman Rds., Brightwater Dr.,Bend, 15001052

VIRGINIA

Albemarle County

Greenwood—Afton Rural Historic District (Boundary Increase),5860 & 5710 Howardsville Tpk.,Greenwood—Afton, 15001053

Chesterfield County

Pocahontas State Park Historic District,(Virginia State Parks built by New Deal Programs MPS)10301 State Park Rd.,Chesterfield, 15001054

WISCONSIN

La Crosse County

La Crosse Plow Company Building,525 N. 2nd St.,La Crosse, 15001055

Rock County

Whiton—Parker House,1000 E. Milwaukee St.,Janesville, 15001056

Authority: 60.13 of 36 CFR part 60.

Dated: December 29, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–01071 Filed 1–20–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–20062; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before January 2, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 5, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 2, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

ALASKA

Fairbanks North Star Borough-Census Area

St. Matthew's Episcopal Church,1029 1st Ave.,Fairbanks, 16000001

ARIZONA

Pinal County

Chi'chil Bildagoteel Historic District,Address Restricted,Superior, 16000002

CALIFORNIA

Placer County

DeWitt General Hospital,(Latinos in 20th Century California MPS)1st St. & Bell Ave.,Auburn, 16000003

ILLINOIS

Cook County

Central Manufacturing District—Original East Historic District,3500–3700 blks. of S. Morgan, S. Racine Ave. & S. Iron St., 3500–3900blks. of S. Ashland Ave, 1200–1600 W. 38th St.,Chicago, 16000004

KENTUCKY

Hickman County

First Christian Church,201 N. Washington St.,Clinton, 16000005

Jefferson County

American Life and Accident Insurance Company Building,471 W. Main St.,Louisville, 16000006

Klotz Confectionary Company,731 Brent St.,Louisville, 16000007

Louisville Cotton Mills (Boundary Increase),(Textile Mills of Louisville TR)1318 McHenry St.,Louisville, 16000008

Marion County

Purdom, Clel, House,7075 Danville Hwy.,Lebanon, 16000009

Mason County

Sroufe House,2471 Mary Ingles Hwy.,Dover, 16000010

McCracken County

California Apartments,2900 Clay,Paducah, 16000011

Metcalfe County

Bell House, The,7310 Columbia Rd.,Edmonton, 16000012

Rowan County

Morehead Chesapeake and Ohio Railway Freight Depot,130 E. 1st St.,Morehead, 16000013

Spencer County

Stidger, Felix Grundy, House,102 Garrard St.,Taylorsville, 16000014

NEW YORK

Chemung County

North Main and West Water Commercial Historic District,100–184 N. Main & 200–233 W. Water Sts.,Elmira, 16000015

Kings County

Congregation Chevra Linath Hazedeck,109 Clara St.,Brooklyn, 16000016

Greenwood Baptist Church,461 6th St.,Brooklyn, 16000017

Prospect Heights Historic District (Boundary Increase),Portions of Bergen & Dean Sts., Flatbush, Underhill, Vanderbelt &Washington Aves., Butler, Prospect & Sterling Pls.,Brooklyn, 16000018

Monroe County

Hulburt, Thomas L., House,106 Hulburt Rd.,Fairport, 16000019

New York County

Hudson View Gardens,116 Pinehurst Ave.,Manhattan, 16000020

Steuben County

Temple Beth-El,12 Church St.,Hornell, 16000021

WISCONSIN

Brown County

Green Bay YMCA,235 235 N. Jefferson St.,Green Bay, 16000022

Authority: 60.13 of 36 CFR part 60.

Dated: January 5, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–01073 Filed 1–20–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0002; DS63610000 DR2000000.CH7000 167D0102R2]

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations that ONRR published September 13, 2004 (69 FR 55076), provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. As the regulations require, ONRR provided a list of qualifying marginal Federal oil and gas properties to States that received a portion of Federal royalties. Each State then decided whether to participate in one or both relief options. For calendar year 2016, we provide in this notice the affected States' decisions to allow one or both types of relief.

DATES: Effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Maroya Faied, Economic and Market Analysis office, at (303) 231–3744; or email at *maroya.faied@onrr.gov.*

SUPPLEMENTARY INFORMATION: The regulations, codified at 30 CFR part 1204, subpart C, implement certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) (30 U.S.C. 1726), which allows States to relieve the lessees of marginal properties from certain reporting, accounting, and auditing requirements. States make an annual determination of whether or not to allow relief. Two options for relief are provided: (1) Notification-based relief for annual reporting; and (2) other requested relief, as industry proposed and ONRR and the affected State approved. The regulations require ONRR to publish by December 1 of each year a list of the States and their decisions regarding marginal property relief.

To qualify for the first relief option (notification-based relief) for calendar year 2016, properties must produce less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2014, through June 30, 2015). Annual reporting relief will begin January 1, 2016, with the annual report and payment due February 28, 2017, or March 31, 2017, if you have an estimated payment on file. To qualify for the second relief option (other requested relief), the combined equivalent production of the marginal properties during the base period must equal an average daily well production of less than 15 BOE per well, per day calculated under 30 CFR 1204.4(c).

The following table shows the States that have qualifying marginal properties and the States' decisions to allow one or both forms of relief.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Alabama	No	No.
Arkansas	No	No.
California	No	No.
Colorado	No	No.
Kansas	No	No.
Louisiana	No	No.
Michigan	No	No.
Mississippi	No	No.
Montana	No	No.
Nebraska	No	No.
Nevada	No	No.
New Mexico	No	Yes.
North Dakota	Yes	Yes.
Oklahoma	Yes	Yes.
South Dakota	No	No.
Utah	No	No.
Wyoming	No	No.

Federal oil and gas properties located in all other States where ONRR does not share a portion of Federal royalties with the State are eligible for relief if they qualify as marginal under the regulations (See section 117(c) of RSFA; 30 U.S.C. 1726(c)). For information on how to obtain relief, please refer to 30 CFR 1204.205 or to the published rule, which you may view at *http://www.onrr.gov/Laws_R_D/FRNotices/PDFDocs/55076.pdf.*

Unless the information that ONRR received is proprietary data, all correspondence, records, or information that we receive in response to this notice may be subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*). If applicable, please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. We protect the proprietary information under the Trade Secrets Act (18 U.S.C. 1905); FOIA, Exemption 4 (5 U.S.C. 552(b)(4)); and Department regulations (43 CFR part 2).

Dated: January 6, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–01079 Filed 1–20–16; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–934]

Certain Windshield Wiper Devices and Components Thereof; Commission Decision To Review In Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's (''ALJ'') final initial determination (''final ID'') issued on October 27, 2015 finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 27, 2014, based on a Complaint filed by Nobel Biocare Services AG of Switzerland and Nobel Biocare USA, LLC of Yorba Linda, California (collectively, ''Nobel''), as supplemented. 79 FR 63940–41 (Oct. 27, 2014). The Complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the sale for importation, importation, and sale within the United States after importation of certain dental implants by reason of infringement of certain claims of U.S. Patent Nos. 8,714,977 (''the '977 patent'') and 8,764,443 (''the '443 patent''). The Complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation named as respondents Neodent USA, Inc., of Andover, Massachusetts and JJGC Indústria e Comércio de Materiais Dentários S/A of Curitiba, Brazil (collectively, ''Respondents''). The Commission previously terminated the investigation in part as to certain claims of the '443 patent. Notice (Apr. 29, 2015); Order No. 22 (Apr. 8, 2015). The Commission also amended the Notice of Investigation to reflect the corporate name change of Neodent USA, Inc. to Instradent USA, Inc. Notice (May 6, 2015); Order No. 24 (Apr. 9, 2015). The use of the term ''Respondents'' herein refers to the current named respondents.

On October 27, 2015, the ALJ issued his final ID, finding a violation of section 337 with respect to asserted claims 15, 18, 19, 30, and 32 of the '443 patent, and finding no violation with respect to asserted claim 17 of the '443 patent and all of the asserted claims of the '977 patent. In particular, the final ID finds that the accused products infringe claims 1–5 and 19 of the '977 patent and claims 15, 18, 19, 30, and 32 of the '443 patent, but do not infringe claim 17 of the '443 patent. The final ID also found that Respondents have shown that the asserted claims of the '977 patent are invalid for anticipation under 35 U.S.C. 102, but have not shown that the asserted claims of the '443 are invalid. In addition, the final ID found that Respondents failed to show that the asserted claims of the '977 and '443 patents are unenforceable due to inequitable conduct. The final ID further found that Nobel has satisfied the domestic industry requirement with respect to both the '977 and '443 patents.

On November 10, 2015, the ALJ issued his recommended determination (''RD'') on remedy and bonding. The RD recommended that the appropriate remedy is a limited exclusion order barring entry of Respondents' infringing dental implants. The RD did not recommend issuance of a cease and desist order against any respondent. The RD recommended the imposition of a bond of $120 per imported unit during the period of Presidential review.

On November 9, 2015, Nobel filed a petition for review of the final ID's finding of no violation with respect to claims 1–5 of the '977 patent. In particular, Nobel requested review of the final ID's finding that the March 2003 Product Catalog of Alpha Bio Tec, Ltd. (''the 2003 Alpha Bio Tec Catalog'') constitutes prior art under 35 U.S.C. 102(b), arguing that the catalog was not sufficiently publicly accessible prior to the critical date. Nobel also requested, if the Commission determines not to review the ID's prior art finding, that the Commission review the final ID's construction of the limitation ''the coronal region having a frustoconical shape'' recited in claim 1 of the '977 patent and, accordingly, review the final ID's finding that the accused products do not infringe claims 1–5 of the '977 patent under Nobel's proposed construction of that limitation. Nobel further argued that, should the Commission agree partially with Nobel concerning the proper construction of the limitation ''the coronal region having a frustoconical shape,'' the 2003 Alpha-Bio Tec Catalog does not anticipate the asserted claims of the '977 patent.

No party petitioned for review of the final ID's finding that there is a violation of section 337 with respect to the '443 patent.

On November 17, 2015, Respondents and the Commission investigative attorney (''IA'') each filed responses opposing Nobel's petition for review.

On December 10, 2015, Respondents submited a post-RD statement on the public interest pursuant to Commission

Rule 210.50(a)(4). On December 14, 2015, Nobel submited a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). No responses were filed by the public in response to the post-RD Commission Notice issued on November 12, 2015. *See* Notice of Request for Statements on the Public Interest, 80 FR 76574–75 (Dec. 9, 2015), *see also* Correction of Notice, 80 FR 77376–77 (Dec. 14, 2015).

Having examined the record of this investigation, including the final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part.

Specifically, the Commission has determined to review the final ID's construction of the limitation ''coronal region having a frustoconical shape'' recited in claim 1 of the '977 patent with regard to whether or not the term ''frustoconical shape'' is an adjective that modifies the claimed ''coronal region'' or whether the term is an independent structure that may comprise only a portion of the claimed ''coronal region.'' In accordance with its claim construction review, the Commission has further determined to review the final ID's infringement findings with respect to claims 1–5 of the '977 patent, as well as the final ID's finding that the technical prong of the domestic industry requirement is satisfied with respect to claims 1–5 of the '977 patent.

The Commission has also determined to review the final ID's finding that the 2003 Alpha Bio Tec Catalog is a printed publication under 35 U.S.C. 102. The Commission has further determined to review the final ID's finding that the 2003 Alpha Bio Tec Catalog anticipates claims 1–5 of the '977 patent.

The Commission has determined not to review the remaining issues decided in the final ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. With respect to the proper construction of the limitation ''coronal region having a frustoconical shape'' recited in claim 1 of the '977 patent, please address the meaning of the term ''frustoconical shape'' in the context of claim 1, and, in particular, whether the term is an adjective that merely modifies the claimed ''coronal region'' or whether the term may refer to an independent structure comprised within the claimed ''coronal region.'' In addition, please address the significance of the clause ''wherein a diameter of an apical end of the coronal region is larger than a diameter of a coronal end of the coronal region'' recited in claim 1 to the appropriate construction of the limitation ''coronal region having a frustoconical shape.'' Please discuss all governing precedent with respect to this issue.

2. With respect to whether the 2003 Alpha Bio Tec Catalog is prior art to the '977 patent, please address the significance of the evidence presented in exhibit JX–0278C, and the significance of the inclusion of the catalog in an information disclosure statement to the U.S. Patent and Trademark Office (*see* exhibit CX–0560). In addition, please address any evidence regarding the publication date of the 2003 Alpha Bio Tec Catalog, as well as any record evidence concerning whether and when the 2003 Alpha Bio Tec Catalog was ''publically accessible'' prior to the critical date under governing precedent.

3. Please address whether the 2003 Alpha Bio Tec Catalog anticipates the asserted claims of the '977 patent under a construction of the limitation ''coronal region having a frustoconical shape'' recited in claim 1 that requires the entire coronal region to be frustoconical but does not require any additional functional limitation.

4. With respect to whether the 2003 Alpha Bio Tec Catalog anticipates claim 2 of the '977 patent, please address the significance of the testimony of Nobel's expert, Mr. Hurson, that one of ordinary skill in the art would understand that any portion of an implant intended to mate with another component, *e.g.* an abutment, would never be acid-etched. In addition, please address whether or not the 2003 Alpha Bio Tec Catalog clearly and convincingly discloses that the bevel of the illustrated 5.0 mm SPI implant is acid etched.

5. Please address whether, under a construction of the limitation ''coronal region having a frustoconical shape'' recited in claim 1 of the '977 patent that requires the entire coronal region to be frustoconical but does not require any additional functional limitation, the technical prong of the domestic industry requirement is satisfied with respect to claim 1 of the '977 patent.

The parties have been invited to brief only these discrete issues, as enumerated above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, including the Office of Unfair Import Investigations, are requested to file written submissions on the issues identified in this notice. Parties to the investigation, including the Office of Unfair Import Investigations, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Office of Unfair Import Investigations are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the patents expire, the HTSUS numbers under which the

accused products are imported, and any known importers of the accused products. The written submissions and proposed remedial orders must be filed no later than close of business on January 21, 2016. Initial submissions are limited to 50 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on January 28, 2016. Reply submissions are limited to 25 pages, not including any attachments or exhibits related to discussion of the public interest. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–934'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

On October 21, 2015, Nobel filed a motion to amend the Administrative Protective Order (''APO'') issued in this investigation to add specific provisions permitting the use of discovery from this investigation in two co-pending proceedings in the U.S. Patent and Trademark Office captioned as *Instradent USA, Inc.* v. *Nobel Biocare Services AG,* IPR2015–01784, and *Instradent USA, Inc.* v. *Nobel Biocare Services AG,* IPR2015–01786. On November 2, 2015, Respondents and the IA filed oppositions to Nobel's motion. On November 12, 2015, Nobel filed a motion for leave to file a reply in support of its motion to amend the APO. On November 23, 2015, Respondents filed an opposition to Nobel's motion for leave to file a reply.

The Commission has determined to deny both Nobel's motion to amend the APO and motion for leave to file a reply in support of its motion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 14, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01089 Filed 1–20–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–983]

Certain Laser-Driven Light Sources, Subsystems Containing Laser-Driven Light Sources, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Energetiq Technology, Inc. of Woburn, Massachusetts. A supplement to the complaint was filed on December 23, 2015. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laser-driven light sources, subsystems containing laser-driven light sources, and products containing same by reason of infringement of certain claims of U.S. Patent No. 8,969,841 (''the '841 patent''); U.S. Patent No. 9,048,000 (''the '000 patent''); and U.S. Patent No. 9,185,786 (''the '786 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 14, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser-driven light sources, subsystems containing laser-driven light sources, and products containing same by reason of infringement of one or more of claims 1–3, 6, 7, 10, 11, 13, 26, and 29 of the '841 patent; claims 1–6 and 15–18 of the '000 patent; and claims 1, 6, 8, 13, 15, 20, 21, and 25 of the '786 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Energetiq Technology, Inc., 7 Constitution Way, Woburn, MA 01801.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ASML Netherlands B.V., De Run 6501, 5504 DR, Veldhoven, The Netherlands.

ASML US, Inc., 2650 West Geronimo Place, Chandler, AZ 85224.

Qioptiq Photonics GmbH & Co. KG, Königsallee 23, 37801 Göttingen, Germany.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 15, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01134 Filed 1–20–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–982]

Certain RF Capable Integrated Circuits and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of ParkerVision, Inc. of Jacksonville, Florida. Supplements to the complaint were filed on December 23, 2015 and January 4, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain RF capable integrated circuits and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,879,817 (''the '817 patent''); U.S. Patent No. 7,929,638 (''the '638 patent''); U.S. Patent No. 8,571,135 (''the '135 patent''); and U.S. Patent No. 9,118,528 (''the '528 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 14, 2016, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain RF capable integrated circuits and products containing the same by reason of infringement of one or more of claims 1, 5–7, 11, and 14 of the '817 patent; claims 1 and 4–8 of the '638 patent; claims 22 and 24 of the '135 patent; and claims 1, 5, 6, 8–10, 17–19, 23, 24, 26–28, and 33–36 of the '528 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: ParkerVision, Inc., 7915 Baymeadows Way, Suite 400, Jacksonville, FL 32256.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Apple Inc., One Infinite Loop, Cupertino, CA 95014

LG Electronics, Inc., 128 Yeoui-Daero, Yeongdeungpo-Gu, Seoul 07336, Republic of Korea

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632

LG Electronics MobileComm U.S.A., Inc., 10101 Old Grove Road, San Diego, CA 92131

Samsung Electronics Co., Ltd., 129 Samsung-Ro, Yeongtong-Gu, Suwon-Shi 16677, Republic of Korea

Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660

Samsung Semiconductor, Inc., 3655 N 1st Street, San Jose, CA 95134

Qualcomm Incorporated, 5775 Morehouse Drive, San Diego, CA 92121

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: January 15, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01135 Filed 1–20–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–003]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 9, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–528–529 and 731–TA–1264–1268 (Final) (Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal). The Commission is currently scheduled to complete and file its determinations and views of the Commission on February 22, 2016.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.
Issued: January 15, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–01242 Filed 1–19–16; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–002]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 29, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1306 (Preliminary) (Large Residential Washers from China). The Commission is currently scheduled to complete and file its determination on February 1, 2016; views of the Commission are currently scheduled to be completed and filed on February 8, 2016.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.
Issued: January 15, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–01243 Filed 1–19–16; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Johnson Matthey, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before March 21, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 3, 2015, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428 applied to be

registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	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.

Dated: January 13, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–01202 Filed 1–20–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Satcher Properties, LLC,* Civil Action No. 3:16–cv–00112–JFA, was lodged with the United States District Court for the District of South Carolina on January 13, 2016.

This proposed Consent Decree concerns a complaint filed by the United States against Satcher Properties, LLC, pursuant to 33 U.S.C. 1311(a) and 1344, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas or to submit an after-the-fact permit application and to perform mitigation and to pay a civil penalty. The proposed Consent Decree also provides for the defendant to perform an Environmental Compliance Promotion Project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Beth Drake, First Assistant United States Attorney, United States Attorney's Office, 1441 Main Street, Suite 500, Columbia, South Carolina and refer to *United States* v. *Satcher Properties, LLC,* Civil Action No. 3:16–cv–00112–JFA, USAO File No. 2013V01042.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina (Columbia Division), Matthew J. Perry, Jr. Courthouse, 901 Richland Street, Columbia, South Carolina 29201. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2016–01109 Filed 1–20–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., January 26, 2016.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Open..

MATTERS TO BE CONSIDERED: Approval of October 6, 2015 minutes.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: January 15, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–01219 Filed 1–19–16; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Tuesday, January 26, 2016.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on six original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: January 15, 2016.

J. Patricia W. Smoot,

Chairman, U.S. Parole Commission.

[FR Doc. 2016–01216 Filed 1–19–16; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for Linking to Employment Activities Pre-Release Through Specialized American Job Centers (AJCS)—(''LEAP–2'')

AGENCY: Employment and Training Administration, Labor.

ACTION: Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–16–03

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of $5,000,000 in grant funds for a second round of Linking to Employment Activities Pre-release through Specialized American Job Centers (AJCs), or ''LEAP–2,'' grants. ETA plans to award approximately 10 grants of up to $500,000 each to Local Workforce Development Boards. This grant program is designed to provide incarcerated individuals with workforce services prior to release and link them to a continuum of services offered through their community-based AJCs post-release. These grants are job-driven and build connections to local employers that will enable transitioning offenders to secure employment. The jail-based specialized AJCs will enable transitioning offenders to prepare for employment prior to release and continue with Individual Employment Plans (as described in Section IV of the FOA) in the community once released. The aim of these centers is to improve the workforce outcomes for transitioning offenders.

The complete FOA and any subsequent FOA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is February 26, 2016. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Pia Miller, Grants Management Specialist, Office of Grants Management, at (202) 693–3153. Applicants should email all technical questions to *miller.pia.m@dol.gov* and reference the Funding Opportunity Number listed in this notice.

The Grant Officer for this FOA is Eric Luetkenhaus.

Signed January 14, 2016 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer/Division Chief, Employment and Training Administration.

[FR Doc. 2016–01146 Filed 1–20–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposal to extend OMB approval of the information collection: Notice of Issuance of Insurance Policy (CM–921). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 21, 2016.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/FAX (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* Section 423 of the Black Lung Benefits Act, as amended, requires that a responsible coal mine operator be insured and outlines the items each contract of insurance must contain. It also enumerates the civil penalties to which a responsible coal mine operator is subject, should these procedures not be followed. Further, 20 CFR par V, subpart C, 726.208–213 requires that each insurance carrier shall report to the Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to responsible operators. It states that this report will be made in such manner and on such a form as DCMWC may require. The CM–921 is the form completed by the insurance carrier and forwarded to DCMWC for review. It is also required that if a policy is issued or renewed for more than one operator, a separate report for each operator shall be submitted. This information collection is currently approved for use through July 31, 2016.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to identify operators who have secured insurance for payment of black lung benefits as required by the Act.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Notice of Issuance of Insurance Policy.

OMB Number: 1240–0048.

Agency Number: CM–921.

Affected Public: Business or other for profit; Federal Government and State, Local or Tribal Government.

Total Respondents: 51.

Total Annual Responses: 3,500.

Estimated Time per Response: 10 minutes.

Frequency: Annually.

Estimated Total Burden Hours: 8

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $29.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2016–01144 Filed 1–20–16; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposal to extend OMB approval of the information collection: Certification by School Official (CM–981). A copy of the proposed information collection request

can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 21, 2016.

ADDRESSES: Ms Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3323, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

In order to qualify as a dependent that is eligible for black lung benefits, a child aged 18 to 23 must be a full-time student as described in the Black Lung Benefits Act, 30 U.S.C. 901 et seq. and attending regulations 20 CFR 725.209. The CM–981 is partially completed by the appropriate district office so that the school official or registrar's office will know for which student and time period the information is being requested and is also used to verify the full-time student status. This information collection is currently approved for use through July 31, 2016.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently-approved information collection in order to determine the continued eligibility of students.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Certification by School Official.

OMB Number: 1240–0031.

Agency Number: CM–981.

Affected Public: Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Total Respondents: 493.

Total Annual Responses: 493.

Estimated Time per Response: 10 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 82

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 2016.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2016–01145 Filed 1–20–16; 8:45 am]

BILLING CODE 4510–CK–P

LEGAL SERVICES CORPORATION

Request for Letters of Intent To Apply for 2016 Pro Bono Innovation Fund Grants

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) issues this Notice describing the conditions under which Letters of Intent to Apply for 2016 funding will be received for the Pro Bono Innovation Fund. On December 18, 2015, Congress provided $4 million for the Pro Bono Innovation Fund through the Consolidated Appropriations Act for 2016.

DATES: Letters of Intent must be submitted by 5:00 p.m. EST on March 28, 2016.

ADDRESSES: Letters of Intent must be submitted electronically at *http://lscgrants.lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mytrang Nguyen, Program Counsel, Office of Program Performance, Legal Services Corporation, 3333 K Street NW., Washington, DC, 20007; (202) 295–1564 or *nguyenm@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The Pro Bono Innovation Fund was created after the LSC Board of Directors formed a Pro Bono Task Force in 2011 to identify ways to better engage pro bono lawyers and other volunteers to serve low-income people. One recommendation of the Pro Bono Task Force was to create a competitive Innovation Fund grant program. On January 17, 2014, the President signed Public Law 113–76, the Consolidated Appropriations Act of 2014, which included $2.5 million in LSC's appropriation for the Pro Bono Innovation Fund. In its first year of grant making, LSC funded eleven projects seeking to address the critical legal needs of underserved populations with more pro bono volunteers, significant collaboration, and technology enhancements. The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (December 16, 2014) increased LSC's appropriation for the Pro Bono Innovation Fund to $4 million and LSC funded an additional fifteen projects in FY15. On December 18, 2015, the Consolidated Appropriations Act, 2016, Public Law 114–113 provided $4 million for the Pro Bono Innovation Fund.

In 2016, the Pro Bono Innovation Fund will continue to advance LSC's goal of increasing the quantity and quality of legal services provided to eligible people. Applicants to the Pro Bono Innovation Fund should identify the most pressing unmet client needs and how pro bono volunteers will be used to address those needs. Projects funded by the Pro Bono Innovation Fund will serve as demonstration efforts to strengthen pro bono service delivery and improve low income persons' access to high quality legal assistance through coordinated legal delivery systems.

II. Funding Opportunity Information

A. Pro Bono Innovation Fund Purpose and Key Goals

The purpose of the Pro Bono Innovation Fund is to develop and enhance pro bono programs that serve larger numbers of low-income clients and that improve the quality and effectiveness of the services clients receive by using pro bono volunteers. Projects should be innovative (new, replicable models and approaches to pro bono delivery) or replicate prior successful models.

The Pro Bono Innovation Fund is designed to address issues identified in the 2012 report of LSC's Pro Bono Task Force. The report provides a summary

of findings that illustrates the current crisis in legal services and suggests ways that pro bono can be used to increase the supply of lawyers and others who are available to provide legal assistance to low-income people. The key goals of the Pro Bono Innovation Fund are to:

1. Address gaps in the delivery of legal services to low-income people
2. Engage more lawyers and other volunteers in pro bono service
3. Develop and implement new, innovative, and replicable strategies that address persistent challenges in pro bono delivery systems

B. Areas of Interest for FY 2016

LSC welcomes applications in a wide variety of areas; there are no specific areas of interest. Consistent with the key goals of the Pro Bono Innovation Fund, however, applicants are encouraged to consider developing projects that propose to replicate effective models of pro bono delivery or propose novel (and replicable) solutions to persistent challenges in their current pro bono system. Such challenges and solutions may include, but are not limited to:

- Advancing the organization's strategic imperatives by integrating volunteers into significant delivery or advocacy efforts (*e.g.,* using law students to conduct screening and intake, expanding complex litigation or appellate practice with pro bono attorneys).
- Addressing duplicative or fractured pro bono efforts by forming partnerships with pro bono and community stakeholders or adding new partners to existing collaborations (*e.g.,* working with state and local pro bono committees or with specialty and minority bar associations, aligning with state Access to Justice Commission initiatives, and complementing self-represented litigant efforts).
- Developing strategies to bring pro bono services to the locations and communities where clients reside or are accessing services, particularly for hard to reach populations (*e.g.,* medical-legal partnerships, mobile or remote services for rural populations, or adopting a neighborhood).
- Developing quality controls and setting goals for timely, effective pro bono work. This can include technology solutions and/or innovative ways to provide more mentoring, training, and support for volunteers (*e.g.,* designating experienced volunteers to mentor newer pro bono attorneys, developing process improvements to share resources through common data portals, and sharing case updates and files with shared case management systems).

C. Available Funds and Estimated Award Amounts

LSC has received an appropriation of $4 million, of which $3.8 million is available for grants in fiscal year 2016 to support Pro Bono Innovation Fund projects. In 2015, fifteen Pro Bono Innovation Fund Projects received funding with a median funding amount of $257,000. LSC recommends a minimum $50,000 request, and there is no maximum amount for Pro Bono Innovation Fund requests that are within the total funding available. LSC encourages proposals for projects that include other in-kind and cash support, although LSC has no matching requirement.

D. Project and Funding Period

Pro Bono Innovation Fund grant awards will cover either an 18- or 24-month project period. Applicants' proposals should cover the full period for which a grant award is requested. The project period is expected to commence in October 2016.

III. Grant Application Process and Letter of Intent To Apply Instructions

A. Pro Bono Innovation Fund Grant Application Process

LSC is committed to reviewing all Pro Bono Innovation Fund grant applications in a quick and thorough manner. Applicants must first submit a Letter of Intent to Apply for Funding (LOI). LSC staff will review the LOIs and notify applicants by April 25, 2016 if their LOI is selected. Applicants whose LOIs are selected will be asked to submit a detailed, full application in LSC Grants. Once LSC has received a full application from a selected applicant, the application undergoes a rigorous review process by LSC staff and external subject matter experts. LSC's President makes the final decision on funding for the Pro Bono Innovation Fund.

B. Letters of Intent To Apply for Funding Requirements and Format

The LOI should succinctly summarize in approximately three pages a proposed project's context, goals, objectives, activities, estimated budget, timeline, and evaluation plan. Applicants must submit the LOI electronically using the LSC Grants online system found at *http://lscgrants.lsc.gov.* They system will be live for applicants in early March 2016.

The LOI form in LSC Grants will ask each applicant the following information about the proposed project:

1. Project Description. In this section, please provide a brief description of the proposed project that includes:

- The specific client need and challenge or opportunity in the pro bono delivery system that the project will address.
- The goals and objectives of the project, the activities that make up the project, and how those activities will link to and achieve the stated goals and objectives.
- Strong indication of volunteer demand or interest in supporting the project.
- The expected impact of the project. This should include a brief explanation of the changes and outcomes that will be created as a result of the project.

2. Project Staff, Organizational Capacity, and Project Partners. Please briefly identify and describe the project team and project partners including:

- The qualifications and relevant experience of the proposed project team, any proposed partner organizations, and your organization.
- The role of your organization's executive management in the design and implementation of the project.

3. Budget and Timeline. Please provide the following information about the estimated project costs and the proposed implementation timeframe:

- Whether the proposed project will be implemented in an 18- or 24- month timeframe.
- Estimated total project cost. This includes the estimate for the Pro Bono Innovation Fund requested amount and other in-kind or cash contributions to support the project.
- List, if any, of anticipated contributions, both in-kind and monetary, of all partners involved in the project.
- List of key partners who will receive Pro Bono Innovation Fund funding, including their roles, and the estimated dollar amount or percent of budget assigned to each partner.

Please provide an estimated budget using the following form.

	Pro Bono Innovation Fund Share—*estimated*	Other cash or in-kind support—*estimated*
1. Personnel Expenses:		
a. Salaries/Wages		
b. Fringe Benefits		
Subtotal Personnel Expenses		
2. Project Expenses:		
a. Travel		
b. Equipment		
c. Software		
d. Supplies		
e. Communication		
f. Training		
g. Evaluation		
h. Other		
Subtotal Project Expenses		
3. Third-Party Contracts and Subgrants:		
a. Contract		
b. Subgrant		
Subtotal Third-Party Contracts and Subgrants		
Totals		
Percentage of Total Project		

Note: Applicants are encouraged to provide as complete an estimate as possible despite the preliminary nature of the LOI. LSC recognizes that the budget information provided is an initial estimate only and subject to change if applicants are invited to submit a full application.

C. One Project per Letter of Intent To Apply

Applicants are encouraged to propose more than project. To do so, applicants must submit a separate LOI for each project.

D. Letter of Intent To Apply Deadline

Applicants must complete and submit LOIs through *http://lscgrants.lsc.gov* no later than 5:00 p.m. ET, Monday, March 28, 2016. To avoid any technical difficulties or submission challenges on the day of the deadline, please allow sufficient time for your LSC Grants submission. Applicants are strongly encouraged to complete LOI submissions prior to the deadline.

LSC will provide a confirmation email for each completed electronic LOI submission. Please keep this email as verification that your LOI was received. If you do not receive an email confirmation for your LOI submission, please inquire about the status of your LOI at *probonoinnovation@lsc.gov.*

LSC will not accept applications submitted after the deadline unless LSC has approved a request to waive the deadline. See Section IV (D) Waiver Authority below.

E. Selection Process

Applicants must be current LSC grantees. LSC will review all LOIs to determine whether they are from eligible entities, submitted as complete in LSC Grants, and are responsive to the questions described above. Failure to meet these submission requirements may result in rejection of the LOI before substantive review.

Each LOI will then be carefully reviewed to identify those projects that address the key goals of the Pro Bono Innovation Fund. The LOIs will also be reviewed to determine the extent to which the proposed project:

- Provides a clear description of client need and the challenge in the pro bono delivery system that the project will address.
- Demonstrates is has the support of, or is viable with, the pro bono volunteers targeted for recruitment and participation in the project.
- Articulates thoughtful, appropriate, and concrete goals and activities that address the articulated need and challenges.
- Is either innovative or an appropriate replication of prior successful models.
- Has potential for client impact, strong outcomes, further replication, or scaling.
- Leverages partnerships and involves all of the appropriate parties needed to make it successful and sustainable.
- Has organizational support and capacity, and is cost-effective.

Projects that address the above criteria will be invited to submit full applications.

F. Next Steps for Successful Applicants

LSC will notify successful LOI applicants by April 25, 2016. Successful applicants will have until 5:00 p.m. ET, Monday, July 18, 2016 to complete full applications in the LSC Grants online application system.

IV. LSC Requirements and Eligibility Information

A. LSC Requirements

Pro Bono Innovation Fund grants are subject to all the requirements of the Legal Services Corporation Act of 1974 as amended (LSC Act), any applicable appropriations acts and any other applicable law, rules, regulations, policies, guidelines, instructions, and other directives of including, but not limited to: The LSC Audit Guide for Recipients and Auditors, the Accounting Guide for LSC Recipients, the CSR Handbook, the 1981 LSC Property Manual (as amended) and the Property Acquisition and Management Manual, with any amendments to the foregoing adopted before or during the period of the grant. Before submitting a Letter of Intent to Apply, applicants should be familiar with LSC's subgrant and transfer requirements at 45 CFR parts 1610 and 1627, particularly as they pertain to payments of LSC funds to other entities for programmatic activities. Termination Policies and Procedures will be same as those described in the 2015 Pro Bono Innovation Fund Grant Assurances.

B. Eligible Applicants

To be eligible for Pro Bono Innovation Fund grants, applicants must be current grantees of LSC grants for Basic Field-General, Basic Field-Migrant, or Basic Field-Native American funding. Organizations and entities that are not current LSC grantees are not eligible to apply directly to LSC for Pro Bono Innovation Fund grants. Collaborations between LSC grantees and partner organizations are strongly encouraged to enhance projects, strengthen pro bono

delivery systems, and avoid duplication of services.

C. Waiver Authority

LSC, upon its own initiative or when requested, may waive provisions in this Notice at its sole discretion under extraordinary circumstances and when it is in the best interest of the eligible client community. Waivers may be granted only for requirements that are discretionary and not mandated by statute or regulation. Any request for a waiver must set forth in writing the extraordinary circumstances for the request. LSC will not consider a request to waive the deadline for an LOI unless it is received by LSC prior to the deadline.

D. Contact Information

For more information about current Pro Bono Innovation Fund projects, please contact Mytrang Nguyen, Program Counsel, (202) 295–1564 or *nguyenm@lsc.gov.*

If you have a general question or questions about the Pro Bono Innovation Fund application process, please email *probonoinnovation@lsc.gov.*

For technical questions or issues with the LSC Grants online application system, please send an email to *techsupport@lsc.gov.*

Dated: January 15, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–01106 Filed 1–20–16; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the Smithsonian Institution's South Mall Campus Master Plan

AGENCY: National Capital Planning Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1970, as amended and implemented by the Council on Environmental, and in accordance with the Environmental Policies and Procedures adopted by the National Capital Planning Commission (NCPC), the NCPC announces its intent along with the Smithsonian Institution (SI), and in cooperation with the National Park Service (NPS), to prepare an Environmental Impact Statement (EIS). The EIS will provide a full and fair discussion of the potential environmental impacts resulting from implementation of SI's South Mall Campus Master Plan. NCPC will act as lead federal agency for NEPA compliance and SI is the project owner, sponsoring the preparation of the EIS. Although SI is not a ''federal agency'' within the meaning of NEPA and CEQ Regulations, SI works with federal agencies on NEPA compliance when, as here, an SI project requires federal agency approval.

The South Mall Campus Master Plan (Master Plan) will evaluate opportunities to: Better align Smithsonian facilities on the South Mall Campus with SI's mission; increase public access to the museums and gardens; replace and upgrade aging building systems; upgrade security systems campus wide; rehabilitate and restore historic buildings; provide seismic retrofitting; consolidate and upgrade loading functions; enhance public space; and increase the visitor services provided in the area. The Master Plan will revitalize the South Mall Campus by interconnecting programs and services both above- and below-grade; and, by improving physical access for all through enhanced circulation, way finding, and program visibility. These improvements will provide visitors and staff with facilities, amenities, and educational experiences expected of a world class institution.

DATES: The Scoping Period shall run February 22, 2016.

ADDRESSES: Electronic Comments may be submitted at *commentsonsouthcampus@si.edu.*

FOR FURTHER INFORMATION CONTACT: Matthew Flis, Senior Urban Designer, National Capital Planning Commission, Urban Design and Plan Review, 401 9th StreetNW., Washington, DC 20004, Phone 202–482–7236; or Michelle Spofford, Senior Planning Manager, Smithsonian Institution, Office of Planning Design and Construction, Facilities Master Planning, 600 Maryland Avenue SW., Suite 501, PO Box 37012, MRC 511, Washington, DC 20013–7012, Phone: 202–633–6558.

SUPPLEMENTARY INFORMATION: NCPC and SI previously conducted scoping For an Environmental Assessment (EA) of the Master Plan from December 16, 2014 through January 30, 2015. As part of this process, NCPC and SI held a public scoping meeting on December 16, 2014 and received written comments from local and federal agencies, interested organizations, and the public. Based on the information obtained and additional coordination with local and federal agencies, NCPC and SI have determined that preparation of an EIS is warranted.

Topics for environmental analysis identified through the scoping process include: Historic resources; visual resources; transportation; public utilities; land use; social and economic issues; visitor use; and physical and biological resources, such as air quality, water quality, and climate change.

All private parties, Federal and local agencies, and interested organizations having an interest in the project are invited to comment. All previously submitted comments from the EA scoping period are documented in the administrative record and will be used to inform the Draft EIS; only new issues and concerns need to be submitted at this time. During this scoping period, no public scoping meeting will be held.

All new and relevant environmental information, or additional comments on any issues that may be associated with the proposed project, should be sent to the address or email address below. 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 publically 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.

Information related to the project and public involvement opportunities for the draft EIS will be provided at the project's Web site: *http://www.southmallcampus.si.edu/.*

Authority: 40 CFR 1501.7.

Dated: January 13, 2016.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2016–01162 Filed 1–20–16; 8:45 am]

BILLING CODE 7520–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Agency Information Collection Activities: Proposed Collection; Comment Request; 2017 Survey of Public Participation in the Arts

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Proposed collection; comments request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a

preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection on arts participation in the U.S: *Clearance Request for NEA 2017 Survey of Public Participation in the Arts.* Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov.*

DATES: Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: 2017 Survey of Public Participation in the Arts.

OMB Number: New.

Frequency: One Time.

Affected Public: American adults.

Estimated Number of Respondents: 36,000.

Estimated time per respondent: 10.0 minutes.

Total burden hours: 6,000 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This request is for clearance of the 2017 Survey of Public Participation in the Arts (SPPA) to be conducted by the Census Bureau in July 2017 as a supplement to the Bureau of Labor Statistic's Current Population Survey. The SPPA is the field's premiere repeated cross sectional survey of individual attendance and involvement in arts and cultural activity. The data are circulated to interested researchers, and they are the basis for a range of NEA reports and independent research publications. The SPPA provides primary knowledge on the extent and nature of participation in the arts in the United States. Earlier SPPA surveys were conducted in 1982, 1985, 1992, 1997, 2002, 2008, and 2012 all of which were conducted by the Census Bureau except the 1997 study, which was conducted by a private contractor, Westat Inc. Reports on these data will be made publicly available on the NEA's Web site. The SPPA will provide primary knowledge on the extent and nature of participation in the arts in the United States. These data will also be used by the NEA as a contextual measure for one of the strategic goals identified in its FY 2014—FY 2018 strategic plan.

Dated: January 15, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 2016–01136 Filed 1–20–16; 8:45 am]

BILLING CODE 7537–01–P

POSTAL REGULATORY COMMISSION

[Docket No. ACR2015; Order No. 3027]

Postal Service Performance Report and Performance Plan

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: On December 29, 2015, the Postal Service filed the FY 2015 Performance Report and FY 2016 Performance Plan with its FY 2014 Annual Compliance Report. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 26, 2016. *Reply Comments are due:* March 7, 2016.

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

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

SUPPLEMENTARY INFORMATION:

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II. Background
III. Request for Comments
IV. Ordering Paragraphs

I. Introduction

Each fiscal year, the Postal Service prepares an annual performance plan and a report on program performance as required under 39 U.S.C. 2803 and 2804. Pursuant to 39 U.S.C. 3652(g), the Postal Service filed its FY 2015 Annual Report in Docket No. ACR2015.[1] The FY 2015 Annual Report includes the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan. Annual Report at 11–28.

The Commission must evaluate whether the Postal Service met its performance goals in FY 2015. *See* 39 U.S.C. 3653(d). The Commission may also provide recommendations to the Postal Service ''related to the protection or promotion of public policy objectives set out in'' title 39. *Id.*

II. Background

Prior to Docket No. ACR2013, the Commission analyzed performance reports and performance plans as part of the Annual Compliance Determination (ACD). The Commission later determined that its obligations under 39 U.S.C. 3653(d) are distinguishable from its ACD obligations under 39 U.S.C. 3653(b). In Docket Nos. ACR2013 and ACR2014, the Commission issued separate reports analyzing the Postal Service's performance reports and performance plans.[2] By issuing separate reports, the Commission provided more in-depth analysis of the Postal Service's performance goals.

As it did in Docket Nos. ACR2013 and ACR2014, the Commission will issue its

[1] United States Postal Service 2015 Annual Report to Congress, Library Reference USPS–FY15–17, December 29, 2015 (FY 2015 Annual Report).

[2] Docket No. ACR2013, Postal Regulatory Commission, Review of Postal Service FY 2013 Performance Report and FY 2014 Performance Plan, July 7, 2014; Docket No. ACR2014, Postal Regulatory Commission, Analysis of the Postal Service's FY 2014 Program Performance Report and FY 2015 Performance Plan, July 7, 2015.

analysis of the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan separately from the FY 2015 ACD. To facilitate this review, the Commission is establishing a separate comment period and invites public comment to consider the following issues:

- Did the Postal Service meet its performance goals in FY 2015?
- Do the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan meet applicable statutory requirements, including 39 U.S.C. 2803 and 2804?
- What recommendations should the Commission provide to the Postal Service that relate to protecting or promoting public policy objectives in title 39?
- What recommendations or observations should the Commission make concerning the Postal Service's strategic initiatives? [3]
- What other matters are relevant to the Commission's analysis of the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan under 39 U.S.C. 3653(d)?

III. Request for Comments

Comments by interested persons are due no later than February 26, 2016. Reply comments are due no later than March 7, 2016. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as Public Representative to represent the interests of the general public in this docket with respect to issues related to the Commission's analysis of the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan.

IV. Ordering Paragraphs

It is ordered:

1. The Commission invites public comment on the Postal Service's FY 2015 Annual Performance Report and FY 2016 Annual Performance Plan.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative to represent the interests of the general public in this proceeding with respect to issues related to the Commission's analysis of the FY 2015 Annual Performance Report and the FY 2016 Annual Performance Plan.
3. Comments are due no later than February 26, 2016.
4. Reply comments are due no later than March 7, 2016.
5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–01086 Filed 1–20–16; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* FY 2015 Annual Report at 64–65.

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–67; Order No. 3028]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a modification to a Global Reseller Expedited Package Services 4 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 21, 2016.

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

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

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On January 13, 2016, the Postal Service filed notice that it has agreed to a second Modification to the existing Global Reseller Expedited Package Services 4 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Modification.

The Postal Service also filed the unredacted Modification under seal and seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal.[2]

The Modification revises Article 11 (term of the agreement), as well as the articles concerning postage payment, in order to allow postage payment through the Electronic Verification System. Notice at 1.

The Postal Service intends for the Modification to become effective on February 1, 2016. *Id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 21, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–67 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Lyudmila Y. Bzhilyanskaya to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than January 21, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–01087 Filed 1–20–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package Contracts 4 Negotiated Service Agreement, January 13, 2016 (Notice). The Modification is an attachment to the Notice (Modification).

[2] Notice at 1; *see also* Docket Nos. MC2014–38 and CP2014–67, Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts 4 to the Competitive Products List and Notice of Filing a Global Reseller Expedited Package 4 Negotiated Service Agreement, August 8, 2014, Attachment 1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76914; File No. SR–NYSEArca-2016–03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca Integrated Feed

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'' and ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees [sic] NYSE Arca Integrated Feed to: (1) Establish a multiple data feed fee; and (2) discontinue fees relating to managed non-display. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE Arca Integrated Feed market data product,[4] as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee; and
- Discontinue fees relating to managed non-display.

Multiple Data Feed Fee [5]

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE Arca Integrated Feed in more than two locations would be charged $200 per additional location per product per month. No new reporting would be required.[6]

Managed Non-Display Fees

Non-Display Use of NYSE Arca market data means accessing, processing, or consuming NYSE Arca market data delivered via direct and/or Redistributor [7] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[8] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[9] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE Arca Integrated Feed and does not allow for further internal distribution or external redistribution of NYSE Arca Integrated Feed by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE Arca on a monthly basis the data recipients that are receiving NYSE Arca market data through the Redistributor's managed non-display service and the real-time NYSE Arca market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE Arca Integrated Feed from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $2,500 per month. Data recipients that receive NYSE Arca Integrated Feed from an approved Redistributor of Managed Non-Display Services are also charged an Access Fee of $1,500 per month.

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE Arca Integrated Feed on a managed non-display basis would be subject to the same access fee of $3,000 per month, and the same non-display services fees,[10] as other non-display data recipients.[11]

[4] *See* Securities Exchange Act Release Nos. 66128 (Jan. 10, 2012), 77 FR 2331 (Jan. 17, 2012) (SR–NYSEArca–2011–96); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing''); 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEArca–2014–93) (''2014 Non-Display Filing''); and 73993 (Jan. 6, 2015), 80 FR 1527 (Jan. 12, 2015) (SR–NYSEArca–2014–147).

[5] The text of footnote 5 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSEArca–2016–01 (Proposed Rule Change to Amend the Fees for NYSE ArcaBook).

[6] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Arca Integrated Feed product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[7] ''Redistributor'' means a vendor or any other person that provides an NYSE Arca data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[8] *See e.g.* 2014 Non-Display Filing, *supra* note 4.

[9] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE Arca Integrated Feed for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE Arca Integrated Feed in the Redistributor's own messaging formats (rather than using raw NYSE Arca message formats) by reformatting and/or altering NYSE Arca Integrated Feed prior to retransmission without affecting the integrity of NYSE Arca Integrated Feed and without rendering NYSE Arca Integrated Feed inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[10] *See* Fee Schedule.

[11] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to

Non-Substantive Change to the Fee Schedule

Non-Display Use fees for NYSE Arca Integrated Feed include the Non-Display Use of NYSE ArcaBook, NYSE Arca BBO and NYSE Arca Trades for customers paying NYSE Arca Integrated Feed non-display fees that also pay access fees for NYSE ArcaBook, NYSE Arca BBO and NYSE Arca Trades.[12] The Exchange proposes to describe this application of the Non-Display Use fees in note 1 to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE Arca Integrated Feed.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee for taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[15] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[16]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[17] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Non-Substantive Changes to the Fee Schedule

The Exchange believes that adding a note to the Fee Schedule to reflect that Non-Display Use fees for NYSE Arca Integrated Feed include the Non-Display Use of NYSE ArcaBook, NYSE Arca BBO and NYSE Arca Trades for customers paying NYSE Arca Integrated Feed non-display fees that are also paying access fees for NYSE ArcaBook, NYSE Arca BBO and NYSE Arca Trades will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the application of non-display use fees that have been previously filed with the Commission and are applicable to the existing Fee Schedule.[18]

The Exchange notes that NYSE Arca Integrated Feed is entirely optional. The Exchange is not required to make NYSE Arca Integrated Feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE Arca Integrated Feed. Firms that do purchase NYSE Arca Integrated Feed do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE Arca Integrated Feed or any other similar products are attractively priced or not.[19]

Firms that do not wish to purchase NYSE Arca Integrated Feed have a variety of alternative market data products from which to choose,[20] or if NYSE Arca Integrated Feed do [sic] not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE Arca Integrated Feed or use it at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[21]

Managed Non-Display Services for NYSE ArcaBook, and NYSE Arca BBO and NYSE Arca Trades. *See* SR–NYSEArca–2016–01 and SR–NYSEArca–2016–02.

[12] *See* 2013 Non-Display Filing, *supra* note 4, at 21671.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4), (5).

[15] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[16] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA Plan [sic] at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[17] *See* note 4, *supra.*

[18] *See* 2013 Non-Display Filing, *supra* note 4, at 20976.

[19] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[20] *See* NASDAQ Rule 7023 (Nasdaq Totalview) and BATS Rule 11.22.(a) and (c) (BATS TCP Pitch and Multicast Pitch).

[21] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [22]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[23]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [24]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [25] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[26]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade

[22] *NetCoalition,* 615 F.3d at 535.

[23] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[24] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[25] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[26] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE Arca Integrated Feed unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE Arca Integrated Feed can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE Arca and NYSE Arca's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[27] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[28]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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

[27] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[28] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[29] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE MKT, NYSE, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE Arca Integrated Feed, competitors offer close substitute products.[30] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed change [sic] changes to the fees for the NYSE Arca Integrated Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[31] of the Act and subparagraph (f)(2) of Rule 19b–4[32] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[33] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca-2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2016–03. 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;

[29] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[30] *See supra* note 20.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2016–03 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01063 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76910; File No. SR–Phlx–2016–02]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Obsolete Rules 1000B–1012B and To Amend Rule 722

January 14, 2016.

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 January 5, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete obsolete Rules 1000B—1012B, collectively captioned Rules Applicable to Trading of Cash Index Participations, and to amend Rule 722, Miscellaneous Securities Margin Accounts.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Cash Index Participations (''CIPs'') were listed on the Exchange in the late 1980s.[3] A CIP was a security based on the spot value of an index of stocks, of indeterminate duration, and paying its purchasers a proportionate share of dividends declared on the component stocks of the CIP. CIPs are no longer listed or traded on Phlx. Accordingly the Exchange proposes to delete the caption ''Rules Applicable to Trading of Cash Index Participations (Rules 1000B–1012B)'' found immediately before Rule 1000B. It also proposes to delete the text following Rule 1000B and replace it with the word ''Reserved.'' Rules 1001B– 1012B are proposed to be deleted in their entirety. Finally, the Exchange proposes to make a conforming change to Rule 722, Miscellaneous Securities Margin Accounts, by deleting from it the language dealing with margin requirements for CIPs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, this proposed change removes from the Phlx rulebook the Rules Applicable to Trading of Cash Index Participations. These rules are no longer applicable because they deal solely with CIPs which have not been listed or traded on Phlx for many years. Removing these CIP rules from the Phlx rulebook will help eliminate potential member and investor confusion about products listed and traded on Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but would merely remove references to CIPs that are no longer relevant to the Exchange's business in any respect.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

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[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(a)(iii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2016–02 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–02 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01060 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76912; File No. SR–NYSE–2016–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE BBO and NYSE Trades

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE BBO and NYSE Trades to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3) modify the application of the access fee; and (4) reduce the Enterprise Fee. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE BBO and NYSE Trades market data products,[4] as set forth on the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display;
- Modify the application of the access fee; and
- Reduce the Enterprise Fee.

Multiple Data Feed Fee [5]

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE BBO or NYSE Trades in more than two locations would be charged $200 per additional location per product per month. No new reporting would be required.[6]

Managed Non-Display Fees

Non-Display Use of NYSE market data means accessing, processing, or consuming NYSE market data delivered via direct and/or Redistributor [7] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external

[4] *See* Securities Exchange Act Release Nos. 61914 (Apr. 14, 2010), 74 FR 21077 (Apr. 22, 2010) (SR–NYSE–2010–30) (notice—NYSE BBO); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (approval order—NYSE BBO); 59309 (Jan. 28, 2009), 74 FR 6073 (Feb. 4, 2009) (SR–NYSE–2009–04) (notice—NYSE Trades); and 59309 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (approval order—NYSE Trades) (SR–NYSE–2009–04) and 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR–NYSE–2010–22).

[5] The text of footnote 6 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSE–2016–02 (Proposed Rule Change to Amend the Fees for NYSE OpenBook).

[6] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE BBO product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[7] ''Redistributor'' means a vendor or any other person that provides an NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

redistribution.[8] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[9] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE BBO and NYSE Trades and does not allow for further internal distribution or external redistribution of NYSE BBO and NYSE Trades by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE on a monthly basis the data recipients that are receiving NYSE market data through the Redistributor's managed non-display service and the real-time NYSE market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE BBO from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $300 per month, and data recipients that receive NYSE Trades from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $1,000 per month. Data recipients that receive NYSE BBO and NYSE Trades from an approved Redistributor of Managed Non-Display Services are also charged an Access Fee of $750 per month.[10]

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE BBO and NYSE Trades on a managed non-display basis would be subject to the same access fee of $1,500 per month, and the same non-display services fees,[11] as other non-display data recipients.[12]

Modification of the Application of the Access Fee

The Exchange proposes to modify the application of the access fees for NYSE BBO and NYSE Trades.

Each NYSE BBO data feed recipient currently pays a monthly $1,500 access fee for NYSE BBO, and each NYSE Trades data feed recipient currently pays a monthly $1,500 access fee for NYSE Trades. A single access fee applies for data recipients receiving both NYSE BBO and NYSE Trades.[13] The Exchange proposes to amend the access fees so that recipients of NYSE BBO and NYSE Trades would be required to pay a separate access fees for NYSE BBO ($1,500 per month) and NYSE Trades ($1,500 per month). This change would have no impact on customers who receive only NYSE BBO or only NYSE Trades.

In addition, the Exchange notes that recipients of NYSE OpenBook that also receive NYSE BBO and NYSE Order Imbalances do not currently pay an access fee for NYSE BBO and NYSE Order Imbalances.[14] The Exchange has proposed by separate rule filing to amend the NYSE OpenBook access fee so that recipients of NYSE OpenBook who also receive NYSE BBO or NYSE Order Imbalances would be required to pay separate access fees for NYSE BBO ($1,500 per month) and/or NYSE Order Imbalances ($500 per month) in addition to the access fee for NYSE OpenBook.[15] This change would have no impact on customers who do not receive NYSE OpenBook but who do receive NYSE BBO or NYSE Order Imbalances.

Reduction to Enterprise Fee

The Exchange currently charges an enterprise fee of $190,000 per month for an unlimited number of professional and non-professional users for each of NYSE BBO and NYSE Trades. A single Enterprise Fee applies for clients receiving both NYSE BBO and NYSE Trades.[16] The Exchange proposes to lower the enterprise fee to $185,000 per month.

As an example, under the current fee structure for per user fees, if a firm had 40,000 professional users who each received NYSE Trades at $4 per month and NYSE BBO at $4 per month, then the firm would pay $320,000 per month in professional user fees. Under the current pricing structure, the charge would be capped at $190,000 and effective January it would be capped at $185,000.

Under the proposed enterprise fee, the firm would pay a flat fee of $185,000 for an unlimited number of professional and non-professional users for both products. As is the case currently, a data recipient that pays the enterprise fee would not have to report the number of such users on a monthly basis.[17] However, every six months, a data recipient must provide the Exchange with a count of the total number of natural person users of each product, including both professional and non-professional users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE BBO and NYSE Trades.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee taking a data feed for a market data product in

[8] *See e.g.* Securities Exchange Act Release No. 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014) (SR–NYSE–2014–43) (''2014 Non-Display Filing'').

[9] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE BBO and NYSE Trades for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE BBO and NYSE Trades in the Redistributor's own messaging formats (rather than using raw NYSE message formats) by reformatting and/or altering NYSE BBO and NYSE Trades prior to retransmission without affecting the integrity of NYSE BBO and NYSE Trades and without rendering NYSE BBO and NYSE Trades inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[10] A single Managed Non-Display Access Fee applies for clients receiving both NYSE BBO and NYSE Trades. The Exchange is also proposing in this filing to modify this application of the access fees. *See* ''Modification of the application of the access fee,'' below.

[11] *See* Fee Schedule.

[12] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE OpenBook and NYSE Order Imbalances. *See* SR–NYSE–2016–02 and SR–NYSE–2016–04. The fees applicable to the NYSE Integrated market data product effective as of January 4, 2016 do not include Managed Non-Display Services fees.

[13] *See* Securities Exchange Act Release No. 61914 (April 15, 2010), 75 FR 21077 (April 22, 2010) (SR–NYSE–2010–30) at 21078.

[14] *See* Securities Exchange Act Release No. 59544 (Mar. 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131), at 11163.

[15] *See* SR–NYSE–2016–02.

[16] *See* Securities Exchange Act Release No. 70211 (Aug. 15, 2013), 78 FR 51781 (Aug. 21, 2013) (SR–NYSE–2013–58).

[17] Professional users currently are subject to a per display device count. *See* Securities Act Release No. 73985 (Jan. 5. 2015), 80 FR 1456 (Jan. 9, 2015) (SR–NYSE–2014–75).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4), (5).

more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[20] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[21]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. In 2013, the Exchange determined that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments.[22] Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[23] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Modifications to Access Fee

The Exchange believes that it is reasonable to make the changes proposed to the application of access fees for NYSE BBO and NYSE Trades. The Exchange believes the proposed changes will make the application of the access fees to each of products so that an access fee entitles a customer to receive, for the applicable product, a data feed or feeds. Specifically, data recipients that take the NYSE BBO and/or NYSE Trades products receive value from each product they choose to take. A data recipient that chooses to take multiple products (no recipient is required to take any of these products, or any specific combination of them) uses each product in a different way and therefore obtains different value from each. The Exchange believes that each product has a separate and distinct value that is appropriate to reflect in a separate access fee. Finally, the requirement to pay separate access fees for each market data product is equitable and not unfairly discriminatory because it would apply to all data recipients and appropriately reflects the value of each product to those who choose to use them.

Reduction to Enterprise Fee

The proposed enterprise fees for NYSE BBO and NYSE Trades are reasonable because they could result in a fee reduction for data recipients with a large number of professional and nonprofessional users, as described in the example above. If a data recipient has a smaller number of professional users of NYSE BBO and/or NYSE Trades, then it may continue to use the per user fee structure. By reducing prices for data recipient [sic] with a large number of professional and non-professional users, the Exchange believes that more data recipient [sic] may choose to offer NYSE BBO and NYSE Trades, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering an enterprise fee expands the range of options for offering NYSE BBO and NYSE Trades and allows data recipients greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing.

The Exchange notes that NYSE BBO and NYSE Trades are entirely optional. The Exchange is not required to make NYSE BBO and NYSE Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE BBO and NYSE Trades. Firms that do purchase NYSE BBO and NYSE Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE BBO and NYSE Trades or any other similar products are attractively priced or not.[24]

Firms that do not wish to purchase NYSE BBO and NYSE Trades at the new prices have a variety of alternative market data products from which to choose,[25] or if NYSE BBO and NYSE Trades do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE BBO and NYSE Trades or use them at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[26]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system

[20] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[21] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule[sic] PRA [sic] Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[22] *See* Securities Exchange Act Release No. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25).

[23] *See* note 8, *supra.*

[24] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[25] *See* NASDAQ Rule 7047 (Nasdaq Basic) and BATS Rule 11.22 (BATS TOP and Last Sale).

[26] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [27]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[28]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [29]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [30] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[31]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors

[27] *NetCoalition,* 615 F.3d at 535.

[28] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[29] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[30] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[31] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

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. Vendors will not elect to make available NYSE BBO or NYSE Trades unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE BBO and NYSE Trades can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE and NYSE's affiliates NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''MKT'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[32] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[33]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[34] In

[32] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[33] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis . . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[34] This is simply a securities market-specific example of the well-established principle that in

this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE MKT, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE BBO and NYSE Trades, competitors offer close substitute products.[35] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed changes to the fees for the NYSE BBO and NYSE Trades, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[36] of the Act and subparagraph (f)(2) of Rule 19b–4[37] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[38] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSE–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–03 and should be submitted on or before February 11, 2016.

certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[35] *See supra* note 25.

[36] 15 U.S.C. 78s(b)(3)(A).

[37] 17 CFR 240.19b–4(f)(2).

[38] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01062 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76911; File No. SR–NYSEMKT–2016–05]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE MKT Order Imbalances

January 14, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE MKT Order Imbalances to: (1) Establish a multiple data feed fee; and (2) discontinue fees relating to managed non-display. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE MKT Order Imbalances[4] as set forth on the NYSE MKT Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee for NYSE MKT Order Imbalances; and
- Discontinue fees relating to managed non-display for NYSE MKT Order Imbalances.

Multiple Data Feed Fee for NYSE MKT Order Imbalances[5]

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE MKT Order Imbalances in more than two locations would be charged $200 per product per additional location per month. No new reporting would be required.[6]

Managed Non-Display Fees for NYSE MKT Order Imbalances

Non-Display Use of NYSE MKT market data means accessing, processing, or consuming NYSE MKT market data delivered via direct and/or Redistributor[7] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[8] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[9] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE MKT Order Imbalances and does not allow for further internal distribution or external redistribution of NYSE MKT Order Imbalances by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE MKT on a monthly basis the data recipients that are receiving NYSE MKT market data through the Redistributor's managed non-display service and the real-time NYSE MKT market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE MKT Order Imbalances from an approved Redistributor of Managed Non-Display Services are charged an access fee of $250 per month and a Managed Non-Display Services Fee of $100 per month, for a total fee of $350 per month.

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE MKT Order Imbalances on a managed non-display basis would continue to be subject to an access fee of $500 per month, and the same non-display services fees,[10] as other data recipients.[11]

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR–NYSEAmex–2009–11) (Notice—NYSE MKT Order Imbalances), 72020 (Sept. 9, 2014), 79 FR 55040 (Sept. 15, 2014) (SR–NYSEMKT–2014–72) (''2014 Non-Display Filing''), and 73995 (Jan. 6, 2015), 80 FR 1560 (Jan. 12, 2015) (SR–NYSEMKT–2014–114).

[5] The text of footnote 5 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSEMKT–2016–03 (Proposed Rule Change to Amend the Fees for NYSE MKT OpenBook).

[6] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the Order Imbalance Data Feed product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[7] ''Redistributor'' means a vendor or any other person that provides an NYSE MKT data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[8] *See* 2014 Non-Display Filing, *supra* note 4.

[9] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE MKT Order Imbalances for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE MKT Order Imbalances in the Redistributor's own messaging formats (rather than using raw NYSE MKT message formats) by reformatting and/or altering NYSE MKT Order Imbalances prior to retransmission without affecting the integrity of NYSE MKT Order Imbalances and without rendering NYSE MKT Order Imbalances inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[10] *See* Fee Schedule.

[11] In order to harmonize its approach to fees for its market data products, the Exchange is

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE MKT Order Imbalances.

Multiple Data Feed Fee for NYSE MKT Order Imbalances

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee [sic] taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[14] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[15]

Managed Non-Display Fees for NYSE MKT Order Imbalances

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. The Exchange determined in 2013 that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments.[16] Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in a 2014 filing.[17] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

The Exchange notes that NYSE MKT Order Imbalances is entirely optional. The Exchange is not required to make NYSE MKT Order Imbalances available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE MKT Order Imbalances. Firms that do purchase NYSE MKT Order Imbalances do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE MKT Order Imbalances or any other similar products are attractively priced or not.[18]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [19]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could

simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE MKT OpenBook, NYSE MKT BBO, and NYSE MKT Trades. *See* SR–NYSEMKT–2016–03 and SR–NYSEMKT–2016–04. The fees applicable to NYSE MKT Integrated market data product effective as of January 4, 2016 do not include Managed Non-Display Services fees.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4), (5).

[14] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[15] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA Plan [sic] at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[16] *See* Securities Exchange Act Release No. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR–NYSEMKT–2013–32).

[17] *See* 2014 Non-Display Filing, *supra* note 4.

[18] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[19] *NetCoalition,* 615 F.3d at 535.

not be done practically or offer any significant benefits.[20]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [21]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [22] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[23]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE MKT Order Imbalances unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE MKT Order Imbalances can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

[20] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[21] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[22] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[23] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE MKT and NYSE MKT's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[24] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[25]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[26] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the

[24] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[25] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[26] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

actual number of orders and transaction reports that exist in the marketplace. Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed change [sic] changes to the fees for the NYSE MKT Order Imbalances, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [27] of the Act and subparagraph (f)(2) of Rule 19b–4 [28] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [29] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–05. 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–NYSEMKT–2016–05 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01061 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76906; File No. SR–NYSEMKT–2016–04]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE MKT BBO and NYSE MKT Trades

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE MKT BBO and NYSE MKT Trades to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3)

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

modify the application of the access fee; and (4) reduce the Enterprise Fee. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE MKT BBO and NYSE MKT Trades market data products,[4] as set forth on the NYSE MKT Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 1, 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display;
- Modify the application of the access fee; and
- Reduce the Enterprise Fee.

Multiple Data Feed Fee [5]

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE MKT BBO or NYSE MKT Trades in more than two locations would be charged $200 per additional location per product per month. No new reporting would be required.[6]

Managed Non-Display Fees

Non-Display Use of NYSE MKT market data means accessing, processing, or consuming NYSE MKT market data delivered via direct and/or Redistributor [7] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[8] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[9] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE MKT BBO and NYSE MKT Trades and does not allow for further internal distribution or external redistribution of NYSE MKT BBO and NYSE MKT Trades by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE MKT on a monthly basis the data recipients that are receiving NYSE MKT market data through the Redistributor's managed non-display service and the real-time NYSE MKT market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE MKT BBO from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $150 per month, and data recipients that receive NYSE MKT Trades from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $600 per month. Data recipients that receive NYSE MKT BBO and NYSE MKT Trades from an approved Redistributor of Managed Non-Display Services are also charged an Access Fee of $375 per month.[10]

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE MKT BBO and NYSE MKT Trades on a managed non-display basis would be subject to the same access fee of $750 per month, and the same non-display services fees,[11] as other non-display data recipients.[12]

Modification of the Application of the Access Fee

The Exchange proposes to modify the application of the access fees for NYSE MKT BBO and NYSE MKT Trades.

Each NYSE MKT BBO data feed recipient currently pays a monthly $750 access fee for NYSE MKT BBO, and each NYSE MKT Trades data feed recipient currently pays a monthly $750 access fee for NYSE MKT Trades. A single access fee applies for data recipients receiving both NYSE MKT BBO and NYSE MKT Trades.[13] The Exchange proposes to amend the access fees so that recipients of NYSE MKT BBO and NYSE MKT Trades would be required to pay a separate access fees for

[4] *See* Securities Exchange Act Release Nos. 61936 (Apr. 16, 2010), 74 FR 21088 (Apr. 22, 2010) (SR–NYSEAmex–2010–35) (notice—NYSE MKT BBO and NYSE MKT Trades) and 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35) (approval order—NYSE MKT BBO and NYSE MKT Trades).

[5] The text of footnote 5 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSEMKT–2016–03 (Proposed Rule Change to Amend the Fees for NYSE MKT OpenBook).

[6] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE MKT BBO product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[7] ''Redistributor'' means a vendor or any other person that provides an NYSE MKT data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[8] *See e.g.* Securities Exchange Act Release No. 72020 (Sept. 9, 2014), 79 FR 55040 (Sept. 15, 2014)(SR–NYSEMKT–2014–72) (''2014 Non-Display Filing''); *see also* Securities Exchange Act Release No. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR–NYSEMKT–2013–32) (''2013 Non-Display Filing'').

[9] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE MKT BBO and NYSE MKT Trades for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE MKT BBO and NYSE MKT Trades in the Redistributor's own messaging formats (rather than using raw NYSE message formats) by reformatting and/or altering NYSE MKT BBO and NYSE MKT Trades prior to retransmission without affecting the integrity of NYSE MKT BBO and NYSE MKT Trades and without rendering NYSE MKT BBO and NYSE MKT Trades inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[10] A single Non-Display Access Fee applies for clients receiving both NYSE MKT BBO and NYSE MKT Trades. The Exchange is also proposing in this filing to modify this application of the access fees. *See* ''Modification of the application of the access fee,'' below.

[11] *See* Fee Schedule.

[12] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE MKT OpenBook and NYSE MKT Order Imbalances. *See* SR–NYSEMKT–2016–03 and SR–NYSEMKT–2016–05. The fees applicable to the NYSE MKT Integrated market data product effective as of January 4, 2016 do not include Managed Non-Display Services fees.

[13] *See* note 4, *supra.*

NYSE MKT BBO ($750 per month) and NYSE MKT Trades ($750 per month). This change would have no impact on customers who receive only NYSE MKT BBO or only NYSE MKT Trades.

Reduction to Enterprise Fee

The Exchange currently charges an enterprise fee of $20,000 per month for an unlimited number of professional and non-professional users for each of NYSE MKT BBO and NYSE MKT Trades. A single Enterprise Fee applies for clients receiving both NYSE MKT BBO and NYSE MKT Trades.[14] The Exchange proposes to lower the enterprise fee to $15,000 per month.

As an example, under the current fee structure for per user fees, if a firm had 40,000 professional users who each received NYSE MKT Trades at $1 per month and NYSE MKT BBO at $1 per month, then the firm would pay $80,000 per month in professional user fees. Under the current pricing structure, the charge would be capped at $20,000 and effective January it would be capped at $15,000.

Under the proposed enterprise fee, the firm would pay a flat fee of $15,000 for an unlimited number of professional and non-professional users for both products. As is the case currently, a data recipient that pays the enterprise fee would not have to report the number of such users on a monthly basis.[15] However, every six months, a data recipient must provide the Exchange with a count of the total number of natural person users of each product, including both professional and non-professional users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE MKT BBO and NYSE MKT Trades.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[18] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[19]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[20] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Modifications to Access Fee

The Exchange believes that it is reasonable to make the changes proposed to the application of access fees for NYSE MKT BBO and NYSE MKT Trades. The Exchange believes the proposed changes will make the application of the access fees to each of products so that an access fee entitles a customer to receive, for the applicable product, a data feed or feeds. Specifically, data recipients that take the NYSE MKT BBO and/or NYSE MKT Trades products receive value from each product they choose to take. A data recipient that chooses to take multiple products (no recipient is required to take any of these products, or any specific combination of them) uses each product in a different way and therefore obtains different value from each. The Exchange believes that each product has a separate and distinct value that is appropriate to reflect in a separate access fee. Finally, the requirement to pay separate access fees for each market data product is equitable and not unfairly discriminatory because it would apply to all data recipients and appropriately reflects the value of each product to those who choose to use them.

Reduction to Enterprise Fee

The proposed enterprise fees for NYSE MKT BBO and NYSE MKT Trades are reasonable because they could result in a fee reduction for data recipients with a large number of professional and nonprofessional users, as described in the example above. If a data recipient has a smaller number of professional users of NYSE MKT BBO and/or NYSE MKT Trades, then it may continue to use the per user fee

[14] *See* Securities Exchange Act Release No. 70212 (Aug. 15, 2013), 78 FR 51775 (Aug. 21, 2013) (SR–NYSEMKT–2013–69).

[15] Professional users currently are subject to a per display device count. *See* Securities Act Release No. 73986 (Jan. 5. 2015), 80 FR 1444 (Jan. 9, 2015) (SR–NYSEMKT–2014–113).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4), (5).

[18] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[19] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule [sic] PRA [sic] Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[20] *See* note 8, *supra.*

structure. By reducing prices for data recipient [sic] with a large number of professional and non-professional users, the Exchange believes that more data recipients may choose to offer NYSE MKT BBO and NYSE MKT Trades, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering an enterprise fee expands the range of options for offering NYSE MKT BBO and NYSE MKT Trades and allows data recipients greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing.

The Exchange notes that NYSE MKT BBO and NYSE MKT Trades are entirely optional. The Exchange is not required to make NYSE MKT BBO and NYSE MKT Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE MKT BBO and NYSE MKT Trades. Firms that do purchase NYSE MKT BBO and NYSE MKT Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE MKT BBO and NYSE MKT Trades or any other similar products are attractively priced or not.[21]

Firms that do not wish to purchase NYSE MKT BBO and NYSE MKT Trades at the new prices have a variety of alternative market data products from which to choose,[22] or if NYSE MKT BBO and NYSE MKT Trades do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE MKT BBO and NYSE MKT Trades or use them at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[23]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [24]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[25]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition.

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [26]

[21] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[22] *See* NASDAQ Rule 7047 (Nasdaq Basic) and BATS Rule 11.22 (BATS TOP and Last Sale).

[23] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

[24] *NetCoalition,* 615 F.3d at 535.

[25] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[26] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group

Continued

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [27] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[28]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE MKT BBO or NYSE MKT Trades unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE MKT BBO and NYSE MKT Trades can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE MKT and NYSE MKT's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[29] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[30]

Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[27] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[28] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

[29] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[30] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[31] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE MKT BBO and NYSE MKT Trades, competitors offer close substitute products.[32] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed changes to the fees for the NYSE MKT BBO and NYSE MKT Trades, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[33] of the Act and subparagraph (f)(2) of Rule 19b–4[34] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[31] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[32] *See supra* note 22.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [35] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSEMKT–2016–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–04 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01056 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76900; File No. SR–NYSE–2016–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE OpenBook

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE OpenBook to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3) modify the application of the access fee; and (4) modify the application of the non-professional user fee cap. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE OpenBook,[4] as set forth on the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display; and
- Modify the application of the access fee.

The Exchange also proposes to modify the application of the non-professional fee cap, effective April 1, 2016.

Multiple Data Feed Fee

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE OpenBook in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[5]

[4] *See* Securities Exchange Act Release Nos. 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR–NYSE–2008–42) (''2008 NYSE OpenBook Notice''), 59544 (Mar. 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (''2009 NYSE OpenBook Order'') and 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR–NYSE–2010–22). *See* also Securities Exchange Act Release Nos. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25) (''2013 Non-Display Filing''), 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014) (SR–NYSE–2014–43) (''2014 Non-Display Filing'') and 74027 (Jan. 9, 2015), 80 FR 2148 (Jan. 15, 2015) (SR–NYSE–2014–76) (''2015 NYSE OpenBook Notice'').

[5] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE OpenBook product, that data recipient will pay the Multiple

Managed Non-Display Fees

Non-Display Use of NYSE market data means accessing, processing, or consuming NYSE market data delivered via direct and/or Redistributor[6] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[7] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[8] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE OpenBook and does not allow for further internal distribution or external redistribution of NYSE OpenBook by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE on a monthly basis the data recipients that are receiving NYSE market data through the Redistributor's managed non-display service and the real-time NYSE market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE OpenBook from an approved Redistributor of Managed Non-Display Services are charged an access fee of $2,500 per month and a Managed Non-Display Services Fee of $2,400 per month, for a total fee of $4,900 per month.

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE OpenBook on a managed non-display basis would be subject to the same access fee of $5,000 per month, and the same non-display services fees,[9] as other data recipients.[10]

Modification of the Application of the Access Fee

The Exchange proposes to make two changes to the application of the access fee for NYSE OpenBook.

First, each NYSE OpenBook data feed recipient currently pays a monthly $5,000 access fee for NYSE OpenBook. Recipients of NYSE OpenBook that also receive NYSE BBO and NYSE Order Imbalances do not currently pay an access fee for NYSE BBO and NYSE Order Imbalances.[11] The Exchange proposes to amend the NYSE OpenBook access fee so that recipients of NYSE OpenBook who also receive NYSE BBO or NYSE Order Imbalances would be required to pay a separate access fees for NYSE BBO ($1,500 per month) and/or NYSE Order Imbalances ($500 per month) in addition to the access fee for NYSE OpenBook. This change would have no impact on customers who do not receive NYSE OpenBook but who do receive NYSE BBO or NYSE Order Imbalances.

Second, NYSE OpenBook is currently available in two forms: NYSE OpenBook Aggregated (formerly known as NYSE OpenBook Realtime) and NYSE OpenBook Ultra. NYSE OpenBook Aggregated distributes the Exchange's limit order data in real-time at intervals of one second. NYSE OpenBook Ultra makes available limit order data in real-time upon receipt of each displayed limit order.[12]

When the Exchange introduced NYSE OpenBook Ultra, the Exchange represented that it would continue to support and make available NYSE OpenBook Aggregated as an optional alternative without additional or different fees or terms.[13] At that time, the Exchange stated that it anticipated reassessing its pricing for NYSE OpenBook, and that it might restructure or modify the charges applicable to the NYSE OpenBook Aggregated and NYSE OpenBook Ultra packages. Currently, recipients of NYSE OpenBook Aggregated and NYSE OpenBook Ultra pay an access of $5,000 per month whether they receive one or both products. The Exchange proposes to charge separate access fees for each of NYSE OpenBook Ultra and NYSE OpenBook Aggregated. As proposed, the Exchange would charge an access fee of $5,000 per month for NYSE OpenBook Aggregated and an access fee of $5,000 per month for NYSE OpenBook Ultra.[14]

Non-Professional User Fee Cap

For display use of the NYSE OpenBook data feed, the Fee Schedule sets forth a Professional User Fee of $60 per user per month and a Non-Professional User Fee of $15 per user per month. These user fees generally apply to each display device that has access to NYSE OpenBook.

For customers that are broker-dealers, these fees are subject to a $25,000 per month cap on non-professional user fees (the ''Non-Professional User Fee Cap'').[15] In 2009, the Exchange adopted guidelines under which the broker-dealer would be eligible for the Non-Professional User Fee Cap notwithstanding the inclusion, temporarily or unintentionally, of a limited number of account-holding professional users (the ''Professional User Exception''), subject to a complex set of conditions relating to the percentage of professional users, the relationship of those professional users to the broker-dealer, and the method of

Data Feed fee with respect to three of the five locations.

[6] ''Redistributor'' means a vendor or any other person that provides an NYSE data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[7] *See e.g.* 2015 NYSE OpenBook Notice, *supra* note 4.

[8] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE OpenBook for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE OpenBook in the Redistributor's own messaging formats (rather than using raw NYSE message formats) by reformatting and/or altering NYSE OpenBook prior to retransmission without affecting the integrity of NYSE OpenBook and without rendering NYSE OpenBook inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[9] *See* Fee Schedule.

[10] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE BBO, NYSE Trades, and NYSE Order Imbalances. *See* SR–NYSE–2016–03 and SR–NYSE–2016–04. The fees applicable to the NYSE Integrated market data product effective as of January 4, 2016 do not include Managed Non-Display Services fees.

[11] *See* 2009 NYSE OpenBook Order, *supra* note 4, at 11163.

[12] *See* 2008 NYSE OpenBook Notice, *supra* note 4. NYSE OpenBook Ultra also includes information regarding the changes in limit order interest, provides more precise timestamp resolution (microseconds) and provides a format that is optimized for speed and recoverability.

[13] *See* 2008 NYSE OpenBook Notice, *supra* note 4, at 31906.

[14] All other fees applicable to NYSE OpenBook will continue to apply as they do currently, whether a data recipient receives one or both of NYSE OpenBook Aggregated and NYSE OpenBook Ultra.

[15] *See* 2009 NYSE OpenBook Order, *supra* note 4. The 2009 NYSE OpenBook Order described the $25,000 fee cap as being subject to increase or decrease by the percentage increase or decrease in the annual cost-of-living adjustment (''COLA'') that the U.S. Social Security Administration applies to Supplemental Security Income for the calendar year preceding that subsequent calendar year. Although COLAs have represented increases in each year since this fee was adopted in 2009 *(https://www.ssa.gov/oact/cola/colaseries.html,* last visited on November 30, 2015), the Exchange has waived its right to implement the increases it would have been entitled to implement and has not increased the fee cap commensurate with the intervening COLAs and hereby proposes to set the fee cap at a constant $25,000 per month that would not be subject to COLA adjustments.

display and use of the data.[16] The Exchange proposed the Professional User Exception to the Non-Professional User Fee Cap to permit broker-dealers that primarily serve non-institutional brokerage account holders to offer an online client experience without undue administrative burdens while at the same time guarding against potential abuses by monitoring the use of the exception closely and reserving the right to deny application of the exception if a broker-dealer is determined to be misusing it, such as by opening up retail brokerage accounts to disseminate data to institutional clients.

The Exchange proposes to eliminate the Professional User Exception for NYSE OpenBook effective April 1, 2016. The Exchange notes the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of the exception and the burdens on customers and on the Exchange that have to track compliance with the exception. In addition, the Exchange notes that the Professional User Exception has been used by a small number of customers since it was adopted.

Accordingly, as proposed, the Non-Professional User Fee Cap would no longer include any professional users that receive NYSE OpenBook data feed and the Professional User fee of $60 per user per month would apply with respect to all Professional Users.

Non-Substantive Change to the Fee Schedule

Non-Display Use fees for NYSE OpenBook include the Non-Display Use of NYSE BBO and NYSE Order Imbalances for customers paying NYSE OpenBook non-display fees that also pay access fees for NYSE BBO and NYSE Order Imbalances.[17] The Exchange proposes to describe this application of the Non-Display Use fees in note 1 to the Fee Schedule.[18]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE OpenBook.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee [sic] taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[21] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[22]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[23] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

[16] *See* 2009 NYSE OpenBook Order, *supra* note 3 at 11164. The Professional User Exception provided that a broker-dealer could include professional Subscribers in the calculation of the monthly maximum amount for the Non-Professional User Fee Cap if: (i) Nonprofessional Subscribers comprise no less than 95 percent of the pool of Subscribers that are included in the calculation; (ii) each professional Subscriber included in the calculation maintains an active brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker dealer); and (iii) each professional Subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates; (iv) all Subscribers receive access to the identical service, regardless of whether the Subscribers are professional Subscribers or nonprofessional Subscribers; (v) upon discovery of the inclusion in the cap of an individual that does not qualify as a nonprofessional Subscriber, the broker-dealer takes reasonable action to reclassify and report that individual as a professional Subscriber during the immediately following reporting period. Notwithstanding (iii) and (v), the broker-dealer could include a professional Subscriber that is affiliated with the broker-dealer or its affiliates (subject to (i) and (ii)) if he or she accesses market data on-line through his or her personal account solely for the non-business purpose of managing his or her own portfolio. Notwithstanding (v), professional Subscribers may constitute up to five percent of the pool of Subscribers that the broker-dealer includes in the calculation of the monthly maximum amount if those professional Subscribers can only view data derived from through the Subscriber's online brokerage account and only in an inquiry/response per-quote display (*i.e.,* not in a streaming display).

[17] *See* 2013 Non-Display Filing, *supra* note 4, at 20976.

[18] The Exchange added a similar note, Note 1(b), to the Fee Schedule in connection with the addition of fees for the NYSE Integrated Feed. *See* Securities Exchange Act Release No. 76485 (Nov. 20, 2015), 80 FR 74158 (Nov. 27, 2015) (SR–NYSE–2015–57).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4), (5).

[21] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[22] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[23] *See* note 4, *supra.*

Modifications To Access Fees

The Exchange believes that it is reasonable to make the changes proposed to the application of access fees for NYSE OpenBook. In both cases, the Exchange believes the proposed changes will make the application of the access fees to each of products so that an access fee entitles a customer to receive, for the applicable product, a data feed or feeds. Specifically, data recipients that take the NYSE OpenBook, NYSE BBO and/or NYSE Order Imbalances products receive value from each separate product they choose to take. A data recipient that chooses to take multiple products that contain overlapping data (no recipient is required to take any of these products, or any specific combination of them) uses each product in a different way and therefore obtains different value from each. Similarly, the Exchange believes that it is reasonable to apply separate access fees for each of NYSE OpenBook Ultra and NYSE OpenBook Aggregated. First, applying an access fee to each product would bring consistency to the Exchange's application of access. Second, because NYSE OpenBook Ultra and NYSE OpenBook Aggregated provide the Exchange's depth of book data in different forms, data recipients that choose to receive and utilize both forms get separate value from each. The Exchange believes that each product has a separate and distinct value that is appropriate to reflect in a separate access fee. Finally, the requirement to pay separate access fees for each market data product is equitable and not unfairly discriminatory because it would apply to all data recipients and appropriately reflects the value of each product to those who choose to use them.

Non-Professional User Fee Cap

The Exchange believes that it is reasonable to modify the application of the non-professional user fee cap by eliminating the Professional User Exception. The Exchange notes that the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of, and tracking compliance with, the exception. Eliminating the Professional User Exception would make the application of the Non-Professional User Fee Cap simpler by removing an administrative exception that has had very limited use and application.

Non-Substantive Changes to the Fee Schedule

The Exchange believes that adding a note to the Fee Schedule to reflect that Non-Display Use fees for NYSE OpenBook include the Non-Display Use of NYSE BBO and NYSE Order Imbalances for customers paying NYSE OpenBook non-display fees that are also paying access fees for NYSE BBO and NYSE Order Imbalances will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the application of non-display use fees that have been previously filed with the Commission and are applicable to the existing Fee Schedule. [24]

The Exchange notes that NYSE OpenBook is entirely optional. The Exchange is not required to make NYSE OpenBook available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE OpenBook. Firms that do purchase NYSE OpenBook do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE OpenBook or any other similar products are attractively priced or not.[25]

Firms that do not wish to purchase NYSE OpenBook at the new prices have a variety of alternative market data products from which to choose,[26] or if NYSE OpenBook does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE OpenBook or use it at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[27]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [28]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[29]

[24] *See* 2013 Non-Display Filing, *supra* note 4, at 20976.

[25] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[26] *See* NASDAQ Rule 7023 (Nasdaq Totalview) and BATS Rule 11.22(a) and (c) (BATS TCP Pitch and Multicast Pitch).

[27] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

[28] *NetCoalition,* 615 F.3d at 535.

[29] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste.

Continued

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [30]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [31] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[32]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE OpenBook unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE OpenBook can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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.

Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[30] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (DC Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[31] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[32] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE and NYSE's affiliates NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[33] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[34]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[35] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE MKT, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE OpenBook, competitors offer close substitute products.[36] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users

[33] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[34] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[35] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[36] *See* note 26, *supra.*

may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed changes to the fees for the NYSE OpenBook, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [37] of the Act and subparagraph (f)(2) of Rule 19b–4 [38] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [39] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the 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–NYSE–2016–02 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01052 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(2).

[39] 15 U.S.C. 78s(b)(2)(B).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76909; File No. SR–CBOE–2015–106]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Permit P.M.-Settled Options on Broad-Based Indexes To Expire on Any Wednesday of the Month by Expanding the End of Week/End of Month Pilot Program

January 14, 2016.

I. Introduction

On November 17, 2015, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the End of Week/End of Month Pilot Program to permit P.M.-settled options on broad-based indexes to expire on any Wednesday of the month and extend the duration of the pilot program. The proposed rule change was published for comment in the **Federal Register** on December 3, 2015.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE proposes to expand and extend the duration of its existing End of Week/End of Month Pilot Program (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (''Notice'').

''Pilot'').[4] Under the terms of the current Pilot, the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month (''EOW''), and (b) the last trading day of the month (''EOM'').[5] Under the proposal, the Exchange will expand the Pilot to permit P.M.-settled options on broad-based indexes to expire on any Wednesday of the month (''WED''), other than Wednesdays that are EOM, and extend the duration of the Pilot to May 3, 2017.[6]

A. Wednesday Expirations

The Exchange's proposed rule change will allow it to open for trading WEDs on any broad-based index eligible for standard options trading to expire on any Wednesday of the month, other than a Wednesday that is EOM.[7] WEDs will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled,[8] and will be subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading procedures.[9] In addition, WEDs on the same broad-based index will be aggregated for position limits, if any, and any applicable reporting and other requirements.[10] Contract terms for WEDs will be similar to EOWs, as described below.[11]

The maximum number of expirations that may be listed for WEDs is the same as the maximum number of expirations permitted in CBOE Rule 24.9(a)(2) for standard options on the same broad-based index, and CBOE proposes that other expirations in the same class will not be counted as part of the maximum number of WED expirations for a particular broad-based index class.[12] Other than expirations that coincide with an EOM expiration, CBOE's proposed rule will require that WED expirations expire on consecutive Wednesdays.[13] Further, a new group of WEDs that are first listed in a given class may begin with an initial expiration up to four weeks from the date that CBOE first lists the group of WEDs.[14]

With respect to listing, if the last trading day of a month is a Wednesday, the Exchange will list an EOM and not a WED. This hierarchy will only apply if the Exchange lists an EOM in a particular class; if the Exchange does not list an EOM in that class on a last trading day of a month that is a Wednesday, it may list a WED.[15]

B. Annual Pilot Program Report

The Exchange currently submits a Pilot report to the Commission at least two months prior to the expiration date of the Pilot (the ''Annual Report''). The Exchange represents that it will expand the Annual Report to provide the same data and analysis related to WED expirations as is currently provided for EOW and EOM expirations.[16] Because the Pilot is currently set to expire on May 3, 2016, and the Annual Report is provided at least two months prior the expiration date of the Pilot, the Exchange proposes to extend the Pilot to May 3, 2017 [17] to provide a greater volume of data concerning WED expirations in the Annual Report due in 2017.[18] The Exchange represents that it will provide an Annual Report in 2016 that covers EOWs, EOMs, and WEDs.[19]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission has had concerns about the adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading. Only in limited instances has the Commission previously approved P.M. settlement for cash-settled options. In addition to approving the original Pilot,[22] in 1993, the Commission approved CBOE's listing of P.M.-settled, cash-settled options on certain broad-based indexes expiring on the first business day of the month following the end of each calendar quarter.[23] In 2010, the Commission approved CBOE's listing of P.M.-settled FLEX options on a pilot basis.[24] The Commission also approved the listing of P.M.-settled SPX index options on a pilot basis.[25]

[4] *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075) (''Pilot Approval Order''). *See also* Securities Exchange Act Release No. 73422 (October 24, 2014), 79 FR 64640 (October 30, 2014) (SR–CBOE–2014–079) (notice of filing and immediate effectiveness extending the Pilot). The Pilot is currently set to expire on May 3, 2016. *See id.*

[5] EOWs and EOMs are permitted on any broad-based index that is eligible for regular options trading. EOWs and EOMs are cash-settled expirations with European-style exercise, and are subject to the same rules that govern the trading of standard index options. *See* CBOE Rule 24.9(e).

[6] The Exchange also proposes to retitle the Pilot, which will cover EOW, EOM, and WED expirations, as the ''Nonstandard Expirations Pilot Program.''

[7] *See* proposed CBOE Rule 24.9(e)(3).

[8] *See id.*

[9] *See* Notice, *supra* note 3, at 75696.

[10] *See* proposed CBOE Rule 24.4(b).

[11] *See* Notice, *supra* note 3, at 75696.

[12] *See* proposed CBOE Rule 24.9(e)(3).

[13] *See id.*

[14] *See id.* The Exchange also proposes conforming language for EOWs. It provides that other than expirations that are third Friday-of-the-month or that coincide with an EOM expiration, EOW expirations shall be for consecutive Friday expirations. It also provides that EOWs that are first listed in a given class may expire up to four weeks from the actual listing date. *See* proposed CBOE Rule 24.9(e)(1).

[15] *See* proposed CBOE Rule 24.9(e)(3). The Exchange proposes to add language to clarify a similar listing hierarchy for EOW expirations: if the last trading day of a month is a Friday, the Exchange will list an EOM and not an EOW, but this hierarchy will only apply if the Exchange actually lists an EOM in a particular class. If the Exchange does not list an EOM in that class on a last trading day of a month that is a Friday, it may list a EOW. *See* proposed CBOE Rule 24.9(e)(1).

[16] *See* Notice, *supra* note 3, at 75697.

[17] Any positions established under the Pilot would not be impacted by the expiration of the Pilot. For example, if the Exchange lists an EOW, EOM, or WED expiration that expires after the Pilot expires (and is not extended) then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction. *See* Notice, *supra* note 3, at 75696.

[18] *See* Notice, *supra* note 3, at 75697.

[19] *See id.*

[20] 15 U.S.C. 78f(b). 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).

[21] 15 U.S.C. 78f(b)(5).

[22] See Pilot Approval Order, *supra* note 4.

[23] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13). In 2006, CBOE implemented, on a pilot basis, listing of P.M.-settled index options expiring on the last business day of a calendar quarter. *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65).

[24] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087).

[25] The Commission initially approved P.M.-settled SPX index options (''SPXPM'') on a 14-month pilot basis (the ''SPXPM Pilot'') on C2 Options Exchange, Incorporated (''C2''). *See* Securities Exchange Act Release No. 65256

Continued

The Commission believes that it is appropriate to approve the WEDs proposal on a pilot basis and extend the existing Pilot in order to allow the Exchange to gain experience with the new WEDs and collect data concerning WEDs. The addition of WEDs would offer additional investment options to investors and may be useful for their investment or hedging objectives. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series that may burden some liquidity providers and further stress options quotation and transaction infrastructure. Further, CBOE's proposed extended Pilot period should allow for both the Exchange and the Commission to continue to monitor the potential for adverse market effects of P.M. settlement on the market, including the underlying cash equities markets at the expiration of these options.

The Commission notes that CBOE will provide the Commission with the Annual Report analyzing volume and open interest of EOWs, EOMs, and WEDs, which will also contain information and analysis of EOWs, EOMs, and WED trading patterns and index price volatility and share trading activity for series that exceed minimum parameters. This information should be useful to the Commission as it evaluates whether allowing P.M. settlement for EOWs, EOMs, and WEDs has resulted in increased market and price volatility in the underlying component stocks, particularly at expiration. The Pilot information should help the Commission and CBOE assess the impact on the markets and determine whether changes to these programs are necessary or appropriate. Furthermore, the Exchange's ongoing analysis of the Pilot should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–2015–106) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01059 Filed 1–20–16; 8:45 am]

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(September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008). The SPXPM Pilot was subsequently transferred from C2 to CBOE and reset to a new 12-month pilot period. *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120). In 2013, the Commission approved the addition of P.M.-settled mini-SPX index options to the SPXPM Pilot and the pilot's extension. *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76901; File No. SR–NYSEMKT–2016–03]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE MKT OpenBook

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE MKT OpenBook to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3) modify the application of the non-professional user fee cap; and (4) modify fees relating to non-display use. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE MKT OpenBook,[4] as set forth on the NYSE MKT Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display;
- Modify the application of the non-professional user fee cap; and
- Modify fees relating to non-display use.

The Exchange also proposes to modify the application of the non-professional fee cap, effective April 1, 2016.

Multiple Data Feed Fee

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE MKT OpenBook in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[5]

Managed Non-Display Fees

Non-Display Use of NYSE MKT market data means accessing, processing, or consuming NYSE MKT market data delivered via direct and/or

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60123 (June 17, 2009), 74 FR 30192 (June 24, 2009) (SR–NYSEAmex–2009–28) (establishing NYSE MKT OpenBook). *See also* Securities Exchange Act Release Nos. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR–NYSEMKT–2013–32) (adopting access fees, subscriber fees, and non-display fees) (''2013 Non-Display Filing''), 72020 (Sept. 9, 2014), 79 FR 55040 (Sept. 15, 2014) (SR–NYSEMKT–2014–72) (amending non-display fees) (''2014 Non-Display Filing'') and 73986 (Jan. 9, 2015), 80 FR 1444 (Jan. 9, 2015) (SR–NYSEMKT–2014–113) (''2015 NYSE MKT OpenBook Notice'').

[5] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE MKT OpenBook product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

Redistributor[6] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[7] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[8] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE MKT OpenBook and does not allow for further internal distribution or external redistribution of NYSE MKT OpenBook by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE MKT on a monthly basis the data recipients that are receiving NYSE MKT market data through the Redistributor's managed non-display service and the real-time NYSE MKT market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE MKT OpenBook from an approved Redistributor of Managed Non-Display Services are charged an access fee of $500 per month and a Managed Non-Display Services Fee of $750 per month, for a total fee of $1,250 per month.

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE MKT OpenBook on a managed non-display basis would be subject to the same access fee of $1,000 per month, and the same non-display services fees,[9] as other data recipients.[10]

Non-Professional User Fee Cap

For display use of the NYSE MKT OpenBook data feed, the Fee Schedule sets forth a Professional User Fee of $5 per user per month and a Non-Professional User Fee of $1 per user per month. These user fees generally apply to each display device that has access to NYSE MKT OpenBook.

For customers that are broker-dealers, these fees are subject to a $20,000 per month cap on non-professional user fees (the ''Non-Professional User Fee Cap'').[11] When adopting these fees, the Exchange adopted guidelines under which the broker-dealer would be eligible for the Non-Professional User Fee Cap notwithstanding the inclusion, temporarily or unintentionally, of a limited number of account-holding professional users (the ''Professional User Exception''), subject to a complex set of conditions relating to the percentage of professional users, the relationship of those professional users to the broker-dealer, and the method of display and use of the data.[12] The Exchange proposed the Professional User Exception to the Non-Professional User Fee Cap to permit broker-dealers that primarily serve non-institutional brokerage account holders to offer an online client experience without undue administrative burdens while at the same time guarding against potential abuses by monitoring the use of the exception closely and reserving the right to deny application of the exception if a broker-dealer is determined to be misusing it, such as by opening up retail brokerage accounts to disseminate data to institutional clients.

The Exchange proposes to eliminate the Professional User Exception for NYSE MKT OpenBook effective April 1, 2016. The Exchange notes the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of the exception and the burdens on customers and on the Exchange that have to track compliance with the exception. In addition, the Exchange notes that the Professional User Exception has been used by a small number of customers since it was adopted.

Accordingly, as proposed, the Non-Professional User Fee Cap would no longer include any professional users that receive NYSE MKT OpenBook data feed and the Professional User fee of $5 per user per month would apply with respect to all Professional Users.

Modification to Fees Relating to Non-Display Use

The Exchange proposes to modify the Non-Display Use fees for NYSE MKT OpenBook to provide that such fees include the Non-Display Use of NYSE MKT BBO and NYSE MKT Order Imbalances for customers paying NYSE MKT OpenBook non-display fees that also pay access fees for NYSE MKT BBO and NYSE MKT Order Imbalances. This proposed rule change is based on how the Exchange's affiliate, New York Stock Exchange LLC (''NYSE'') charges Non-Display Fees for NYSE OpenBook, NYSE BBO and NYSE Order Imbalances.[13] The Exchange proposes to describe this application of the Non-Display Use fees in note 1 to the Fee Schedule.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

[6] ''Redistributor'' means a vendor or any other person that provides an NYSE MKT data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[7] *See e.g.* 2015 NYSE MKT OpenBook Notice, *supra* note 4.

[8] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE MKT OpenBook for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE MKT OpenBook in the Redistributor's own messaging formats (rather than using raw NYSE message formats) by reformatting and/or altering NYSE MKT OpenBook prior to retransmission without affecting the integrity of NYSE MKT OpenBook and without rendering NYSE MKT OpenBook inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[9] *See* Fee Schedule.

[10] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE MKT BBO, NYSE MKT Trades, and NYSE MKT Order Imbalances. *See* SR–NYSEMKT–2016–04 and SR–NYSEMKT–2016–05. The fees applicable to NYSE MKT Integrated market data product effective as of January 4, 2016 do not include Managed Non-Display Services fees.

[11] *See* 2013 Non-Display Filing, *supra* note 4, at 21174. In the 2013 Non-Display Filing, the Exchange described the Non-Professional User Fee Cap as being subject to being increased (but not decreased) by the percentage increase (if any) in the annual composite share volume for the calendar year preceding that calendar year, subject to a maximum annual increase of five percent. *Id.* The Exchange has waived its right to implement the increases it would have been entitled to implement and has not increased the fee cap commensurate since 2013 and hereby proposes to set the fee cap at a constant $20,000 per month that would not be subject to any adjustments.

[12] *See id.*

[13] *See, e.g.,* Securities Exchange Act Release No. 69278 (April 2, 2013), 78 FR 20973, 20976 (SR–NYSE–2013–25).

[14] The Exchange added a similar note, Note 1(b), to the Fee Schedule in connection with the addition of fees for the NYSE MKT Integrated Feed. *See* Securities Exchange Act Release No. 76525 (Nov. 25, 2015), 80 FR 74148 (Dec. 1, 2015) (SR–NYSEMKT–2015–95).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4), (5).

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE MKT OpenBook.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee [sic] taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[17] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[18]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[19] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Non-Professional User Fee Cap

The Exchange believes that it is reasonable to modify the application of the non-professional user fee cap by eliminating the Professional User Exception. The Exchange notes that the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of the exception and the burdens on customers and on the Exchange entailed with tracking compliance with the exception. Eliminating the Professional User Exception would make the application of the Non-Professional User Fee Cap simpler and ease administrative burdens for customers and the Exchange by removing an administrative exception that has had limited use and application.

Non-Display Fees

The Exchange believes that the proposed modification to the Non-Display Use fees for NYSE MKT OpenBook to provide that such fees include the Non-Display Use of NYSE MKT BBO and NYSE MKT Order Imbalances for customers paying NYSE MKT OpenBook non-display fees that also pay access fees for NYSE MKT BBO and NYSE MKT Order Imbalances is reasonable and would not permit unfair discrimination among customers, issuers, and brokers because it would be applied equally to all data recipients that choose to subscribe to non-display use of NYSE MKT OpenBook, NYSE MKT BBO, and NYSE MKT Order Imbalances. The Exchange further believes that adding a note to the Fee Schedule to reflect that Non-Display Use fees for NYSE MKT OpenBook include the Non-Display Use of NYSE MKT BBO and NYSE MKT Order Imbalances for customers paying NYSE MKT OpenBook non-display fees that are also paying access fees for NYSE MKT BBO and NYSE MKT Order Imbalances will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the application of non-display use fees by providing transparency regarding the Exchange's fees associated with non-display use of these data feeds.

The Exchange notes that NYSE MKT OpenBook is entirely optional. The Exchange is not required to make NYSE MKT OpenBook available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE MKT OpenBook. Firms that do purchase NYSE MKT OpenBook do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE MKT OpenBook or any other similar products are attractively priced or not.[20]

Firms that do not wish to purchase NYSE MKT OpenBook at the new prices have a variety of alternative market data products from which to choose,[21] or if NYSE MKT OpenBook does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE MKT OpenBook or use it at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[22]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and

[17] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[18] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[19] *See* note 4, *supra.*

[20] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[21] *See* NASDAQ Rule 7023 (Nasdaq Totalview) and BATS Rule 11.22(a) and (c) (BATS TCP Pitch and Multicast Pitch).

[22] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [23]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[24]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [25]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [26] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[27]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for

[23] *NetCoalition,* 615 F.3d at 535.

[24] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[25] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[26] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[27] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE MKT OpenBook unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE MKT OpenBook can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE MKT and NYSE MKT's affiliates NYSE and NYSE Arca, Inc. (''NYSE Arca'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[28] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[29]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain

[28] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[29] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[30] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE MKT OpenBook, competitors offer close substitute products.[31] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed changes to the fees for the NYSE MKT OpenBook, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[32] of the Act and subparagraph (f)(2) of Rule 19b–4[33] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–03. 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–NYSEMKT–2016–03 and should be submitted on or before February 11, 2016.

[30] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[31] *See supra* note 21.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01053 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31956; 812–13761]

J.P. Morgan Exchange-Traded Fund Trust, et al.; Notice of Application

January 14, 2016.

AGENCY: Securities and Exchange Commission (the ''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) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: J.P. Morgan Exchange-Traded Fund Trust (the ''Trust''), J.P. Morgan Investment Management Inc. (''JPMIM''), and SEI Investments Distribution Co. (the ''Distributor'').

SUMMARY: *Summary of Application:* Applicants request an order that permits: (a) actively-managed series of certain open-end management investment companies to issue shares (''Shares'') 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 Creation Units 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; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

DATES: *Filing Dates:* The application was filed on March 10, 2010 and amended on November 8, 2010, October 3, 2011, May 24, 2013, January 24, 2014, September 24, 2014, May 15, 2015, October 10, 2015, and December 23, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 8, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the 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: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: J.P. Morgan Investment Management, Inc., 270 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered as an open-end management investment company under the Act. The Trust is organized as a series fund with multiple series. The Trust will offer a new series (the ''New Fund''), whose investment objective will be to seek total return by investing pursuant to a systematic rules-based investment process. The New Fund will invest its assets globally (including in emerging markets) to gain exposure to equity securities (across market capitalizations), debt securities (including below investment grade and unrated debt securities), commodities (through a Wholly-Owned Subsidiary (as defined below) of the New Fund) and currencies.

2. JPMIM, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). JPMIM will serve as the investment adviser to the New Fund. The Adviser (as defined below) may enter into sub-advisory agreements with one or more investment advisers, each of which will act as sub-adviser (''Sub-Adviser'') to a Fund (as defined below) or its respective Master Fund (as defined below). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Distributor, a Pennsylvania corporation, is registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Distributor will serve as the principal underwriter and distributor for the New Fund.[1]

3. Applicants request that the order apply to the New Fund, as well as to additional series of the Trust and any other open-end management investment companies or series thereof that may be created in the future (''Future Funds''). Any Future Fund will: (a) Be advised by JPMIM or an entity controlling, controlled by, or under common control with JPMIM (each such entity is referred to as an ''Adviser'') and (b) comply with the terms and conditions of the application. The New Fund and Future Funds together are the ''Funds.''[2] Each Fund relying on the order will operate as an actively-managed exchanged traded fund (''ETF''), and a Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund'').

4. The Funds, or their respective Master Funds (as defined below), may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets. Funds, or their respective Master Funds, that invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets are ''Global Funds.'' Funds, or their respective Master Funds, that invest solely in foreign equity securities or foreign fixed income securities are ''Foreign Funds.'' The Funds may also invest in a in a broad variety of other

[35] 17 CFR 200.30–3(a)(12).

[1] Applicants request that the order apply to any other Broker hired by a Fund (including an affiliate of the Adviser) to act as distributor and principal underwriter of the Fund that complies with the terms and conditions of the application. Applicants state that neither the Distributor nor any future Distributor is or will be affiliated with any Listing Market (as defined below).

[2] All entities that currently intend to rely on the 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.

instruments.[3] Applicants anticipate that the Funds, or their respective Master Funds, may invest a significant portion or their assets in depositary receipts representing foreign securities in which they seek to invest (Depositary Receipts'').[4] Applicants further state that, in order to implement each Fund's investment strategy, the Adviser and/or Sub-Advisers of a Fund may review and change the securities, or instruments, or other assets or positions held by the Fund, or its respective Master Fund (''Portfolio Instruments'') daily.

5. With respect to section 12(d)(1), applicants are requesting relief (''Fund of Funds Relief'') to permit management investment companies and unit investment trusts (''UITs'') registered under the Act 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 Funds (such registered management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limitations in section 12(d)(1)(A) and to permit the Funds, and any principal underwriter for the Funds, and any Broker, to sell Shares beyond the limitations in section 12(d)(l)(B) to Funds of Funds. Applicants request that any exemption under section 12(d)(1)(J) from sections 12(d)(1)(A) and (B) apply to: (1) Each Fund that is currently or subsequently part of the same ''group of investment companies'' as the New Fund within the meaning of section 12(d)(1)(G)(ii) of the Act, as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to Funds of Funds; and (2) each Fund of Funds that enters into a participation agreement (''FOF Participation Agreement'') with a Fund. ''Funds of Funds'' do not include the Funds.[5]

6. Applicants further request that the order permit a Fund to operate as a Feeder Fund (''Master-Feeder Relief''). Under the order, a Feeder Fund would be permitted to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) of the Act,[6] and the Master Fund, and any principal underwriter for the Master Fund, would be permitted to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act. Applicants request that the Master-Feeder Relief apply to any Feeder Fund, any Master Fund and any principal underwriter for the Master Funds selling shares of a Master Fund to a Feeder Fund. Applicants state that creating an exchange-traded feeder fund may be preferable to creating entirely new series for several reasons, including avoiding additional overhead costs and economies of scale for the Feeder Funds.[7] Applicants assert that, while certain costs may be higher in a master-feeder structure and there may possibly be lower tax efficiencies for the Feeder Funds, the Feeder Funds' Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure.

7. A Creation Unit will consist of at least 25,000 Shares and applicants expect that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'', and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

8. In order to keep costs low and permit each Fund to be as fully invested as possible, 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'').[8] On any given Business Day[9] 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, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[10] 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 to eliminate fractional shares or lots that are not tradeable round lots;[11] or (c) TBA Transactions,[12] short positions and other positions that cannot be

[3] If a Fund (or its respective Master Fund) invests in derivatives, then (a) the Fund's board of trustees or directors (for any entity, the ''Board'') will periodically review and approve the Fund's (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives and how the Fund's investment adviser assesses and manages risk with respect to the Fund's (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[4] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited with the Depositary. A Fund (or its respective Master Fund) will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, and Future Fund, any Adviser, or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund (or its respective Master Fund), except a depositary bank that is deemed to be affiliated solely because a Fund owns greater than 5% of the outstanding voting securities of such depositary bank.

[5] A Fund of Funds may rely on the order only to invest in Funds and not in any other registered investment company.

[6] A Feeder Fund managed in a master-feeder structure will not make direct investments in any security or other instrument other than the securities issued by its respective Master Fund.

[7] In a master-feeder structure, the Master Fund, rather than the Feeder Fund, would invest its portfolio in compliance with the order. There would be no ability by Fund shareholders to exchange shares of Feeder Funds for shares of another feeder series of the Master Fund.

[8] 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.

[9] Each Fund will sell and redeem Creation Units on any day that the Trust is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[10] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[11] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[12] 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.

transferred in kind [13] will be excluded from the Creation Basket.[14] If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket 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; (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 Process or DTC Process; or (ii) in the case of Global Funds and 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 Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[15]

10. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (a ''Listing Market''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Listing Market will disseminate, every 15 seconds throughout the regular trading hours, through the facilities of the Consolidated Tape Association, an estimated NAV, which is an amount per Share representing the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Listing Market.

11. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee'').[16] The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Adviser to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[17] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Fund. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

12. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a Listing Market and it is expected that the relevant Listing Market will designate one or more member firms to maintain a market for the Shares.[18] The price of Shares trading on a Listing Market will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

13. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[19] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

14. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

15. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the features or

[13] 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.

[14] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

[15] 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).

[16] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[17] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[18] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Listing Market (including NYSE Arca, Inc.), one or more member firms of that Listing Market will act as market maker (a ''Market Maker'') and maintain a market for Shares trading on that Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[19] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

method of obtaining, buying, or selling Creation Units, or Shares traded on a Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

16. The Trust's Web site (''Web site''), which will be publicly available prior to the offering of Shares, will include each Fund's prospectus (''Prospectus''), statement of additional information (''SAI''), and summary prospectus, if used. The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on a Listing Market, each Fund shall post on the Web site the identities and quantities of the Portfolio Instruments held by the Fund, or its respective Master Fund, that will form the basis for the calculation of the NAV at the end of that Business Day.[20] This disclosure will look through any Wholly-Owned Subsidiary and identify the specific Portfolio Instruments held by that entity.

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 22(e) of the Act and rule 22c–1 under the Act; and 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 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (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 provision 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 holder, upon its presentation to the issuer, is entitled to receive approximately a 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 Trust to issue Shares that are redeemable in Creation Units only.[21] Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to 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 the 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.[22]

5. Applicants state 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 (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers and (c) to ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants assert that the protections intended to be afforded by section 22(d) and rule 22c–1 are adequately addressed by the proposed methods for creating, redeeming and pricing Creation Units and pricing and trading Shares. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot 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 but do not occur as a result of unjust or discriminatory manipulation. Finally, applicants assert that competitive forces in the marketplace should ensure that the margin between NAV and the price for the Shares in the secondary market remains narrow.

Section 22(e) of the Act

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 of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio

[20] Under accounting procedures followed by the Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the funds will be ale to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[21] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

[22] The Master Funds will not require relief from section 22(d) or rule 22c–1 because shares of the Master Funds will not trade at negotiated prices in the secondary market.

Instruments in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fifteen (15) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fifteen (15) days following the tender of a Creation Unit.[23]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the protections intended to be afforded by section 22(e) are adequately addressed by the proposed method and securities delivery cycles for redeeming Creation Units. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of fifteen (15) calendar days[24] would not be inconsistent with the spirit and intent of section 22(e).[25] Applicants represent the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 15 calendar days, needed to deliver the proceeds for each affected Foreign Fund or Global Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign and Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act 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, or any other broker or dealer from selling its 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 relief to permit Funds of Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Funds of Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that certain of their proposed conditions address concerns regarding the potential for undue influence. To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser, Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser, sponsor of an Investing Trust (''Sponsor''), and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser, the 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 sub-adviser to an Investing Management Company (''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 sections 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'').

12. Applicants propose a condition to ensure that no Fund of Funds or Fund of Funds Affiliate[26] (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'').[27]

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent Board members''), will be required to 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 Investing Management Company may invest. Applicants also state that 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.[28]

14. In order to address concerns about complexity, applicants propose condition B.12, which will prohibit Funds 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, other

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) of the Act will affect any obligations that it may otherwise 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.

[24] Certain countries in which a Fund may invest have historically had settlement periods of up to 15 calendar days.

[25] Other feeder funds invested in any Master Fund are not seeking, and will not rely on, the section 22(e) relief requested herein.

[26] ''Fund of Funds Affiliate'' is any Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is the Adviser, Sub-Adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[27] 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 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 any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

[28] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

than a Wholly-Owned Subsidiary,[29] except to the extent permitted by exemptive relief from the Commission permitting a Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes.

15. Finally, each Fund of Funds must enter into an FOF Participation Agreement with the respective Funds, which will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in a Fund and not in any other investment company.

16. Applicants also are seeking relief from sections 12(d)(1)(A) and 12(d)(1)(B) to the extent necessary to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

17. 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 to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include 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 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 or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund 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'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 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.[30] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Funds of Funds of which the Funds are affiliated persons or second-tier affiliates.[31]

19. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from a Fund of Funds meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid 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.[32] The FOF Participation Agreement will require any Fund of Funds that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Fund's registration statement.

21. In addition, to the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the request for relief described above would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder

[29] A Fund, or its respective Master Fund, may invest in a wholly-owned subsidiary, organized under the laws of the Cayman Islands or under the laws of another non-U.S. jurisdiction (each, a ''Wholly-Owned Subsidiary''), in order to pursue its investment objectives and/or ensure that the Fund remains qualified as a registered investment company for U.S. federal income tax purposes. A Wholly-Owned Subsidiary may rely on section 3(c)(1) or 3(c)(7) of the Act to be excluded from the definition of investment company. For a Fund (or its respective Master Fund) that invests in a Wholly-Owned Subsidiary, the Adviser will serve as investment adviser to both the Fund (or its respective Master Fund) and the Wholly-Owned Subsidiary. A Feeder Fund will not invest in a Wholly-Owned Subsidiary.

[30] 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 a second-tier affiliate of a Fund of Funds because the Adviser, or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to the Fund of Funds.

[31] 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. The requested relief is intended to cover, however, transactions directly between Funds and Funds of Funds.

[32] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or a second-tier affiliate for the purchase by the Fund of Funds of Shares of the Fund 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.

Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Applicants represent that such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants state that, in effect, the Feeder Fund will serve as a conduit through which creation and redemption orders by Authorized Participants will be effected.

22. Applicants believe that: (a) With respect to the relief requested pursuant to section 17(b), the proposed transactions are fair and reasonable, and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund, and the proposed transactions are consistent with the general purposes of the Act; and (b) with respect to the relief requested pursuant to section 6(c), the requested exemption for the proposed transactions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange Traded Fund Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed ETFs, other than the Master-Feeder Relief.

2. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Listing Market.

3. Neither the Trust nor any Fund will be advertised or marketed as open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire Shares from the Fund and tender Shares for redemption to the Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for the Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price of the Shares, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. No Adviser or Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund, or its respective Master Fund, through a transaction in which the Fund could not engage directly.

6. On each Business Day, before the commencement of trading in Shares on the Fund's Listing Market, the Fund will disclose on the Web site the identities and quantities of the Portfolio Instruments held by the Fund (or its respective Master Fund) that will form the basis of the Fund's calculation of NAV at the end of the Business Day.

B. Section 12(d)(1) Relief

1. The members of the Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. The members of the Fund of Funds Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master 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 its voting securities of the Fund in the same proportion as the vote of all other holders of the Fund's voting securities. This condition does not apply to the Fund of Funds Sub-Advisory Group with respect to a Fund (or its respective Master 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 a Fund of Funds Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and any 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 its respective Master Fund) or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Fund (or its respective Master Fund), including a majority of the independent Board members, will determine that any consideration paid by the Fund (or its respective Master 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 (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master 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 (or its respective Master 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, 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 (or its respective Master Fund) pursuant to rule 12b–1 under the Act) received from a Fund (or its respective Master 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, or trustee, or Sponsor of an Investing Trust, or its affiliated person by the Fund (or its respective Master 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 (or its respective Master 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 (or its respective Master 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 (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund (or its respective Master Fund), including a majority of the independent Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master 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 (or its respective Master 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 (or its respective Master 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 (or its respective Master 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 will execute a FOF Participation Agreement with the Fund stating 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 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 independent 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 (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be recorded fully 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 (or its respective Master 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 that (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes, (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief, or (iii) the Fund invests in a Wholly-Owned Subsidiary that is a wholly-owned and controlled subsidiary of the Fund (or its respective Master Fund) as described in the application. Further, no Wholly-Owned Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01147 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76902; File No. SR–Phlx–2016–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Phlx Rules 792, 794, 797, and 798

January 14, 2016.

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 January 4, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Rules 792, 794, 797, and 798 from the Phlx rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to delete Rules 792, 794, 797, and 798, which generally concern member organization governance and ownership. As discussed below, the Exchange has determined that these rules are anachronistic and no longer serve a purpose. Consequently, the Exchange is proposing to eliminate the rules from the rulebook to avoid any confusion that may be caused by retaining them.

Rule 792

Rule 792 concerns control of the voting stock of a member organization. The rule requires the officers and directors of a member organization that is a corporation to have working control of such member organization. To comply with the rule, such officers and directors must own at least fifty-five per cent (55%) of the voting stock, and shall have contributed at least thirty per cent (30%) of the total capital represented by all classes of stock. The rule allows the Exchange to waive these requirements in specific cases, when it appears that a majority of the officers and a majority of the directors are actively engaged in the conduct of the business of such member organization. As such, the rule is designed to ensure the management of a member organization has more than a simple majority vote and a significant investment in the firm.

The Exchange believes that the rule is no longer relevant. The rule was adopted at a time when the Exchange was owned by its members, and member organizations (then known as ''member corporations'') were small and privately held. Many of the Exchange's current member organizations are large firms, which are publicly held and have a significant number of issued shares. As a consequence, it is unreasonable to require the management of the member organization to hold at least 55% of the voting stock and to contribute at least 30% of the member organization's total capital. Moreover, the Exchange notes that Phlx's affiliate exchanges NASDAQ OMX BX (''BX'') and The Nasdaq Stock Market (''Nasdaq'') do not have such restrictive ownership requirements. Accordingly, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 794

Rule 794 concerns notice of the assignment of the voting stock of a member organization. Specifically, the rule requires that no holder of ten per cent (10%) or more of the common or voting stock in a member organization that is a corporation may sell, assign, transfer, pledge, or hypothecate their holdings of common or voting stock in such member organization, except to such member organization or to officers or directors thereof, without written notice to the Exchange. The rule allows the Exchange to keep apprised of the significant holders of the member organization's voting stock. Such holders would exercise significant control of the member organizations.

Similar to Rule 792 discussed above, the Exchange believes that the rule is no longer relevant. The rule was adopted at a time when the Exchange was owned by its members, and member organizations were small and privately held. As noted, many of the Exchange's member organizations now are large firms, which are publicly held and have a significant number of issued shares. As a consequence, it is unreasonable to require notice of the sale, assignment, transfer, pledge, or hypothecation of 10% or more of the holdings of common or voting stock of the member organization. Moreover, to the extent a member organization is publicly held, the Exchange may readily access the largest holders of member organization's stock. To the extent the member organization is privately held, the Exchange may request a list of shareholders from the member organization. The ownership of a member organization is not a regulatory issue, but rather it was an issue to the Exchange when the requirement was adopted because it was member-owned. As such, influence of a member organization translated to influence of the Exchange. The Exchange is now a wholly-owned subsidiary of a publicly-traded company; therefore, member organization influence as owners of the Exchange is no longer an issue.[3] The Exchange notes that neither BX nor Nasdaq have a similar requirement. As a consequence, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 797

Rule 797 concerns loans to officers and directors of member organizations. Specifically, the rule prohibits a member organization from making any loan to any officer or director of the member organization. The Exchange believes that the rule is outdated and a remnant from when the Exchange was a member-owned organization. The Exchange notes that neither BX nor Nasdaq has a similar prohibition. Moreover, the Exchange notes that corporate law is generally a function of state law, which in most cases allows loans to officers and directors.[4] Thus, the Exchange does not believe the rule serves a regulatory purpose and it is accordingly proposing to delete the rule.

Rule 798

Rule 798 discusses what is required of a corporation to be issued a permit by the Exchange. A permit provides the right to a member to trade on the Exchange and the right to vote for a Member Representative Director. Permits are established by the Board of Directors. A corporation may be issued a permit by the Exchange if the corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its shares are owned by the Exchange. The rule further provides that such a corporate member whose shares are owned by the Exchange is not liable for dues. This

[3] The Exchange is wholly-owned by Nasdaq, Inc.

[4] *See, e.g.,* DEL. CODE ANN. tit. 8, § 143 (2015).

rule was intended to permit Exchange membership for the Exchange's subsidiary, the Stock Clearing Corporation of Philadelphia (''SCCP'').[5] The Exchange has since wound down SCCP and made it inactive. Thus, the Exchange is deleting the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed changes are consistent with just and equitable principles of trade because they delete outdated and potentially confusing rules. Each of the rules that the Exchange proposes to delete is anachronistic and does not have application to the Exchange's current function as a for-profit exchange whereby members no longer own the Exchange,[8] but rather are granted permits to trade thereon. Thus, the governance and ownership requirements of Rules 792, 794 and 797, which generally restrict member organizations from taking corporate actions that they would otherwise be able to do, are no longer relevant. Eliminating Rule 798 is consistent with just and equitable principles of trade because the Exchange no longer operates SCCP, which was the sole reason for the rule's adoption. Thus, removing it from the rules promotes clarity and eliminates potential confusion caused by allowing it to remain.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather it is designed to promote competition among exchanges by removing archaic and overly restrictive rules in comparison to the rules of other exchanges. Thus, the Exchange is able to compete without the needless restrictions currently imposed by the deleted rules. Last, the proposed changes promote clarity in the application of the Exchange's rules by eliminating unneeded rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–01 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01054 Filed 1–20–16; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 57134 (January 11, 2008), 73 FR 3306 (January 17, 2008) (SR–Phlx–2005–68) at note 6 (establishing the purpose of the requirement).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 3 above.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76907; File No. SR–NYSEMKT–2016–07]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 132.30(9)—Equities To Conform the Exchange's Rules to Industry-Wide Standards for Recording the Capacity in Which a Member Organization Executes a Transaction

January 14, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 11, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 132.30(9)—Equities to conform the Exchange's rules to industry-wide standards for recording the capacity in which a member organization executes a transaction. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .30 of Rule 132—Equities (''Rule 132'') to conform the Exchange's rules to industry-wide standards for recording the capacity in which a member organization executes a transaction. To effect this change, the Exchange proposes to eliminate the current requirement to identify the account for which an order was executed and require instead that clearing members and member organizations submit account type indicators (''ATI'') reflecting the capacity in which the member organization executed a transaction (*e.g.,* agency, principal or riskless principal). The Exchange believes that the proposed rule change would align the Exchange's rules with industry-wide conventions focusing on the capacity in which a broker-dealer acts in effecting a transaction and, by eliminating the complex set of ATIs developed over the years, significantly simplify order entry on the Exchange.

Background

Rule 132 requires clearing member organizations submitting transactions to comparison to include the audit trail data elements set forth in Supplementary Material .30. Rule 132.30(9) requires that all orders submitted to the Exchange include specified trade data elements, including ''[w]hether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization.'' The Exchange's affiliate, New York Stock Exchange LLC (''NYSE''), which has the same rule,[4] has periodically published guidance regarding the ATIs that can be used to satisfy this requirement.[5] ATIs are included as part of the audit trail data reported for each transaction on the Exchange. The Exchange also uses ATIs to capture program trade information[6] for those portions of the program trades that are submitted to and executed on the Exchange. In connection with this proposed rule change, the Exchange proposes to retire the unique ATIs used to capture program trading information.[7]

Proposed Rule Change

The Exchange proposes to amend the current requirement in subsection (9) of Rule 132.30 that clearing member organizations identify whether the account for which an order was executed was that of a member or member organization or of a non-member or non-member organization. The current requirement can be satisfied by entering the appropriate ATI from a list of ATIs that have evolved over the past 30 years.[8]

In place of this cumbersome process, the Exchange proposes to require member organizations to identify the capacity in which the member organization executed the transaction as follows: agency, principal or riskless principal.[9] The ''principal'' category would include proprietary trades by a member on the trading Floor relating to the member's error account pursuant to Rule 134—Equities.[10]

[4] *See* NYSE Rule 132.30(9). The NYSE has filed to amend its rule relating to ATIs to conform to industry-wide standards for recording the capacity in which a member organization executes a transaction. *See* SR–NYSE–2016–07 (''NYSE ATI Filing'').

[5] *See, e.g.,* Information Memos 85–37 (Nov. 12, 1985); 88–29 (Oct. 19, 1988); 92–34 (Nov. 13, 1992); 96–36 (Dec. 5, 1996); 02–59 (Dec. 17, 2002); 09–31 (June 24, 2009); 12–25 (October 9, 2012); 14–04 (January 30, 2014). The current list contains 24 distinct ATIs.

[6] ''Program Trading'' means either (1) index arbitrage, or (2) any trading strategy involving the related purchase or sale of a basket or group of 15 or more stocks. *See* Rule 7410(m)—Equities.

[7] *See* NYSE ATI Filing, *supra* note 3. Prior to 2009, NYSE member organizations reported program trading activity to the NYSE via the Daily Program Trading Report (''DPTR''). Following decommissioning of the DPTR requirement in July 2009, the NYSE has used ATI data to report program trading statistics to the Securities and Exchange Commission (''Commission'') and the public. *See* Securities Exchange Act Release No. 60179 (June 26, 2009), 74 FR 31786, 31786–87 (July 2, 2009) (SR–NYSE–2009–61). Unlike the NYSE, the Exchange does not have a requirement to provide weekly statistics regarding program trading activity to either the Commission or the public. In addition, the Exchange did not adopt the DPTR requirement and uses ATIs to capture program trade information.

[8] *See* note 5, *supra.*

[9] In general, the term ''capacity'' refers to whether a broker-dealer acts as agent, *i.e.,* directly on behalf of a customer, or whether the broker-dealer acts as principal, *i.e.,* for its own account, in a transaction. A riskless principal transaction is one where a broker-dealer receives a customer order and then immediately executes an identical order in the marketplace, while taking on the role of principal, in order to fill the customer order pursuant to Rule 5320—Equities.

[10] Rule 134—Equities requires a member or member organization who acquires or assumes a security position resulting from an error transaction to clear such error transaction in the member's or member organization's error account, or in the error account established for a group of members. Rule 123.22—Equities further requires members to enter orders executed to offset transactions made in error into an electronic system and sends a copy of such order to an electronic system on the Floor within 60 seconds of execution. *See also* Rule 123(e)—Equities (defining system entry). This type of proprietary trade is currently identified by the ''Q'' account type indicator, which would be retained to identify these trading Floor-based executions.

By requiring member organizations to identify the capacity in which a broker-dealer enters an order, the Exchange would be harmonizing its order entry requirements with those of other national securities exchanges and the NYSE.[11] The proposed change would also simplify the order entry process at the Exchange and eliminate the requirement for member organizations to use order entry requirements unique to the Exchange, thereby reducing complexity in the marketplace. This proposed amendment would not alter a member organization's obligation to meet order audit trail system requirements, as set forth in the Rule 7400 Series—Equities.

The Exchange will publish an Information Memo advising member organizations of the proposed change that will provide guidance of which ATIs should be submitted in connection with agency, principal, or riskless principal capacity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would provide greater harmonization between order entry on the Exchange and other marketplaces, resulting in greater uniformity and more efficient order entry to enable member organizations to use the same order-market conventions across all equities markets. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but rather it is designed to provide greater harmonization between Exchange and other markets in the marking of orders, resulting in less burdensome and more efficient order entry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–07. 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–NYSEMKT–2016–07 and should be

[11] *See, e.g.,* BATS Exchange, Inc. (''BATS'') Rule 11.21; BATS Y-Exchange, Inc. (''BATS–Y'') Rule 11.21; EDGA Exchange, Inc. (''EDGA'') Rule 11.5; EDGX Exchange, Inc. Rule 11.5; and NASDAQ Stock Market LLC (''NASDAQ'') Rule 4611(a)(6).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 15 U.S.C. 78s(b)(2)(B).

submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01057 Filed 1–20–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76908; File No. SR–FINRA–2015–036]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend FINRA Rule 4210 (Margin Requirements) To Establish Margin Requirements for the TBA Market, as Modified by Partial Amendment No. 1

January 14, 2016.

I. Introduction

On October 6, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 4210 (Margin Requirements) to establish margin requirements for covered agency transactions, also referred to, for purposes of this proposed rule change, as the To Be Announced (''TBA'') market.

The proposed rule change was published for comment in the **Federal Register** on October 20, 2015.[3] On November 10, 2015, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 15, 2016. The Commission received 109 comment letters,[4] which include 50 Type A comment letters and four Type B comment letters in response to the proposed rule change. On January 13, 2016, FINRA responded to the comments and filed Partial Amendment No. 1 to the proposal.[5] The Commission is publishing this order to solicit comments on Partial Amendment No. 1 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B)[6] to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, not does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Partial Amendment No. 1, and on the issues presented by the proposal.

II. Description of the Proposed Rule Change[7]

In its filing, FINRA proposed amendments to FINRA Rule 4210 (Margin Requirements) to establish requirements for: (1) TBA transactions,[8]

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 76148 (Oct. 14, 2015), 80 FR 63603 (Oct. 20, 2015) (File No. SR–FINRA–2015–036) (''Notice'').

[4] *See* Letters from Margaret Allen, AGM Financial, dated November 10, 2015 (''AGM Letter''); Paul J. Barrese, Sandler O'Neill & Partners, L.P., dated November 10, 2015 (''Sandler O'Neill Letter''); Doug Bibby and Doug Culkin, National Multifamily Housing Council and National Apartment Association, dated November 10, 2015 (''NMHC/NAA Letter''); David W. Blass, Investment Company Institute, dated November 9, 2015 (''ICI Letter''); Robert Cahn, Prudential Mortgage Capital Company, LLC, dated November 10, 2015 (''Prudential Letter''); James M. Cain, Sutherland Asbill & Brennan LLP (on behalf of the Federal Home Loan Banks), dated November 10, 2015 (''Sutherland Letter''); Timothy W. Cameron, Esq. and Laura Martin, Securities Industry and Financial Markets Association, Asset Management Group, dated November 10, 2015 (''SIFMA AMG Letter''); Jonathan S. Camps, Love Funding, dated November 9, 2015 (''Love Funding Letter''); Richard A. Carlson, Davis-Penn Mortgage Co., dated November 9, 2015 (''Davis-Penn 1 Letter''); Michael S. Cordes, Columbia National Real Estate Finance, LLC, dated November 9, 2015 (''Columbia Letter''); Carl E. Corrado, Great Lakes Financial Group, LP, dated January 4, 2016 (''Great Lakes Letter''); Daniel R. Crain, Crain Mortgage Group, LLC, dated November 6, 2015 (''Crain Letter''); James F. Croft, Red Mortgage Capital, LLC, dated November 10, 2015 (''Red Mortgage Letter''); Dan Darilek, Davis-Penn Mortgage Co., dated November 9, 2015 (''Davis-Penn 2 Letter''); Jayson F. Donaldson, NorthMarq Capital Finance, L.L.C, dated November 10, 2015 (''NorthMarq Letter''); Robert B. Engel, CoBank, ACB (on behalf of the Farm Credit Banks), dated November 10, 2015 (''CoBank Letter''); Robert M. Fine, Brean Capital, LLC, dated November 10, 2015 (''Brean Capital 1 Letter''); Tari Flannery, M&T Realty Capital Corporation, dated November 9, 2015 (''M&T Realty Letter''); Bernard P. Gawley, The Ziegler Financing Corporation, dated November 10, 2015 (''Ziegler Letter''); John R. Gidman, Association of Institutional INVESTORS, dated November 10, 2015 (''AII Letter''); Keith J. Gloeckl, Churchill Mortgage Investment, LLC, dated November 6, 2015 (''Churchill Letter''); Eileen Grey, Mortgage Bankers Association & Others, dated October 29, 2015 (''MBA & Others 1 Letter''); Mortgage Bankers Association & Others (including American Seniors Housing Association), dated November 10, 2015 (''MBA & Others 2 Letter''); Tyler Griffin, Dwight Capital, dated November 10, 2015 (''Dwight Letter''); Pete Hodo, III, Highland Commercial Mortgage, dated November 5, 2015 (''Highland 1 Letter''); Robert H. Huntington, Credit Suisse Securities (USA) LLC, dated November 10, 2015 (''Credit Suisse Letter''); Matthew Kane, Centennial Mortgage, Inc., dated November 9, 2015 (''Centennial Letter''); Christopher B. Killian, Securities Industry and Financial Markets Association, dated November 10, 2015 (''SIFMA Letter''); Robert T. Kirkwood, Lancaster Pollard Holdings, LLC, dated November 10, 2015 (''Lancaster Letter''); Tony Love, Forest City Capital Corporation, dated November 5, 2015 (''Forest City 1 Letter''); Tony Love, Forest City Capital Corporation, dated November 10, 2015 (''Forest City 2 Letter''); Anthony Luzzi, Sims Mortgage Funding, Inc., dated November 9, 2015 (''Sims Mortgage Letter''); Diane N. Marshall, Prairie Mortgage Company, dated November 10, 2015 (''Prairie Mortgage Letter''); Matrix Applications, LLC, dated November 10, 2015 (''Matrix Letter''); Douglas I. McCree, CMB, First Housing, dated November 10, 2015 (''First Housing Letter''); Michael McRoberts, DUS Peer Group, dated November 2, 2015 (''DUS Letter''); Chris Melton, Coastal Securities, dated November 9, 2015 (''Coastal Letter''); John O. Moore Jr., Highland Commercial Mortgage, dated November 6, 2015 (''Highland 2 Letter''); Dennis G. Morton, AJM First Capital, LLC, dated November 10, 2015 (''AJM Letter''); Michael Nicholas, Bond Dealers of America, dated November 10, 2015 (''BDA Letter''); Lee Oller, Draper and Kramer, Incorporated, dated November 10, 2015 (''Draper Letter''); Roderick D. Owens, Committee on Healthcare Financing, dated November 6, 2015 (''CHF Letter''); Jose A. Perez, Perez, dated November 9, 2015 (''Perez Letter''); David F. Perry, Century Health Capital, Inc., dated November 9, 2015 (''Century Letter''); Deborah Rogan, Bellwether Enterprise Real Estate Capital, LLC, dated November 10, 2015 (''Bellwether Letter''); Bruce Sandweiss, Gershman Mortgage, dated November 18, 2015 (''Gershman 1 Letter''); Craig Singer and James Hussey, RICHMAC Funding LLC, dated November 9, 2015 (''Richmac Letter''); David H. Stevens, Mortgage Bankers Association, dated November 10, 2015 (''MBA Letter''); Stephen P. Theobald, Walker & Dunlop, LLC, dated November 10, 2015 (''W&D Letter''); Robert Tirschwell, Brean Capital, LLC, dated November 10, 2015 (''Brean Capital 2 Letter''); Mark C. Unangst, Gershman Mortgage, dated November 23, 2015 (''Gershman 2 Letter''); Charles M. Weber, Robert W. Baird & Co. Incorporated, dated November 10, 2015 (''Robert Baird Letter''); Steve Wendel, CBRE, Inc., dated November 10, 2015 (''CBRE Letter''); Carl B. Wilkerson, American Council of Life Insurers, dated November 10, 2015 (''ACLI Letter''); David H. Stevens, Mortgage Bankers Association, dated January 11, 2016 (''MBA Supplemental Letter''). The Type A and B form letters generally contain language opposing the inclusion of multifamily housing and project loan securities within the scope of the proposed rule change. The Commission staff also participated in numerous meetings and conference calls with some commenters and other market participants.

[5] *See* Partial Amendment No. 1, dated January 13, 2016 (''Partial Amendment No. 1''). FINRA's responses to comments received and proposed amendments are included in Partial Amendment No. 1. The text of Partial Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The proposed rule change, as described in this Item II, is excerpted, in part, from the Notice, which was substantially prepared by FINRA. *See supra* note 3.

[8] *See* FINRA Rule 6710(u) defines TBA to mean a transaction in an Agency Pass-Through Mortgage-

inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions;[9] and (3) transactions in Collateralized Mortgage Obligations (''CMOs''),[10] issued in conformity with a program of an agency[11] or Government-Sponsored Enterprise (''GSE''),[12] with forward settlement dates, (collectively, ''Covered Agency Transactions,'' also referred to, for purposes of this filing, as the ''TBA market'').

FINRA stated that most trading of agency and GSE Mortgage-Backed Security (''MBS'') takes place in the TBA market, which is characterized by transactions with forward settlements as long as several months past the trade date.[13] The agency and GSE MBS market is one of the largest fixed income markets, with approximately $5 trillion of securities outstanding and approximately $750 billion to $1.5 trillion in gross unsettled and unmargined transactions between dealers and customers.[14]

FINRA stated that historically, the TBA market is one of the few markets where a significant portion of activity is unmargined, thereby creating a potential risk arising from counterparty exposure. With a view to this gap between the TBA market versus other markets, FINRA noted the TMPG recommended standards (the ''TMPG best practices'') regarding the margining of forward-settling agency MBS transactions.[15] FINRA stated that the TMPG best practices are recommendations and as such currently are not rule requirements. FINRA believes unsecured credit exposures that exist in the TBA market today can lead to financial losses by dealers. Permitting counterparties to participate in the TBA market without posting margin can facilitate increased leverage by customers, thereby potentially posing a risk to the dealer extending credit and to the marketplace as a whole. Further, FINRA's present requirements do not address the TBA market generally.[16]

Accordingly, to establish margin requirements for Covered Agency Transactions, FINRA proposed to redesignate current paragraph (e)(2)(H) of Rule 4210 as new paragraph (e)(2)(I), to add new paragraph (e)(2)(H) to Rule 4210, to make conforming revisions to paragraphs (a)(13)(B)(i), (e)(2)(F), (e)(2)(G), (e)(2)(I), as redesignated by the rule change, and (f)(6), and to add to the rule new Supplementary Materials .02 through .05. The proposed rule change is informed by the TMPG best practices and is described in further detail below.[17]

A. Proposed FINRA Rule 4210(e)(2)(H) (Covered Agency Transactions)[18]

FINRA intends the proposed rule change to reach its members engaging in Covered Agency Transactions with specified counterparties. The core requirements of the proposed rule change are set forth in new paragraph (e)(2)(H) of FINRA Rule 4210.

1. Definition of Covered Agency Transactions (Proposed FINRA Rule 4210(e)(2)(H)(i)c)[19]

Proposed paragraph (e)(2)(H)(i)c. of the rule would define Covered Agency Transactions to mean:

- TBA transactions, as defined in FINRA Rule 6710(u), inclusive of ARM transactions, for which the difference between the trade date and contractual settlement date is greater than one business day;
- Specified Pool Transactions, as defined in FINRA Rule 6710(x), for which the difference between the trade date and contractual settlement date is greater than one business day; and
- CMOs, as defined in FINRA Rule 6710(dd), issued in conformity with a program of an agency, as defined in FINRA Rule 6710(k), or a GSE, as defined in FINRA Rule 6710(n), for which the difference between the trade date and contractual settlement date is greater than three business days.

FINRA intended the proposed definition of Covered Agency Transactions to be congruent with the scope of products addressed by the TMPG best practices and related updates.[20]

2. Other Key Definitions Established by the Proposed Rule Change (Proposed FINRA Rule 4210(e)(2)(H)(i))[21]

In addition to Covered Agency Transactions, the proposed rule change would establish the following key definitions for purposes of new paragraph (e)(2)(H) of Rule 4210:

- The term ''bilateral transaction'' means a Covered Agency Transaction that is not cleared through a registered clearing agency as defined in paragraph (f)(2)(A)(xxviii) of Rule 4210;
- The term ''counterparty'' means any person that enters into a Covered Agency Transaction with a member and includes a ''customer'' as defined in paragraph (a)(3) of Rule 4210;
- The term ''deficiency'' means the amount of any required but uncollected maintenance margin and any required but uncollected mark to market loss;
- The term ''gross open position'' means, with respect to Covered Agency Transactions, the amount of the absolute dollar value of all contracts entered into by a counterparty, in all CUSIPs; provided, however, that such amount shall be computed net of any settled

Backed Security (''MBS'') or a Small Business Administration (''SBA'')-Backed Asset-Backed Security (''ABS'') where the parties agree that the seller will deliver to the buyer a pool or pools of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions for good delivery and TBA transactions not for good delivery.

[9] *See* FINRA Rule 6710(x) defines Specified Pool Transaction to mean a transaction in an Agency Pass-Through MBS or an SBA-Backed ABS requiring the delivery at settlement of a pool or pools that is identified by a unique pool identification number at the Time of Execution.

[10] *See* FINRA Rule 6710(dd).

[11] *See* FINRA Rule 6710(k).

[12] *See* FINRA Rule 6710(n) and 2 U.S.C. 622(8).

[13] *See, e.g.,* James Vickery & Joshua Wright, TBA Trading and Liquidity in the Agency MBS Market, Federal Reserve Bank of New York (''FRBNY'') Economic Policy Review, May 2013, available at: <*https://www.newyorkfed.org/medialibrary/media/research/epr/2013/1212vick.pdf*>; *see also* SEC's Staff Report, Enhancing Disclosure in the Mortgage-Backed Securities Markets, January 2003, available at: <*https://www.sec.gov/news/studies/mortgagebacked.htm*>.

[14] *See* Treasury Market Practices Group (''TMPG''), Margining in Agency MBS Trading, November 2012, available at: <*https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/margining_tmpg_11142012.pdf*> (the ''TMPG Report''). The TMPG is a group of market professionals that participate in the TBA market and is sponsored by the FRBNY.

[15] *See* TMPG, Best Practices for Treasury, Agency, Debt, and Agency Mortgage-Backed Securities Markets, revised June 10, 2015, available at: <*https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/TMPG_June%202015_Best%20Practices*>.

[16] *See* Interpretations/01 through/08 of FINRA Rule 4210(e)(2)(F), available at: <*http://www.finra.org/web/groups/industry/@ip/@reg/@rules/documents/industry/p122203.pdf*>. Such guidance references TBAs largely in the context of Government National Mortgage Association (''GNMA'') securities. The modern TBA market is much broader than GNMA securities.

[17] *See supra* note 15; *see also,* TMPG, Frequently Asked Questions: Margining Agency MBS Transactions, June 13, 2014, available at: <*https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/marginingfaq06132014.pdf*>; TMPG Releases Updates to Agency MBS Margining Recommendation, March 27, 2013, available at: <*https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/Agency%20MBS%20margining%20public%20announcement%2003-27-2013.pdf*>.

[18] This section describes the proposed rule change prior to the proposed amendments in Partial Amendment No. 1, which are described below.

[19] *See supra* note 3; *see also,* Exhibit 5, text of proposed rule change, as originally filed.

[20] *See* description of Partial Amendment No. 1 in section II.D.1. below, proposing to allow member firms to elect not to apply the proposed margin requirements to multifamily housing and project loan securities.

[21] *See supra* note 3; *see also,* Exhibit 5, text of proposed rule change, as originally filed.

position of the counterparty held at the member and deliverable under one or more of the counterparty's contracts with the member and which the counterparty intends to deliver;

• The term ''maintenance margin'' means margin equal to two percent of the contract value of the net long or net short position, by CUSIP, with the counterparty;

• The term ''mark to market loss'' means the counterparty's loss resulting from marking a Covered Agency Transaction to the market;

• The term ''mortgage banker'' means an entity, however organized, that engages in the business of providing real estate financing collateralized by liens on such real estate;

• The term ''round robin'' trade means any transaction or transactions resulting in equal and offsetting positions by one customer with two separate dealers for the purpose of eliminating a turnaround delivery obligation by the customer; and

• The term ''standby'' means contracts that are put options that trade over-the-counter (''OTC''), as defined in paragraph (f)(2)(A)(xxvii) of Rule 4210, with initial and final confirmation procedures similar to those on forward transactions.

3. Requirements for Covered Agency Transactions (Proposed FINRA Rule 4210(e)(2)(H)(ii)) [22]

The specific requirements that would apply to Covered Agency Transactions are set forth in proposed paragraph (e)(2)(H)(ii). These requirements would address the types of counterparties that are subject to the proposed rule, risk limit determinations, specified exceptions from the proposed margin requirements, transactions with exempt accounts,[23] transactions with non-exempt accounts, the handling of de minimis transfer amounts, and the treatment of standbys.

• Counterparties Subject to the Rule

Paragraph (e)(2)(H)(ii)a. of the proposed rule provides that all Covered Agency Transactions with any counterparty, regardless of the type of account to which booked, are subject to the provisions of paragraph (e)(2)(H) of the rule. However, paragraph (e)(2)(H)(ii)a.1. of the proposed rule provides that with respect to Covered Agency Transactions with any counterparty that is a Federal banking agency, as defined in 12 U.S.C. 1813(z) under the Federal Deposit Insurance Act, central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements, a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) provided the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b., as discussed below.

• Risk Limits

Paragraph (e)(2)(H)(ii)b. of the rule provides that members that engage in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty that the member shall enforce. The rule provides that the risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures. Further, in connection with risk limit determinations, the proposed rule establishes new Supplementary Material .05. The new Supplementary Material provides that, for purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of the rule:

○ If a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level, except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser constitute more than 10 percent of the investment adviser's regulatory assets under management as reported on the investment adviser's most recent Form ADV;

○ Members of limited size and resources that do not have a credit risk officer or credit risk committee may designate an appropriately registered principal to make the risk limit determinations;

○ The member may base the risk limit determination on consideration of all products involved in the member's business with the counterparty, provided the member makes a daily record of the counterparty's risk limit usage; and

○ A member shall consider whether the margin required pursuant to the rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements.

• *Exceptions from the Proposed Margin Requirements: (1) Registered Clearing Agencies; (2) Gross Open Positions of $2.5 Million or Less in Aggregate*

Paragraph (e)(2)(H)(ii)c. provides that the margin requirements specified in paragraph (e)(2)(H) of the rule shall not apply to:

○ Covered Agency Transactions that are cleared through a registered clearing agency, as defined in FINRA Rule 4210(f)(2)(A)(xxviii), and are subject to the margin requirements of that clearing agency; and

○ any counterparty that has gross open positions in Covered Agency Transactions with the member amounting to $2.5 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions on a Delivery Versus Payment (''DVP'') basis or for cash; provided, however, that such exception from the margin requirements shall not apply to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z),[24] or round robin trades, or that uses other financing techniques for its Covered Agency Transactions.

• *Transactions with Exempt Accounts*

Paragraph (e)(2)(H)(ii)d. of the proposed rule provides that, on any net long or net short position, by CUSIP, resulting from bilateral transactions with a counterparty that is an exempt account, no maintenance margin shall be required. However, the rule provides that such transactions must be marked to the market daily and the member must collect any net mark to market

[22] *Id.*

[23] The term ''exempt account'' is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, non-FINRA member registered broker-dealer, account that is a ''designated account'' under FINRA Rule 4210(a)(4) (specifically, a bank as defined under SEA Section 3(a)(6), a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of at least $45 million and financial assets of at least $40 million for purposes of paragraphs (e)(2)(F) and (e)(2)(G) of the rule, as set forth under paragraph (a)(13)(B)(i) of Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii). FINRA is proposing a conforming revision to paragraph (a)(13)(B)(i) so that the phrase ''for purposes of paragraphs (e)(2)(F) and (e)(2)(G)'' would read ''for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H).'' *See supra* note 3.

[24] *See* FINRA Rule 6710(z).

loss, unless otherwise provided under paragraph (e)(2)(H)(ii)f. The rule provides that if the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member shall be required to deduct the amount of the mark to market loss from net capital as provided in Exchange Act Rule 15c3–1 until such time the mark to market loss is satisfied. The rule requires that if such mark to market loss is not satisfied within five business days from the date the loss was created, the member must promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time. Under the rule, members may treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of mortgage commitments as exempt accounts for purposes of paragraph (e)(2)(H) of this Rule.[25]

• *Transactions with Non-Exempt Accounts*

Paragraph (e)(2)(H)(ii)e. of the rule provides that, on any net long or net short position, by CUSIP, resulting from bilateral transactions with a counterparty that is not an exempt account, maintenance margin, plus any net mark to market loss on such transactions, shall be required margin, and the member shall collect the deficiency, as defined in paragraph (e)(2)(H)(i)d. of the rule, unless otherwise provided under paragraph (e)(2)(H)(ii)f. of the rule. The rule provides that if the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in Exchange Act Rule 15c3–1 until such time the deficiency is satisfied.[26] Further, the rule provides that if such deficiency is not satisfied within five business days from the date the deficiency was created, the member shall promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time.

FINRA believes that the maintenance margin requirement is appropriate because it aligns with the potential risk as to non-exempt accounts engaging in Covered Agency Transactions and the specified two percent amount is consistent with other measures in this area. The rule provides that no maintenance margin is required if the original contractual settlement for the Covered Agency Transaction is in the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for cash; provided, however, that such exception from the required maintenance margin shall not apply to a non-exempt account that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z), or round robin trades, as defined in proposed FINRA Rule 4210(e)(2)(H)(i)i., or that uses other financing techniques for its Covered Agency Transactions.

• *De Minimis Transfer Amounts*

Paragraph (e)(2)(H)(ii)f. of the rule provides that any deficiency, as set forth in paragraph (e)(2)(H)(ii)e. of the rule, or mark to market losses, as set forth in paragraph (e)(2)(H)(ii)d. of the rule, with a single counterparty shall not give rise to any margin requirement, and as such need not be collected or charged to net capital, if the aggregate of such amounts with such counterparty does not exceed $250,000 (''the de minimis transfer amount''). The proposed rule provides that the full amount of the sum of the required maintenance margin and any mark to market loss must be collected when such sum exceeds the de minimis transfer amount.

• *Unrealized Profits; Standbys*

Paragraph (e)(2)(H)(ii)g. of the rule provides that unrealized profits in one Covered Agency Transaction position may offset losses from other Covered Agency Transaction positions in the same counterparty's account and the amount of net unrealized profits may be used to reduce margin requirements. With respect to standbys, only profits (in-the-money amounts), if any, on long standbys shall be recognized.

B. Conforming Amendments to FINRA Rule 4210(e)(2)(F) (Transactions With Exempt Accounts Involving Certain ''Good Faith'' Securities) and FINRA Rule 4210(e)(2)(G) (Transactions With Exempt Accounts Involving Highly Rated Foreign Sovereign Debt Securities and Investment Grade Debt Securities)[27]

The proposed rule change makes a number of revisions to paragraphs (e)(2)(F) and (e)(2)(G) of FINRA Rule 4210:[28]

• The proposed rule change revises the opening sentence of paragraph (e)(2)(F) to clarify that the paragraph's scope does not apply to Covered Agency Transactions as defined pursuant to new paragraph (e)(2)(H). Accordingly, as amended, paragraph (e)(2)(F) states: ''Other than for Covered Agency Transactions as defined in paragraph (e)(2)(H) of this Rule . . . '' FINRA believes that this clarification will help demarcate the treatment of products subject to paragraph (e)(2)(F) versus new paragraph (e)(2)(H). For similar reasons, the proposed rule change revises paragraph (e)(2)(G) to clarify that the paragraph's scope does not apply to a position subject to new paragraph (e)(2)(H) in addition to paragraph (e)(2)(F) as the paragraph currently states. As amended, the parenthetical in the opening sentence of the paragraph states: ''([O]ther than a position subject to paragraph (e)(2)(F) or (e)(2)(H) of this Rule).''

• Current, pre-revision paragraph (e)(2)(H)(i) provides that members must maintain a written risk analysis methodology for assessing the amount of credit extended to exempt accounts pursuant to paragraphs (e)(2)(F) and (e)(2)(G) of the rule which shall be made available to FINRA upon request. The proposed rule change places this language in paragraphs (e)(2)(F) and (e)(2)(G) and deletes it from its current location. Accordingly, FINRA proposes to move to paragraphs (e)(2)(F) and (e)(2)(G): ''Members shall maintain a written risk analysis methodology for assessing the amount of credit extended

[25] The proposed rule change adds to Rule 4210 new Supplementary Material .02, which provides that for purposes of paragraph (e)(2)(H)(ii)d. of the rule, members must adopt written procedures to monitor the mortgage banker's pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes. The proposed requirement is appropriate to ensure that, if a mortgage banker is permitted exempt account treatment, the member has conducted sufficient due diligence to determine that the mortgage banker is hedging its pipeline of mortgage production. In this regard, FINRA notes that the current Interpretations under Rule 4210 already contemplate that members evaluate the loan servicing portfolios of counterparties that are being treated as exempt accounts. *See* Interpretation/02 of FINRA Rule 4210(e)(2)(F).

[26] The proposed rule change adds to FINRA Rule 4210 new Supplementary Material .03, which provides that, for purposes of paragraph (e)(2)(H) of the rule, to the extent a mark to market loss or deficiency is cured by subsequent market movements prior to the time the margin call must be met, the margin call need not be met and the position need not be liquidated; provided, however, if the mark to market loss or deficiency is not satisfied by the close of business on the next business day after the business day on which the mark to market loss or deficiency arises, the member shall be required to deduct the amount of the mark to market loss or deficiency from net capital as provided in Exchange Act Rule 15c3–1 until such time the mark to market loss or deficiency is satisfied. FINRA believes that the proposed requirement should help provide clarity in situations where subsequent market movements cure the mark to market loss or deficiency.

[27] This section describes the proposed rule change prior to the proposed amendments in Partial Amendment No. 1, which are described below.

[28] *See supra* note 3; *see also,* Exhibit 5, text of proposed rule change, as originally filed.

to exempt accounts pursuant to [this paragraph], which shall be made available to FINRA upon request.'' Further, FINRA proposes to add to each: ''The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures.'' FINRA believes this amendment makes the risk limit determination language in paragraphs (e)(2)(F) and (e)(2)(G) more congruent with the corresponding language proposed for new paragraph (e)(2)(H) of the rule.

• The proposed rule change revises the references in paragraphs (e)(2)(F) and (e)(2)(G) to the limits on net capital deductions as set forth in current paragraph (e)(2)(H) to read ''paragraph (e)(2)(I)'' in conformity with that paragraph's redesignation pursuant to the rule change.

C. Redesignated Paragraph (e)(2)(I) (Limits on Net Capital Deductions)[29]

Under current paragraph (e)(2)(H) of FINRA Rule 4210, in brief, a member must provide prompt written notice to FINRA and is prohibited from entering into any new transactions that could increase the member's specified credit exposure if net capital deductions taken by the member as a result of marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G), over a five day business period, exceed: (1) For a single account or group of commonly controlled accounts, five percent of the member's tentative net capital (as defined in Exchange Act Rule 15c3–1); or (2) for all accounts combined, 25 percent of the member's tentative net capital (again, as defined in Exchange Act Rule 15c3–1). As discussed above, the proposed rule change redesignates current paragraph (e)(2)(H) of the rule as paragraph (e)(2)(I), deletes current paragraph (e)(2)(H)(i), and makes conforming revisions to paragraph (e)(2)(I), as redesignated, for the purpose of clarifying that the provisions of that paragraph are meant to include Covered Agency Transactions as set forth in new paragraph (e)(2)(H). In addition, the proposed rule change clarifies that de minimis transfer amounts must be included toward the five percent and 25 percent thresholds as specified in the rule, as well as amounts pursuant to the specified exception under paragraph (e)(2)(H) for gross open positions of $2.5 million or less in aggregate.

Redesignated paragraph (e)(2)(I) of the rule provides that, in the event that the net capital deductions taken by a member as a result of deficiencies or marked to the market losses incurred under paragraphs (e)(2)(F) and (e)(2)(G) of the rule (exclusive of the percentage requirements established thereunder), plus any mark to market loss as set forth under paragraph (e)(2)(H)(ii)d. of the rule and any deficiency as set forth under paragraph (e)(2)(H)(ii)e. of the rule, and inclusive of all amounts excepted from margin requirements as set forth under paragraph (e)(2)(H)(ii)c.2. of the rule or any de minimis transfer amount as set forth under paragraph (e)(2)(H)(ii)f. of the rule, exceed:[30]

• for any one account or group of commonly controlled accounts, 5 percent of the member's tentative net capital (as such term is defined in Exchange Act Rule 15c3–1), or

• for all accounts combined, 25 percent of the member's tentative net capital (as such term is defined in Exchange Act Rule 15c3–1), and,

• such excess as calculated in paragraphs (e)(2)(I)(i)a. or b. of the rule continues to exist on the fifth business day after it was incurred,

the member must give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of the rule that would result in an increase in the amount of such excess under, as applicable, paragraph (e)(2)(I)(i) of the rule.

If the Commission approves the proposed rule change, FINRA proposed to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.[31]

D. Partial Amendment No. 1

In Partial Amendment No. 1, FINRA responds to comments received on the Notice[32] and adds to the proposed rule language, in response to comments, proposed paragraph (e)(2)(H)(ii)a.2 to FINRA Rule 4210, which provides that a member may elect not to apply the margin requirements of paragraph (e)(2)(H) to multifamily and project loan securities, subject to specified conditions. Further, FINRA proposes in Partial Amendment No. 1 that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and proposed Supplementary Material .05 become effective six months from the date the proposed rule change is approved by the Commission. FINRA proposes that the remainder of the proposed rule change become effective 18 months from the date the proposed rule change is approved by the Commission.

1. Proposed Exemption for Multifamily and Project Loan Securities

In its original filing, FINRA noted that the scope of Covered Agency Transactions[33] is intended to be congruent with the scope of products addressed by the TMPG best practices and related TMPG updates, and that the term would include within its scope multifamily housing and project loan program securities such as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, and Ginnie Mae Construction Loan or Project Loan Certificates (collectively, ''multifamily and project loan securities'').[34]

Commenters expressed concerns that FINRA should not include multifamily and project loan securities within the scope of the proposed margin requirements.[35] These commenters said that the proposed rule change would impose undue burdens on participants in the multifamily and project loan securities market, that the multifamily and project loan securities market is of small size relative to the overall TBA market, and that the regulatory benefits gained from any reduction of systemic risk and counterparty exposure would be outweighed by the harms caused to the market. These commenters also stated that there are safeguards in the market, including the provision of good

[29] This section describes the proposed rule change prior to the proposed amendments in Partial Amendment No. 1, which are described below.

[30] *See supra* note 3; *see also,* Exhibit 5, text of proposed rule change, as originally filed.

[31] *See* description of Partial Amendment No. 1, in section II.D.2. below, which revises the proposed implementation dates.

[32] *See supra* note 3. With the exception of comments received related to multifamily housing and project loan securities and the proposed implementation dates, FINRA's responses to comments received are discussed in section III below.

[33] *See* section II.A.1. above, for a description of the definition of Covered Agency Transactions in the original filing. *See supra* note 3.

[34] *See supra* note 3.

[35] *See* Letter Type A, Letter Type B, AGM Letter, AJM Letter, BDA Letter, Bellwether Letter, CBRE Letter, Centennial Letter, Century Letter, CHF Letter, Churchill Letter, Columbia Letter, Crain Letter, Davis-Penn 1 Letter, Davis-Penn 2 Letter, Draper Letter, DUS Letter, Dwight Letter, First Housing Letter, Forest City 1 Letter, Forest City 2 Letter, Gershman 1 Letter, Gershman 2 Letter, Great Lakes Letter, Highland 1 Letter, Highland 2 Letter, Lancaster Letter, Love Funding Letter, M&T Realty Letter, MBA Letter, MBA & Others 1 Letter, MBA & Others 2 Letter, MBA Supplemental Letter, NMHC/NAA Letter, NorthMarq Letter, Perez Letter, Prairie Mortgage Letter, Prudential Letter, Red Mortgage Letter, Richmac Letter, Sims Mortgage Letter, W&D Letter, and Ziegler Letter.

faith deposits by the borrower to the lender, and requirements imposed by the issuing agencies and GSEs, and, related to that point, that the manner in which multifamily and project loan securities are originated and traded does not give rise to the type of credit exposure that may exist in the TBA market overall. Commenters said that about $40 to $50 billion per year in multifamily and project loan securities are issued versus about $1 trillion for the TBA market overall,[36] that a typical multifamily or project loan security is based on a single loan for a single project the identity of which is known at the time the lender and borrower agree to the terms of the loan and the security is underwritten, thereby helping to reduce settlement risk, and that, by contrast, securities in the overall TBA market are based on pools of loans that often have not been originated at the time the Covered Agency Transaction takes place.[37] Commenters said that multifamily and project loan securities are not widely traded and often cannot be marked to the market for purposes of complying with the proposed margin requirements.[38]

In response, FINRA has reconsidered and does not propose at this time to require that members apply the proposed margin requirements,[39] to multifamily and project loan securities, subject to specified conditions. Specifically, FINRA proposes in Partial Amendment No. 1 to add to FINRA Rule 4210 new paragraph (e)(2)(H)(ii)a.2. to provide that a member may elect not to apply the margin requirements of paragraph (e)(2)(H) of the rule with respect to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided that: (1) Such securities are issued in conformity with a program of an Agency, as defined in FINRA Rule 6710(k), or a GSE, as defined in FINRA Rule 6710(n), and are documented as Freddie Mac K Certificates, Fannie Mae Delegated Underwriting and Servicing bonds, or Ginnie Mae Construction Loan or Project Loan Certificates, as commonly known to the trade; and (2) the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b. of Rule 4210.[40] FINRA believes that the proposed exception for multifamily and project loan securities is appropriate at this time.

Based on FINRA's analysis of transactional data, multifamily and project loan securities constitute a small portion of the Covered Agency Transactions market overall,[41] which suggests multifamily and project loan securities are less likely to pose issues of systemic risk. However, in this regard, FINRA notes that systemic risk is only one facet of FINRA's concern. As a matter of investor protection and market integrity, FINRA believes that it is appropriate to require that members make and enforce written risk limit determinations for their counterparties in multifamily and housing securities. FINRA believes that imposing the requirement on members to make and enforce risk limits as to counterparties in multifamily and project loan securities is appropriately tailored, as discussed in the original filing with respect to the risk limit requirement generally,[42] to help ensure that the member is properly monitoring its risk. The requirement would serve to help prevent over-concentration in these products. In light of ongoing analysis in this area, FINRA may consider additional rulemaking if necessary.[43]

FINRA is aware that the proposed exception for multifamily and project loan securities may potentially impact the estimates of expected mark to market margin requirements presented in the Statement on Burden on Competition section of the original filing. Specifically, the original analysis was based on the net exposure to any single counterparty in any TBA market transaction, and therefore may have included situations where the exposure on an open position in a single family TBA market transaction could be offset by an opposite exposure on an open position in a multifamily TBA market transaction with the same counterparty.

As such, the proposed exception for multifamily and project loan securities may alter the net margin calculation for members. Members that transact strictly in multifamily TBA market securities would find that their margin obligations would be lower under this formulation, and thus have lower burdens imposed, if the member elects not to apply the margin requirements specified in paragraph (e)(20(H) of the rule as permitted by proposed paragraph (e)(2)(H)(ii)a.2. But members who transact in both single and multifamily TBA market securities with a given counterparty might find that their margin obligations could be higher or lower in the presence of the exception. In addition, these members would likely incur additional costs to monitor single and multifamily TBA market transactions separately.

While the amendment proposed in Partial Amendment No. 1 may impact the margin requirements for some members, FINRA has reason to expect that these impacts would be small based on a review of TBA market transactions. First, the size of the multifamily and project loan securities market is estimated to be relatively small compared to the single family segment of the market. According to the Financial Accounts of the United States published by the Federal Reserve Board, as of the third quarter of 2015, there were approximately $189.9 billion of multifamily residential agency and GSE-backed mortgage pools outstanding, compared to approximately $1.5 trillion for single family mortgage pools.[44] Second, FINRA staff also analyzed the TBA transactions in 2014 from TRACE and found that less than 1% of TBA transactions occurred in Delegated Underwriting and Servicing (''DUS'') pools securities sponsored by Fannie Mae.

To estimate the impact of the exception on broker-dealers and mortgage banks, FINRA staff also analyzed transactional data provided by a major clearing broker-dealer. This

[36] *See* CBRE Letter, CHF Letter, Forest City 1 Letter, Forest City 2 Letter, Letter Type A, MBA Letter, and NMHC/NAA Letter.

[37] *See* Century Letter, MBA Letter, MBA Supplemental Letter, and NorthMarq Letter.

[38] *See* Century Letter, MBA Letter, NorthMarq Letter, and W&D Letter.

[39] In the interest of clarity, FINRA notes that the ''proposed margin requirements'' refers to the margin requirements as to Covered Agency Transactions as set forth in the original filing, as amended by Partial Amendment No. 1. Products or transactions that are outside the scope of Covered Agency Transactions are otherwise subject to the requirements of FINRA Rule 4210, as applicable.

[40] *See* Exhibit 4 and Exhibit 5 in Partial Amendment No. 1. Proposed Rule 4210(e)(2)(H)(ii)b. sets forth the proposed rule's requirements as to written risk limits.

[41] In a sample of open transactions provided by a major clearing broker-dealer, transactions in multifamily securities sum up to approximately $5 billion and constitute approximately 8% of the total open transactions in TBA market securities across 1,142 accounts.

[42] *See supra* note 3.

[43] For example, the federal banking agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency) recently stated that with respect to commercial real estate lending they have observed certain risk management practices at some financial institutions that cause them concern. *See* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency Joint Release, ''Statement on Prudent Risk Management for Commercial Real Estate Lending'' (Dec. 18, 2015), available at: <*https://www.fdic.gov/news/news/press/2015/pr15100.html*>.

[44] *See* Table L.125 in Board of Governors of the Federal Reserve System Statistical Release (December 10, 2015), available at: <*http://www.federalreserve.gov/releases/z1/current/z1.pdf*>.

dataset contains 27,350 open transactions as of January 7, 2016 in 1,142 accounts at 49 brokers. 261 of these accounts, at four brokers, had exposure to multifamily and project loan securities. The size of the open transactions in the single family securities ranged between $7,000 and approximately $14 billion per account in the whole sample, with an average (median) of approximately $64 million ($6.9 million). For comparison purposes, the size of open transactions in the multifamily securities ranged between $25,000 and approximately $2 billion per account, with an average (median) of approximately $20 million ($640,000).[45]

Of the 261 accounts that had exposure to multifamily and project loan securities, only nine also had open transactions in single family securities. While the size of the open transactions for multifamily securities in these nine accounts is larger than that for single family securities in these same nine accounts that had exposure to both types of securities, the difference is not statistically significant due to the small sample size and high variance.

The average number of days until settlement is also larger, being approximately 79 days for the open transactions in multifamily securities versus 50 days for the transactions in single-family securities.[46]

The evidence presented here suggests that some brokers may have sizable positions in multifamily securities. However, as evidenced by the data, these positions are likely to be maintained by a small number of brokers and the size of the multifamily TBA market is currently a small portion of the overall TBA market that does not potentially represent any systemic risk. Further, in the sample examined, only nine brokers with transactions in multifamily TBA market securities also had open transactions in single family TBA market securities, suggesting there is limited correlation in counterparty risk across the two segments of the market.

2. Proposed Implementation Period

Commenters said that considerable operational and systems work will be needed to comply with the proposed rule change, including changes to or renegotiation of Master Securities Forward Transaction Agreement (''MSFTA'') documentation and other agreements.[47] These commenters suggested that firms should be permitted 18 months to two years to prepare for implementation of the proposed rule change.

In response, FINRA believes that a phased implementation should be appropriate. FINRA proposes that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and proposed Supplementary Material .05 of the rule become effective six months from the date the proposed rule change is approved by the Commission. FINRA proposes that the remainder of the proposed rule change become effective 18 months from the date the proposed rule change is approved by the Commission.

The text of the proposed rule change, as amended by Partial Amendment No. 1, is available at the principal office of FINRA, on FINRA's Web site at *http://www.finra.org* and at the Commission's Public Reference Room. In addition, you may find a more detailed description of the original proposed rule change in the Notice.[48]

III. Summary of Comments and FINRA's Responses [49]

As noted above, the Commission received 109 comment letters on the proposed rule change, including 54 Type A and B letters.[50] These comments and FINRA's responses to the comments are summarized below. [51]

A. Impact and Scope of the Proposal (Other Than With Respect to Multifamily and Project Loan Securities)

Some commenters supported the proposed rule change's goal of addressing counterparty risk in the TBA market and reducing systemic risk.[52] Some commenters acknowledged the need for overall consistency between the proposal and the best practices recommendations of the TMPG.[53] However, commenters expressed concerns that the proposal's scope is overly broad and its requirements too complex to be operationally feasible, and that the proposal would increase costs on various participants in the mortgage market, including small, medium or regional participants, with the effect of driving some participants from the market.[54] One commenter said that all but the largest firms would be driven out of the market.[55] Another commenter questioned the need for the rulemaking on grounds that the TBA market remained stable prior to and throughout the 2008 financial crisis.[56] That commenter also expressed concern that the pool of eligible collateral available for margin purposes is limited and that the opportunity cost of posting collateral would force institutions to forgo participating in the market or would force them to pass costs on to consumers.[57] One commenter suggested the rule should only reach TBA transactions and Specified Pool Transactions.[58] Another commenter suggested the proposal should not reach Specified Pool Transactions.[59] Another commenter suggested that both Specified Pool Transactions and CMOs should be taken out of the proposal's scope and questioned FINRA's authority to impose the requirements.[60] Several commenters suggested that the proposed settlement cycles set forth in the definition of Covered Agency Transactions—that is, greater than one business day between the trade date and the contractual settlement date for TBA transactions and Specified Pool Transactions, and greater than three business days for CMOs—are too short.[61] These commenters proffered alternatives such as a specified settlement cycle for TBA transactions of three days or greater, on grounds that transactions settling within three days present minimal risk,[62] or a specified cycle based on Securities Industry and Financial Markets Association (''SIFMA'') monthly settlement dates,[63] or, for Specified Pool Transactions, a specified cycle of three or more business days.[64]

In response, other than with respect to multifamily and project loan securities, as discussed above, FINRA does not propose to modify the proposed rule's application to Covered Agency

[45] The difference between the average size of open transactions for single family and multifamily securities is statistically significant at the 5% level.

[46] The difference between the average settlement days for single family and multifamily securities is statistically significant at the 5% level.

[47] *See* ACLI Letter, AII Letter, ICI Letter, Sandler O'Neill Letter, SIFMA Letter, and SIFMA AMG Letter.

[48] *See supra* note 3.

[49] *See supra* note 3, for full FINRA discussion of the original filing. Comments received and FINRA's responses to the comments related to the multifamily housing and project loan securities, as well as the proposed implementation dates are addressed in section II.D. above.

[50] *See supra* note 4.

[51] *See supra* note 5.

[52] *See* ACLI Letter, AII Letter, Brean Capital 1 Letter, SIFMA Letter, and SIFMA AMG Letter.

[53] As set forth more fully in the original filing, FINRA noted that the proposal is informed by the TMPG best practices. *See supra* note 3.

[54] *See* ACLI Letter, BDA Letter, Brean Capital 1 Letter, Coastal Letter, and SIFMA Letter.

[55] *See* Brean Capital 1 Letter.

[56] *See* ACLI Letter.

[57] *Id.*

[58] *See* ICI Letter.

[59] *See* Robert Baird Letter.

[60] *See* Coastal Letter.

[61] *See* ACLI Letter, BDA Letter, ICI Letter, Matrix Letter, Robert Baird Letter, and SIFMA Letter.

[62] *See* ICI Letter.

[63] *See* ACLI Letter.

[64] *See* Robert Baird Letter.

Transactions as set forth in the original filing. Further, FINRA does not propose to modify the specified settlement periods as set forth in the Covered Agency Transactions definition. With respect to FINRA's authority, in the original filing FINRA noted that it believed that the rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act.[65] FINRA noted, as set forth more fully in the original filing,[66] that the proposed margin requirements will likely impose direct and indirect costs, including direct costs of compliance with the requirements and indirect costs resulting from changed market behavior of some participants, which may impact liquidity in the market. Though FINRA shares commenters' concerns regarding such potential effects, FINRA believes the proposed requirements are needed because the unsecured credit exposures that exist in the TBA market today can lead to financial losses by members. In this regard, FINRA noted that the TBA market has the potential for a significant amount of volatility,[67] and that permitting counterparties to participate in the TBA market, in the absence of the proposed requirements, can facilitate increased leverage by customers, thereby posing risk to the member extending credit and to the marketplace and potentially imposing, in economic terms, negative externalities on the financial system in the event of failure. Consequently, FINRA believes as to the assertion that there has been no or limited degradation in the TBA market does not of itself demonstrate that there is no credit risk in this market.[68]

In the original filing, FINRA discussed how it had considered, among other things, various options for narrowing the scope of Covered Agency Transactions or extending the specified settlement cycles.[69] As FINRA noted, the FRBNY staff advised FINRA that such modifications to the proposal would result in a mismatch between FINRA standards and the TMPG best practices, thereby resulting in perverse incentives in favor of non-margined products and leading to distortions of trading behavior, including clustering of trades around the specified settlement cycles in an effort to avoid margin expenses. Further, in response to comments on the proposal as it had been published for comment in *Regulatory Notice* 14–02,[70] FINRA engaged in extensive discussions with industry participants and other regulators, including staff of the SEC and the FRBNY, and engaged in analysis of the potential economic impact of the proposal. Following its publication in the *Regulatory Notice,* FINRA made revisions to the proposal to ameliorate its impact on business activity and to address the concerns of smaller customers that do not pose material risk to the market as a whole, in particular those engaging in non-margined, cash account business. These revisions included, among other things, the establishment of the exception from the proposed margin requirements for any counterparty with gross open positions amounting to $2.5 million or less, subject to specified conditions, as well as specified exceptions to the maintenance margin requirement and modifications to the proposal's de minimis transfer provisions.[71] As such, FINRA reiterates its view that narrowing the scope of Covered Agency Transactions or modifying the proposed settlement cycles in the fashion suggested by commenters would undermine the rule's fundamental purpose of improving counterparty risk management and, further, that the revisions made to the proposal, as described in the original filing, will ameliorate its impact.

B. Maintenance Margin

As set forth more fully in the original filing, non-exempt accounts[72] would be required to post two percent maintenance margin plus any net mark to market loss on their Covered Agency Transactions.[73] Commenters opposed the maintenance margin requirement and expressed concerns about the proposed requirement's impact and efficacy.[74] One commenter said that the requirement would disproportionately affect small to medium-sized participants and would exacerbate risks by not requiring that the margin be segregated and held at a non-affiliated custodian.[75] A commenter similarly expressed concern that the requirement would disadvantage small dealers.[76] One commenter said that the requirement would have the effect of requiring maintenance margin from medium-sized firms, rather than small or large firms, and that the requirement would create complexity for members by requiring that maintenance margin be calculated on a transaction by transaction basis.[77] Another commenter also expressed the concern that the requirement would impact medium-sized firms and suggested that FINRA should consider a tiered maintenance margin requirement for trades under a defined gross dollar amount.[78] One commenter said that the requirement should be eliminated.[79] Another commenter suggested that the TMPG best practices do not have a maintenance margin requirement, which would create opportunity for regulatory arbitrage.[80] The same commenter said that the accounts that would be subject to the requirement are too small to create systemic risk.[81]

In response, FINRA does not propose to modify the maintenance margin requirement. Maintenance margin is a mainstay of margin regimes in the securities industry, and as such the need to appropriately track transactions should be well understood to market participants. FINRA is sensitive to commenters' concerns as to the potential impact of the requirement on members and their non-exempt customer accounts. For this reason, as set forth more fully in the original filing and as discussed further below, FINRA revised the proposal to include an exception tailored to customers engaging in non-margined, cash account business. FINRA noted that the requirement is designed to be aligned to the potential risk in this area and that the two percent amount approximates rates charged for corresponding products in other contexts.[82]

[65] *See supra* note 3. Section 15A(b)(6) requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[66] *See supra* note 3.

[67] *See supra* note 3. ACLI suggested that FINRA had conceded in the original filing that the TBA market seems to respond only slightly to the volatility in the U.S. interest rate environment. In response, this only partially states the tenor of FINRA's analysis, which, again, noted that price movements in the TBA market over the past five years suggest the market has *potential* for significant volatility.

[68] *See supra* note 3.

[69] *Id.*

[70] *Regulatory Notice* 14–02 (January 2014) (Margin Requirements: FINRA Requests Comment on Proposed Amendments to FINRA Rule 4210 for Transactions in the TBA Market).

[71] *See supra* note 3. Commenters expressed concerns regarding these exceptions as set forth in the original filing. Commenters' concerns, and FINRA's response, are addressed more fully below.

[72] *See supra* note 23.

[73] *See supra* note 3.

[74] *See* AII Letter, Robert Baird Letter, BDA Letter, Matrix Letter, SIFMA Letter, and SIFMA AMG Letter. Some commenters expressed concern as to the operational feasibility of the rule's proposed exception to the maintenance margin requirement. These comments, and FINRA's response, are addressed more fully below.

[75] *See* SIFMA AMG Letter.

[76] *See* BDA Letter.

[77] *See* SIFMA Letter.

[78] *See* Matrix Letter.

[79] *See* Baird Letter.

[80] *See* AII Letter.

[81] *Id.*

[82] *See supra* note 3.

C. ''Cash Account'' Exceptions

As set forth more fully in the original filing,[83] the proposed margin requirements would not apply to any counterparty that has gross open positions [84] in Covered Agency Transactions with the member amounting to $2.5 million or less in aggregate, if the original contractual settlement for all such transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions and the counterparty regularly settles its Covered Agency Transactions on a DVP basis or for cash. Similarly, a non-exempt account would be excepted from the rule's proposed two percent maintenance margin requirement if the original contractual settlement for the Covered Agency Transaction is in the month of the trade date for such transaction or in the month succeeding the trade date for such transaction and the customer regularly settles its Covered Agency Transactions on a DVP basis or for cash. The rule uses parallel language with respect to both of these exceptions to provide that they are not available to a counterparty that, in its transactions with the member, engages in dollar rolls, as defined in FINRA Rule 6710(z), or ''round robin'' trades, or that uses other financing techniques for its Covered Agency Transactions. FINRA noted that these exceptions are intended to address the concerns of smaller customers engaging in non-margined, cash account business.[85]

Commenters expressed concern that the cash account exceptions are difficult to implement operationally and are in need of further guidance.[86] These commenters suggested that the term ''regularly settles'' is ambiguous and vague, that members may find it too difficult to comply with the requirement and may therefore choose not to make the cash account exceptions available to their customers, that the references to dollar rolls, round robin trades and other financing techniques should be removed to make the cash account exceptions more accessible, or that the rule should permit members to rely on representations counterparties make where activity away from the member firm is involved. A commenter sought guidance as to whether it would suffice if the member has a reasonable expectation of the customer's behavior based on the customer's prior history of physical settlement.[87] Another commenter sought guidance as to the scope of the term ''other financing techniques'' and whether, for instance, a customer's engaging in a single dollar roll or round robin trade would make the cash account exceptions unavailable.[88]

In response, FINRA does not propose to modify the cash account exceptions as proposed in the original filing.[89] Given that the purpose of the exceptions is to help ameliorate the proposal's impact on smaller customers, it is not FINRA's expectation that the exceptions should be onerous to implement. FINRA believes that, as worded, the term ''regularly settles'' is sufficient to convey that the rule's intent is to provide scope for flexibility on members' part as to how they implement the exceptions. FINRA expects that members are in a position to make reasonable judgments as to the observed pattern and course of dealing in their customers' behavior by virtue of their interactions with their customers. In this regard, FINRA believes the import of the term ''other financing techniques'' should be clear as a matter of plain language, that is, transactions other than on a DVP basis or for cash suggest the use of financing. FINRA does not expect that a customer that engages in a single dollar roll or round robin trade would be denied access to the exceptions provided the member can reasonably demonstrate a regular pattern by that customer of settling its Covered Agency Transactions on a DVP basis or for cash. In so doing, a member may use the customer's history of transactions with the member, as well as any other relevant information of which the member is aware. Further, FINRA believes that members should be able to rely on the reasonable representations of their customers where necessary for purposes of this requirement. FINRA welcomes further discussion with industry participants on this issue, and will consider issuing further guidance as needed.

D. Two-Way (Bilateral) Margin

Several commenters suggested that the proposed rule should require the posting of two-way or bilateral margin in Covered Agency Transactions, so that members and their counterparties in such transactions would both post and receive margin.[90] These commenters suggested that two-way margin is necessary to effectively reduce risk given the exposure of the parties and that two-way margin is standard in other contexts. A commenter suggested that the TMPG encourages firms to engage in two-way margining and that FINRA should express support for firms that do so.[91]

In response, FINRA noted in the original filing that it supported the use of two-way margining as a means of managing risk.[92] However, FINRA does not propose to address such a requirement at this time as part of the proposed rule change. FINRA welcomes further dialogue with industry participants on this issue.

E. $2.5 Million Gross Open Position Amount and the $250,000 de Minimis Transfer Amount

As discussed above, the proposed rule sets forth an exception from the proposed margin requirements for counterparties whose gross open positions in Covered Agency Transactions with the member amount to $2.5 million or less in aggregate, as specified by the rule. As set forth more fully in the original filing, the proposed rule also sets forth, for a single counterparty, a $250,000 de minimis transfer amount up to which margin need not be collected or charged to net capital, as specified by the rule.[93] One commenter suggested that the $2.5 million amount is too low and that FINRA should provide guidance as to treatment of accounts that fluctuate in the approximate range of that amount.[94] A couple of commenters suggested a $10 million exception for gross open positions.[95] As to the $250,000 de minimis transfer amount, a few commenters suggested increasing the amount to $500,000.[96] One commenter expressed concern that members would end up needing to monitor the $250,000 amount even though it would benefit few if any customers.[97] This commenter further suggested that the rule should grandfather existing agreements that already provide for $500,000 de minimis transfer amounts.[98] A commenter suggested $500,000 is appropriate because that amount is used

[83] *Id.*

[84] *See* Exhibit 5 in Partial Amendment No. 1.

[85] *See supra* note 3. For convenience, the $2.5 million and maintenance margin exceptions are referred to as the ''cash account'' exceptions for purposes of Partial Amendment No. 1.

[86] *See* Robert Baird Letter, BDA Letter, Credit Suisse Letter, Matrix Letter, SIFMA Letter, and SIFMA AMG Letter.

[87] *See* SIFMA Letter.

[88] *See* SIFMA AMG Letter.

[89] *See supra* note 3.

[90] *See* ACLI Letter, AII Letter, Crain Letter, ICI Letter, SIFMA AMG Letter, and Sutherland Letter.

[91] *See* SIFMA Letter.

[92] *See supra* note 3.

[93] *See supra* note 3.

[94] *See* SIFMA AMG Letter.

[95] *See* SIFMA Letter and BDA Letter.

[96] *See* ACLI Letter, ICI Letter, and SIFMA Letter.

[97] *See* SIFMA Letter.

[98] *Id.*

in other regulatory contexts.[99] One commenter suggested raising the de minimis transfer amount to $1 million.[100] Some commenters suggested that the rule should permit parties to negotiate higher thresholds.[101] Another commenter suggested the $250,000 de minimis transfer amount would not be sufficient for participants in the multifamily market.[102]

In response, FINRA does not propose to alter the $2.5 million amount for gross open positions and does not propose to alter the $250,000 de minimis transfer amount. As discussed in the original filing, FINRA believes that these amounts are appropriately tailored to smaller accounts that are less likely to pose systemic risk.[103] FINRA believes that increasing the thresholds would undermine the rule's purpose. In that regard, permitting parties to negotiate higher thresholds by separate agreement, whether entered into before the rule takes effect or afterwards, would only serve to cut against the rule's objectives. FINRA does not propose to alter the de minimis transfer amount on account of multifamily securities transactions given that, as discussed above, FINRA is amending the rule so that members may elect not to apply the proposed margin requirements to multifamily and project loan securities, subject to specified conditions.[104]

F. Timing of Margin Collection and Position Liquidation

As set forth more fully in the original filing, the proposed rule provides that, with respect to exempt accounts, if a mark to market loss, or, with respect to non-exempt accounts, a deficiency, is not satisfied by the close of business on the next business day after the business day on which the mark to market loss or deficiency arises, the member must deduct the amount of the mark to market loss or deficiency from net capital as provided in Exchange Act Rule 15c3–1.[105] Further, unless FINRA has specifically granted the member additional time, the member is required to liquidate positions if, with respect to exempt accounts, a mark to market loss is not satisfied within five business days, or, with respect to non-exempt accounts, a deficiency is not satisfied within such period.[106] Commenters expressed concerns that the proposed rule's time frame for collection of the mark to market loss or deficiency (that is, margin collection) and the time frame for liquidation are too onerous, that longer periods should be permitted as the five-day liquidation period is not sufficient to resolve various issues that may arise, that parties should be permitted to set the applicable time frames in a MSFTA or other agreement, and that the time frames do not align with the 15 days permitted under FINRA Rule 4210(f)(6) or other market conventions.[107] Two commenters suggested that the ''T+1'' margin call would raise operational issues.[108] Another commenter suggested that the capital charge should apply five days after the initial margin call.[109] Another commenter suggested FINRA should allow firms to take a capital charge in lieu of collecting margin.[110] Another commenter suggested that allowing dealers to take a capital charge is a suitable practice to address margin delivery fails and that the forced liquidation requirement should be eliminated.[111]

In response, FINRA does not propose to modify the timing for margin collection and position liquidation as set forth in the proposed rule change. With respect to position liquidation, while it is true that longstanding language under FINRA Rule 4210(f)(6) sets forth a 15-day period, more recent requirements adopted under the portfolio margin rules, which have been in widespread use among members, set forth a three-day time frame.[112] FINRA believes that, with respect to Covered Agency Transactions, the five-day period should provide sufficient time for members to resolve issues. Further, as FINRA noted in the original filing, FINRA believes the five-day period is appropriate in view of the potential counterparty risk in the TBA market.[113] Consistent with longstanding practice under FINRA Rule 4210(f)(6), the proposed rule allows FINRA to specifically grant the member additional time. FINRA maintains, and regularly updates, the Regulatory Extension System for this purpose. FINRA welcomes further discussion with industry participants on this issue. With respect to the timing of margin collection, FINRA notes that the proposed language ''by the close of business on the next business day after the business day'' on which the market to market loss or deficiency arises is consistent, again, with language under the portfolio margin rules, which are well understood by members.[114] FINRA does not believe it is appropriate to revise the proposed rule to permit members to take a capital charge in lieu of collecting margin. FINRA notes that taking a capital charge, of itself, does not suffice to address counterparty risk, which is a key purpose of the proposed rule change. Further, FINRA believes that only requiring capital charges would render the rule without effect. FINRA does not believe it is appropriate to eliminate the liquidation requirement given that the requirement is intended to mitigate risk.

G. Concentration Limits

As set forth more fully in the original filing, under current (pre-revision) paragraph (e)(2)(H) of the rule, a member must provide written notification to FINRA and is prohibited from entering into any new transactions that could increase credit exposure if net capital deductions, over a five day period, exceed: (1) For a single account or group of commonly controlled accounts, five percent of the member's tentative net capital; or (2) for all accounts combined, 25 percent of the member's tentative net capital.[115] Commenters suggested that the five percent threshold should be raised to 10 percent so as to take account of the impact of the proposal.[116] In response, FINRA does not propose to revise the five percent threshold. FINRA noted in the original filing that both the five percent and the 25 percent thresholds are currently in use and are designed to address aggregate risk in this area.[117] FINRA noted that if the thresholds are easily reached in volatile markets, then that would suggest the thresholds serve an important purpose in monitoring risk.

H. Mortgage Bankers

As set forth more fully in the original filing, the proposed rule provides that members may treat mortgage bankers that use Covered Agency Transactions to hedge their pipeline of commitments as exempt accounts for purposes of paragraph (e)(2)(H) of the rule.[118]

[99] *See* ICI Letter.

[100] *See* BDA Letter.

[101] *See* CoBank Letter, SIFMA AMG Letter, Sutherland Letter.

[102] *See* Crain Letter.

[103] *See supra* note 3.

[104] *See* section II.D.1. above.

[105] *See supra* note 3.

[106] *Id.*

[107] *See* ACLI Letter, AII Letter, BDA Letter, SIFMA Letter, and SIFMA AMG Letter.

[108] *See* SIFMA Letter and SIFMA AMG Letter.

[109] *See* BDA Letter.

[110] *See* ICI Letter.

[111] *See* AII Letter.

[112] *See* FINRA Rule 4210(g)(9) and FINRA Rule 4210(g)(10).

[113] *See supra* note 3.

[114] *See* FINRA Rule 4210(g)(10)(B).

[115] *See supra* note 3. Under the proposed rule change, current paragraph (e)(2)(H) would be redesignated as paragraph (e)(2)(I).

[116] *See* BDA Letter and SIFMA Letter.

[117] *See supra* note 3.

[118] *Id.*

Proposed Supplementary Material .02 of the rule provides that members must adopt written procedures to monitor the mortgage banker's pipeline of mortgage loan commitments to assess whether the Covered Agency Transactions are being used for hedging purposes.[119] The Mortgage Bankers Association (''MBA'') suggested that, in addition to excepting mortgage bankers from treatment as non-exempt accounts if they hedge their pipeline of commitments, and thereby excepting them from the maintenance margin requirements that would otherwise apply, FINRA should also except mortgage bankers from the mark to market (also referred to as variation) margin requirements that would apply to exempt accounts.[120] MBA suggested that mortgage bankers function as ''end users'' that should not be unduly burdened by mandatory transaction rules, that requiring variation margin would distort the mortgage finance markets, and that hedging transactions by mortgage brokers do not represent a systemic risk. MBA said that FINRA had not done sufficient economic analysis as to the rule's impact on mortgage bankers.[121] Several other commenters said that FINRA should clarify what level of diligence members need to apply to determine whether a mortgage banker is hedging its pipeline of commitments and thereby eligible to be treated as an exempt account.[122] Commenters sought guidance as to whether for example members may comply by obtaining representations or certifications from the mortgage bankers.

In response, as FINRA noted in the original filing, the type of monitoring set forth in the proposed rule is not a wholly new requirement.[123] The current Interpretations under Rule 4210 already contemplate that members evaluate the loan servicing portfolios of specified counterparties that are being treated as exempt accounts.[124] FINRA believes it is sound practice that members have written procedures to monitor the portfolios of mortgage bankers that are being treated as exempt accounts. As discussed earlier with respect to the cash account exceptions, FINRA believes that members should be able to rely on the reasonable representations of their mortgage banker customers where necessary for purposes of this requirement. FINRA welcomes further discussion with industry participants on this issue, and will consider issuing further guidance as needed. FINRA does not propose to modify the proposal to except mortgage bankers from the mark to market requirements, such as by creating an ''end user'' or other similar type of exception, as doing so would undermine the rule's purpose by excepting a major category of participant in the market. FINRA believes that such an exception would create incentives that would distort trading behavior, which could increase the risk of member firms and their customers. As discussed in section III.A. above, and as further discussed below, FINRA has noted that the proposed rule change will likely impose direct and indirect costs, which may lead to decreased liquidity in the market.[125] However, FINRA has noted the need for the rule change given the potential for risk in this market.[126]

In response to MBA's suggestion that FINRA did not do sufficient economic analysis as to the rule's impact on mortgage bankers, FINRA notes the following. First, MBA stated that FINRA's analysis consisted of a cursory examination of the TBA market over a short period of time using data from one broker-dealer across 35 days leading up to and including May 30, 2014.[127] In response, FINRA notes that this interpretation of the data used in the analysis is not accurate; the sample period is not 35 days and the data do not contain the open positions of a single broker-dealer. To estimate the potential burden on mortgage bankers, FINRA analyzed data provided by a major clearing broker. This dataset contained 5,201 open transactions as of May 30, 2014 in 375 customer (including mortgage banker) accounts at 10 broker-dealers. These open transactions were created between October 18, 2013 and May 30, 2014, with approximately 60% created in May 2014. Based on FINRA's discussions with the clearing broker, FINRA believes that the sample is a good representation of typical exposures. These open positions would require posting margin on 35 days throughout the sample, corresponding to less than 0.01% of the 14,001 account-day combinations.

Second, MBA suggested that FINRA's analysis did not control the results of its study against typical market volatility, against the expected withdrawal of the Federal Reserve as an active buyer of TBA-eligible MBS or even to follow its sample data through other periods throughout 2014.[128] However, as discussed in the original filing, FINRA analyzed the relation between interest rate volatility and the volatility in the TBA market by comparing the volatility of Deutsche Bank's TBA index in two different interest rate regimes based on 10-year U.S. Treasury yields and found no significant change across the two periods.[129] FINRA acknowledged that the Federal Reserve (specifically, the FRBNY) is a major market participant in the TBA market. The withdrawal of FRBNY as an active buyer would have a significant impact on the market, unless other market participants increase their activities or new participants choose to enter the market.[130] FINRA discussed this potential impact in the original filing.[131]

Third, MBA suggested that FINRA's analysis did not appear to evaluate the financial and other costs the proposed rule change would impose on mortgage bankers and borrowers and that FINRA did not evaluate the impact to consumers and other borrowers resulting from an increase in mortgage rates and reduction in competition that would arise due to the proposed rule change.[132] MBA suggested that the proposed rule change will harm borrowers by limiting their access to credit, and that requiring mortgage bankers to divert their liquidity from origination for margin calls imposes an acute liquidity risk on mortgage bankers. In response, as discussed earlier, FINRA acknowledged in the original filing the potential impact of the proposed rule change on market behavior of participants and noted that ''[s]ome parties who currently transact in the TBA market may choose to withdraw from or limit their participation in the TBA market.[133] Reduced participation may lead to decreased liquidity in the market for certain issues or settlement periods, potentially restricting access to end users and increasing costs in the mortgage market.'' [134] However, FINRA noted that the impact on access to credit would be limited if new participants

[119] *See* proposed FINRA Rule 4210.02 in Exhibit 5 of Partial Amendment No. 1.

[120] *See* MBA Letter.

[121] *Id.*

[122] *See* BDA Letter, Matrix Letter, SIFMA Letter, and Sandler O'Neill Letter.

[123] *See supra* note 3.

[124] *See* Interpretation /02 of FINRA Rule 4210(e)(2)(F); *see also, supra* note 3. The Interpretation cites, in part, such factors as loan balance, servicing fee, remaining life of the loan, probability of loan survival, delinquency rate, geographic relationships, cost of foreclosure and servicing costs.

[125] *See supra* note 3.

[126] *See supra* note 67.

[127] *See* MBA Letter.

[128] *Id.*

[129] *See supra* note 3.

[130] *Id.*

[131] *Id.*

[132] *See* MBA Letter.

[133] *See supra* note 3.

[134] *Id.*

choose to enter the market to offset the impact of participants that exit the market. Further, in light of the importance of the role of mortgage bankers in the mortgage finance market, FINRA noted in the original filing that the proposed rule change has accommodated the business of mortgage bankers by including provision for members to treat mortgage bankers as exempt accounts with respect to their hedging, subject to specified conditions.[135]

Fourth, MBA suggested that FINRA neglected to analyze the impact of mortgage bankers being forced to switch from mandatory to best efforts delivery commitments in the process forsaking significant amounts of their gain on sale or limiting their competitiveness in various products.[136] In response, FINRA has no basis to believe that the margin requirement would force mortgage bankers to switch from mandatory execution basis to best efforts execution. FINRA expects that the majority of the mortgage bankers' positions would be excepted from the proposed margin requirements, and market competition would maintain the origination of loans to the borrowers.

I. Risk Limit Determinations

One commenter sought clarification as to whether paragraphs (e)(2)(F), (e)(2)(H) and (e)(2)(G) of the rule require a member to write a separate risk limit determination for the types of products addressed by each of those paragraphs for each counterparty.[137] In response, FINRA notes that one written risk limit determination, for each counterparty, should suffice, provided it addresses the products. As set forth more fully in the original filing, FINRA notes that the proposed risk limit language in paragraphs (e)(2)(F) and (e)(2)(G) is drawn from language that appears under current, pre-revision paragraph (e)(2)(H) and which currently, by its terms, already applies to both paragraphs (e)(2)(F) and (e)(2)(G).[138]

J. Advisory Clients of Registered Investment Advisers

As set forth more fully in the original filing, proposed Supplementary Material .05 requires in part that, for purposes of any risk limit determination pursuant to paragraphs (e)(2)(F), (e)(2)(G), or (e)(2)(H) of Rule 4210, if a member engages in transactions with advisory clients of a registered investment adviser, the member may elect to make the risk limit determination at the investment adviser level, except with respect to any account or group of commonly controlled accounts whose assets managed by that investment adviser constitute more than 10 percent of the investment adviser's regulatory assets under management as reported on the investment adviser's most recent Form ADV.[139] One commenter sought clarification as to whether the 10 percent threshold may be calculated as of the time of the credit review under the member's written risk analysis policy and procedures.[140] Another commenter suggested that the 10 percent threshold is not necessary and FINRA should clarify whether the 10 percent goes to the commonly controlled accounts at the member firm.[141] A commenter requested guidance as to whether it would be permissible for the member to collect aggregated margin in a single account, given that the investment adviser may be contractually prohibited from disclosing details about customers in the sub-accounts.[142]

In response, FINRA believes it is consistent with the rule's intent that the 10 percent threshold may be calculated as of the time of the member's credit review pursuant to its written risk policies and procedures.[143] FINRA expects that the 10 percent would be as to accounts of which the member is aware by virtue of the member's relationship with the investment adviser. As noted in the original filing, FINRA believes the 10 percent threshold is appropriate given that accounts above that threshold pose a higher magnitude of risk. FINRA believes that the rule does not prevent a member from aggregating margin, provided the member observes all applicable requirements under SEC and FINRA rules.[144]

K. Sovereign Entities

As set forth more fully in the original filing, the proposed rule provides that, with respect to Covered Agency Transactions with any counterparty that is a federal banking agency, as defined in 12 U.S.C. 1813(z),[145] central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements, a member may elect not to apply the margin requirements specified in paragraph (e)(2)(H) of the proposed rule provided the member makes a written risk limit determination for each such counterparty that the member shall enforce pursuant to paragraph (e)(2)(H)(ii)b.[146] A couple of commenters said that sovereign wealth funds should be included among the entities with respect to which a member may elect not to apply the proposed margin requirements.[147] One of the commenters said that FINRA should consider the credit profile of sovereign wealth funds rather than whether they are commercial participants.[148] In response, FINRA does not propose to make the suggested modification. The proposed exception is designed specifically for selected sovereign entities performing the functions of governments. As commercial participants in the market, sovereign wealth funds are subject to risk. As noted in the original filing, FINRA believes that to include sovereign wealth funds within the parameters of the proposed exception would create perverse incentives for regulatory arbitrage.[149]

L. Federal Home Loan Banks and Farm Credit Banks

Some commenters requested that FINRA amend the rule so that members would have discretion to except Federal Home Loan Banks (''FHLB'') and Farm Credit Banks (''FCB'') from the proposed margin requirements.[150] One commenter requested that, in the alternative, a member should have discretion to except FHLB from the proposed margin requirements when the Covered Agency Transactions are entered into for the purpose of hedging risk.[151] The commenters suggested

[135] *Id.*

[136] *See* MBA Letter.

[137] *See* SIFMA Letter.

[138] *See supra* note 3.

[139] *Id. See* proposed FINRA Rule 4210.05 in Exhibit 5 of Partial Amendment No. 1.

[140] *See* Credit Suisse Letter.

[141] *See* SIFMA Letter.

[142] *See* Sandler O'Neill Letter.

[143] The proposed rule is not intended to prescribe specific intervals at which a member would need to review risk limit determinations. However, FINRA notes that, with respect to risk limit determinations pursuant to the proposed rule, proposed Rule 4210.05(a)(4) provides that a member shall consider whether the margin required pursuant to the rule is adequate with respect to a particular counterparty account or all its counterparty accounts and, where appropriate, increase such requirements. FINRA believes members should be mindful, in the conduct of their business, of the need to revisit risk limit determinations as appropriate. *See* proposed Rule 4210.05(a)(4) in Exhibit 5 in Partial Amendment No. 1.

[144] *See supra* note 3.

[145] 12 U.S.C. 1813(z) defines federal banking agency to mean the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

[146] *See supra* note 3.

[147] *See* SIFMA Letter and SIFMA AMG Letter.

[148] *See* SIFMA Letter.

[149] *See supra* note 3.

[150] *See* Sutherland Letter and CoBank Letter.

[151] *See* Sutherland Letter.

further that the rule should provide for a member's counterparty to have the right to segregate any margin posted with a FINRA member with an independent third-party custodian. In response, FINRA does not propose to make the requested modifications to the proposed rule. The requested exceptions would undermine the rule's purpose of reducing risk. With respect to third-party custodial arrangements, FINRA believes these are best addressed in separate rulemaking or guidance, as appropriate. FINRA welcomes further discussion of these issues.

M. Other Comments

Several commenters expressed concerns, as set forth below, that FINRA believes raise issues that are outside the scope of the proposed rule change. As such, in response, FINRA does not propose any revisions to the proposed rule change. However, FINRA welcomes further discussion of these issues.

- A few commenters said that the proposed rule change should address the responsibilities of introducing and clearing firms, including such issues as assignment of responsibility for capital charges to one party versus the other for purposes of FINRA Rule 4311 when engaging in Covered Agency Transactions. FINRA notes that the proposed rule change is not intended to address issues under Rule 4311.[152]
- A commenter said FINRA should work with international regulators to harmonize the proposed requirements with other regulatory regimes.[153] As noted above, FINRA believes this is outside the scope of the proposed rule change.
- A couple of commenters said that smaller and medium firms may find it difficult to develop in-house systems to comply with the proposed rule change.[154] One commenter requested that FINRA clarify that members may utilize third-party providers to assist with their compliance.[155] Broadly, FINRA believes third-party service providers should be permissible provided the member complies with all applicable rules and guidance, including, among other things, the member's obligations under FINRA Rule 3110 and as described in *Notice to Members* 05–48 (July 2005) (Outsourcing).
- A commenter said that FINRA should coordinate the rule change with the former Mortgage-Backed Securities Clearing Corporation, now part of the Fixed Income Clearing Corporation.[156] As noted above, FINRA believes this is outside the scope of the proposed rule change.
- Two commenters said that FINRA should provide guidance that would permit collective investment trusts, common trust funds or collective trust funds to be treated as exempt accounts.[157] One of the commenters further said that foreign institutions should be recognized as exempt accounts.[158] Another commenter suggested FINRA should confirm that an omnibus account maintained by an investment adviser may be classified as an exempt account based on the assets under management in the account and a risk analysis conducted at the investment adviser level.[159] FINRA notes that, other than for purposes of one conforming revision, as set forth in the original filing, the proposed rule change is not intended to revisit the definition of exempt accounts for the broader purposes of Rule 4210.[160]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2015–036 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether the proposed rule change should be approved or disapproved.[161] Institution of proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the issues presented by the proposed rule change and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal.

Pursuant to Exchange Act Section 19(b)(2)(B),[162] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Exchange Act Section 15A(b)(6)[163] requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA, in proposing margin requirements for Covered Agency Transactions, stated that it believes unsecured credit exposures that exist in the TBA market today can lead to financial losses by dealers.[164] The Commission agrees with FINRA that permitting counterparties to participate in the TBA market without posting margin can facilitate increased leverage by customers, thereby potentially posing a risk to the dealer extending credit and to the marketplace as a whole.[165] The Commission believes, however, that the proposed rule change, as modified by Partial Amendment No. 1, to impose margin requirements on Covered Agency Transactions raises questions with regard to the potential effects of the proposal on the mortgage market, as a whole, as well as on certain market participants. In particular, the Commission believes that the proposed rule change, as modified by Amendment No. 1, raises concerns that the potential operational difficulties and costs of implementing the proposed rule may cause some firms to either withdraw from the TBA market or cease dealing with certain types of counterparties. This raises questions as to whether the proposed margin requirements are consistent with the requirements of Section 15A(b)(6)[166] of the Exchange Act, including whether the proposed rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues raised by the proposed rule change, as modified by Partial Amendment No. 1. In particular, the Commission invites the written views of interested persons on whether the proposed rule change, as modified by Partial Amendment No. 1, is inconsistent with Section 15A(b)(6), or any other provision, of the Exchange

[152] *See* BDA Letter, Sandler O'Neill Letter, and SIFMA Letter.

[153] *See* SIFMA AMG Letter.

[154] *See* Matrix Letter and BDA Letter.

[155] *See* Matrix Letter.

[156] *See* Brean Capital 2 Letter.

[157] *See* SIFMA Letter and SIFMA AMG Letter.

[158] *See* SIFMA AMG Letter.

[159] *See* Credit Suisse Letter.

[160] *See supra* note 3.

[161] 15 U.S.C. 78s(b)(2). Exchange Act Section 19(b)(2)(B) provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

[162] 15 U.S.C. 78s(b)(2)(B).

[163] 15 U.S.C. 78*o*–3(b)(6).

[164] *See supra* note 3.

[165] *Id.*

[166] 15 U.S.C. 78*o*–3(b)(6).

Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[167]

Interested persons are invited to submit written data, views, and arguments by February 11, 2016 concerning whether the proposed rule change should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 7, 2016. In light of the concerns raised by the proposed rule change, as modified by Partial Amendment No. 1, as discussed above, the Commission invites additional comment on the proposed rule change, as modified by Partial Amendment No. 1, as the Commission continues its analysis of whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with Section 15A(b)(6), or any other provision of the Exchange Act, or the rules and regulations thereunder. The Commission is asking that commenters address the merits of FINRA's statements in support of its proposal, as modified by Partial Amendment No. 1, as well as the comments received on the proposal, in addition to any other comments they may wish to submit about the proposed rule change, as modified by Partial Amendment No. 1. Specifically, the Commission is considering and requesting comment, including empirical data in support of comments, in response to the following questions:

1. Will the proposed rule change, as modified by Partial Amendment No. 1, affect the operation and structure of the TBA markets as it exists today? If so, how?
2. What are commenters' views with respect to the benefits and costs of the proposed rule change, as modified by Partial Amendment No. 1? What implementation and ongoing costs will result, if any, from complying with the proposed rule change, as modified by Partial Amendment No. 1?
3. Will the proposed rule change, as modified by Partial Amendment No. 1, affect FINRA member firms differently based on their size (*i.e.,* small, medium or large firms)? If so, how? Will the proposed rule change, as modified by Partial Amendment No. 1, create competitive advantages or disadvantages for member firms based on their size? If so, how?
4. What are commenters' views on the impact of the proposed rule change, as modified by Partial Amendment No. 1, on other affected parties, such as non-member firms and other market participants?
5. What are commenters' views on the exception for multifamily housing and project loan securities in the proposed rule change, as modified by Partial Amendment No. 1? Does the proposed exception for multifamily and project loan securities pose any risks to FINRA members, as well as other market participants? If so, please describe these risks?
6. What are commenters' views on the implementation time required to comply with the proposed rule change, as modified by Partial Amendment No. 1?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–036. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. The Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–036 and should be submitted on or before February 11, 2016. If comments are received, any rebuttal comments should be submitted by March 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[168]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01058 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[167] Exchange Act Section 19(b)(2), as amended by the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceedings—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[168] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76915; File No. SR–BX–2016–001]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 7018

January 14, 2016.

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 January 4, 2016, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule under Exchange Rule 7018(a) with respect to execution and routing of orders in securities priced at $1 or more per share.

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 Exchange is proposing to amend the fee schedule under BX Rule 7018(a), relating to fees and credits provided for orders in securities priced and $1 or more per share that execute on BX.

Under BX Rule 7018(a), the Exchange provides credits to member firms that access liquidity on BX. The Exchange is proposing to add a new credit tier for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging). The new credit tier will be for a member that adds and accesses liquidity equal to or exceeding 0.50% of total consolidated volume during a month. The proposed credit for the tier will be $0.0017 per share executed.

The Exchange also proposes to amend a fee for providing liquidity through the NASDAQ OMX BX Equities System (the ''System''), by eliminating one of the criteria applicable to the fee and decreasing the fee. Specifically, the current fee for a displayed order entered by a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month; and (ii) adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month is $0.0016 per share executed. The Exchange proposes to eliminate criteria (i) and decrease the fee to $0.0014 per share executed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other fees among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5] Likewise, in *NetCoalition* v. *NYSE Arca, Inc.*[6] (''NetCoalition'') the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[7] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [8]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [9]

The Exchange believes that the proposed new credit tier for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging), entered by a member that adds and accesses liquidity equal to or exceeding 0.50% of total consolidated volume during a month is reasonable because it provides an additional opportunity for market participants to receive credits for participation on BX and the Exchange desires to further incentivize member firms to participate in the Exchange by removing liquidity. The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the same credit to all similarly situated members that achieve the level of total consolidated volume required by the tier.

BX believes that the proposed fee decrease from $0.0016 per share executed to $0.0014 per share executed, as well as the elimination of the first criteria below (criteria (i)), for a displayed order entered by a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month; and (ii) adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month are reasonable because decreasing the fee and eliminating the first criteria will provide firms more flexibility in attaining the tier and further incentivize participation in the market.

The Exchange also believes that this proposed rule change is an equitable allocation and is not unfairly discriminatory because it will further encourage market participant activity and will also support price discovery and liquidity provision. The Exchange also believes this proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee and credit to all similarly situated members.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or credit opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The changes reflect this environment because they reflect changes to both credits and fees designed to incentivize changes in market participant behavior to the benefit of the market overall.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[6] *NetCoalition v. NYSE Arca, Inc.,* 615 F.3d 525 (D.C. Cir. 2010).

[7] *See NetCoalition,* at 534.

[8] *Id.* at 537.

[9] *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[10] In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, both the proposed new credit tier and the modification to the fee are subject to extensive competition both from other exchanges and from off-exchange venues.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] 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 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–BX–2016–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–001, and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01064 Filed 1–20–16; 8:45 am]

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[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76903; File No. SR–NYSEARCA–2016–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE ArcaBook

January 14, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE ArcaBook to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; and (3) modify the application of the non-professional user fee cap. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE ArcaBook,[4] as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4, 2016:

- Establish a multiple data feed fee; and
- Discontinue fees relating to managed non-display

The Exchange also proposes to modify the application of the non-professional fee cap, effective April 1, 2016.

Multiple Data Feed Fee

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE ArcaBook in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[5]

Managed Non-Display Fees

Non-Display Use of NYSE Arca market data means accessing, processing, or consuming NYSE Arca market data delivered via direct and/or Redistributor[6] data feeds for a purpose other than in support of a data recipient's display usage or further internal or external redistribution.[7] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[8] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE ArcaBook and does not allow for further internal distribution or external redistribution of NYSE ArcaBook by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE Arca on a monthly basis the data recipients that are receiving NYSE Arca market data through the Redistributor's managed non-display service and the real-time NYSE Arca market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE ArcaBook from an approved Redistributor of Managed Non-Display Services are charged an access fee of $1,000 per month and a Managed Non-Display Services Fee of $1,800 per month, for a total fee of $2,800 per month.

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE ArcaBook on a managed non-display basis would be subject to the same access fee of $2,000 per month, and the same non-display services fees,[9] as other data recipients.[10]

Non-Professional User Fee Cap

For display use of the NYSE ArcaBook data feed, the Fee Schedule sets forth a Professional User Fee of $40 per user per month and a Non-Professional User Fee than [sic] ranges between $3 and $10 per user per month, depending on the number of users. These user fees generally apply to each display device that has access to NYSE ArcaBook.

For customers that are broker-dealers, these fees are subject to a $40,000 per month cap on non-professional user fees (the ''Non-Professional User Fee Cap'').[11] When adopting these fees, the Exchange adopted guidelines under which the broker-dealer would be eligible for the Non-Professional User Fee Cap notwithstanding the inclusion, temporarily or unintentionally, of a limited number of account-holding professional users (the ''Professional User Exception''), subject to a complex set of conditions relating to the percentage of professional users, the relationship of those professional users to the broker-dealer, and the method of display and use of the data.[12] The Exchange proposed the Professional User Exception to the Non-Professional User Fee Cap to permit broker-dealers that primarily serve non-institutional brokerage account holders to offer an online client experience without undue administrative burdens while at the same time guarding against potential abuses by monitoring the use of the exception closely and reserving the right to deny application of the exception if a broker-dealer is determined to be misusing it, such as by opening up retail brokerage accounts to disseminate data to institutional clients.

The Exchange proposes to eliminate the Professional User Exception for NYSE ArcaBook effective April 1, 2016. The Exchange notes the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of the exception and the burdens on customers and on the Exchange that have to track compliance with the exception. In addition, the Exchange notes that the

[4] *See* Securities Exchange Act Release Nos. 53592 (June 7, 2006), 71 FR 33496 (June 9, 2006) (SR–NYSEArca–2006–21) (''2006 ArcaBook Notice''); 59039 (Dec. 2, 2008), 73 FR 74770 (Dec. 9, 2008) (SR–NYSEArca–2006–21); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing''); 72560 (July 8, 2014), 79 FR 40801 (July 14, 2014) (SR–NYSEArca–2014–72) (''2014 ArcaBook Filing''); 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEARCA–2014–93) (''2014 Non-Display Filing''); and 74011 (Jan. 7, 2015), 80 FR 1681 (Jan. 13, 2015) (SR–NYSEArca–2014–149) (''2015 ArcaBook Filing'').

[5] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE ArcaBook product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[6] ''Redistributor'' means a vendor or any other person that provides an NYSE Arca data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[7] *See e.g.* 2015 ArcaBook Filing, *supra* note 4.

[8] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE ArcaBook for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE ArcaBook in the Redistributor's own messaging formats (rather than using raw NYSE message formats) by reformatting and/or altering NYSE ArcaBook prior to retransmission without affecting the integrity of NYSE ArcaBook and without rendering NYSE ArcaBook inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[9] *See* Fee Schedule.

[10] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE Arca BBO, NYSE Arca Trades, and NYSE Arca Integrated Feed. *See* SR–NYSEArca-2016–02 and SR–NYSEArca-2016–03.

[11] *See* 2014 ArcaBook Filing, *supra* note 4. In the 2006 ArcaBook Notice, the Exchange described the Non-Professional User Fee Cap as being subject to being increased (but not decreased) by the percentage increase (if any) in the annual composite share volume for the calendar year preceding that calendar year, subject to a maximum annual increase of five percent. The Exchange has waived its right to implement the increases it would have been entitled to implement and has not increased the fee cap commensurately and hereby proposes to set the fee cap at a constant $40,000 per month that would not be subject to any adjustments.

[12] *See* 2006 ArcaBook Notice, *supra* note 4.

Professional User Exception has been used by a small number of customers since it was adopted.

Accordingly, as proposed, the Non-Professional User Fee Cap would no longer include any professional users that receive NYSE ArcaBook data feed and the Professional User fee of $40 per user per month would apply with respect to all Professional Users.

Non-Substantive Change to the Fee Schedule

The Non-Professional User Fee Cap applies, as noted above, to any broker-dealer for non-professional subscribers that maintain brokerage accounts with the broker-dealer. The Exchange proposes to specify in the Fee Schedule that the cap applies to broker-dealers only.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE ArcaBook.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee [sic] taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (''CTA'').[15] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[16]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[17] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Non-Professional User Fee Cap

The Exchange believes that it is reasonable to modify the application of the non-professional user fee cap by eliminating the Professional User Exception. The Exchange notes that the Professional User Exception was an accommodation, the benefits of which were, when implemented, outweighed by the complexity of the terms of the exception and the burdens on customers and on the Exchange entailed with tracking compliance with the exception. Eliminating the Professional User Exception would make the application of the Non-Professional User Fee Cap simpler and ease administrative burdens for customers and the Exchange by removing an administrative exception that has had limited use and application.

Non-Substantive Changes to the Fee Schedule

The Exchange believes that specifying in the Fee Schedule that the Non-Professional User Fee Cap applies to broker-dealers only will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the application of the Non-Professional User Fee Cap as previously filed with the Commission and applicable to the existing Fee Schedule.[18]

The Exchange notes that NYSE ArcaBook is entirely optional. The Exchange is not required to make NYSE ArcaBook available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE ArcaBook. Firms that do purchase NYSE ArcaBook do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE ArcaBook or any other similar products are attractively priced or not.[19]

Firms that do not wish to purchase NYSE ArcaBook at the new prices have a variety of alternative market data products from which to choose,[20] or if NYSE ArcaBook does not provide

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4), (5).

[15] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[16] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA Plan [sic] at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[17] *See* note 4, *supra.*

[18] *See* 2014 ArcaBook Filing, *supra* note 4.

[19] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[20] *See* NASDAQ Rule 7023 (Nasdaq Totalview) and BATS Rule 11.22(a) and (c) (BATS TCP Pitch and Multicast Pitch).

sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE ArcaBook or use it at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[21]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [22]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[23]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [24]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [25] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[26]

[21] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

[22] *NetCoalition,* 615 F.3d at 535.

[23] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[24] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (DC Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[25] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[26] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the 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. Vendors will not elect to make available NYSE ArcaBook unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE ArcaBook can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors 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, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of 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 availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of the Exchange and the Exchange's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[27] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[28]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

Competition among trading platforms can be expected to constrain the aggregate return that each platform

Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

[27] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[28] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

earns from the sale of its joint products, but different trading 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. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[29] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE ArcaBook, competitors offer close substitute products.[30] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed changes to the fees for NYSE ArcaBook, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[31] of the Act and subparagraph (f)(2) of Rule 19b–4[32] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[33] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–01. 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

[29] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[30] *See supra* note 20.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

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–NYSEARCA–2016–01 and should be submitted on or before February 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01055 Filed 1–20–16; 8:45 am]

BILLING CODE 8011–01–P

[34] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 9414]

30-Day Notice of Proposed Information Collection: Commodity Jurisdiction Determination

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. 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 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to February 22, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

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 Mr. Steven Derscheid, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Washington, DC 20522–0112, who may be reached via email at *derscheidsa@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Commodity Jurisdiction Determination.
- *OMB Control Number:* 1405–0163.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (PM/DDTC).
- *Form Number:* DS–4076.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,043.
- *Estimated Number of Responses:* 1,043.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 4,172 hours.
- *Frequency:* On occasion.
- *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: The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), has the principal missions of taking final action on license applications and other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulations, and collecting various types of reports. By statute, Executive Order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles, the provision of defense services, and the brokering thereof, which are covered by the U.S. Munitions List (USML).

The information submitted pursuant to the Commodity Jurisdiction Determination (OMB Control #1405–0163) will be used to evaluate whether a particular defense article or defense service is covered by the USML and therefore is subject to the export licensing jurisdiction of the Department of State. This collection may also be used to request a change in USML category designation, request the removal of the defense article from the USML, or request the reconsideration of a previous commodity jurisdiction determination.

Methodology: This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: electronically or mail.

Dated: January 5, 2016.

Lisa Aguirre,

Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2016–01163 Filed 1–20–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 9418]

Additional Culturally Significant Objects Imported for Exhibition Determinations: ''Bellissima: Italy and High Fashion 1945–1968'' Exhibition

ACTION: Notice; correction.

SUMMARY: On January 11, 2016, notice was published on page 1274 of the **Federal Register** (volume 81, number 6) of determinations made by the Department of State pertaining to certain objects imported for temporary display in the exhibition ''Bellissima: Italy and High Fashion 1945–1968.'' The referenced notice is corrected here to

include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the additional objects to be included in the exhibition ''Bellissima: Italy and High Fashion 1945–1968,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at the NSU Art Museum Fort Lauderdale, Fort Lauderdale, Florida, from on about February 7, 2016, until on or about June 19, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the additional imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: January 15, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–01296 Filed 1–20–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Quitclaim Deed and Federal Grant Assurance Obligations at Oxnard Airport, Oxnard, Ventura County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Request To Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately .96 acre of airport property near Oxnard Airport, Oxnard, Ventura County, California, from all conditions contained in the Quitclaim Deed and Grant Assurances since the parcel of land is not needed for airport purposes. The property will be sold for its fair market value and the proceeds used for airport purposes. The continued use of the land for agriculture represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Tony Garcia, Airports Compliance Program Manager, Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Todd McNamee, Director, Ventura County Department of Airports, 555 Airport Way, Camarillo, CA 93010.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

Ventura County, Department of Airports, Camarillo, California requested a release from the conditions contained in the Quitclaim Deed and Grant Assurance obligations for approximately .96 acres of airport land near Oxnard Airport. The property is located northwest of Oxnard Airport, adjacent to North Victoria Avenue and between Doris Avenue and Gonzales Road. The property is presently farm land in an agricultural area. The land will continue to be used for farming. Ventura County requested approval to sell the small parcel because the land is not needed for airport purposes and its current agricultural status prevents other uses. The property is approximately one mile from the airport boundary and is not suitable for current or future airport development. The sale price will be based on its appraised market value and the sale proceeds will be used for airport purposes. The continued use of the property for farming represents a compatible use that will not interfere with airport operations. The airport will be properly compensated, thereby serving the interests of civil aviation.

Issued in Hawthorne, California, on January 11, 2016.

Brian Armstrong,

Manager, Safety and Standards, Airports Division, Western-Pacific Region.

[FR Doc. 2016–01205 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–02]

Petition for Exemption; Summary of Petition Received; Alaska Aerial Media

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–0173 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0173.

Petitioner: Alaska Aerial Media.

Section(s) of 14 CFR Affected: §§ 61.23(a) and (c), 61.101(e)(4) and (5), 61.113(a), 61.315(a), 91.7(a), 91.119(c), 91.121, 91.151(a)(1), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (2), and 91.417(a) and (b).

Description of Relief Sought: The petitioner requests an amendment to their current exemption to conduct nighttime operations, as well as offer training and ground school to persons individually or belonging to both private and public organizations.

[FR Doc. 2016–01206 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Quitclaim Deed and Federal Grant Assurance Obligations at Santa Maria Public Airport, Santa Maria, Santa Barbara County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 21.09 acres of airport property at Santa Maria Public Airport/Captain G. Allan Hancock Field, Santa Maria, Santa Barbara County, California, from all conditions contained in the Quitclaim Deed and Grant Assurances since the parcel of land is not needed for airport purposes. The property will be sold for its fair market value and the proceeds used for airport purposes. The planned use of the land for commercial purposes represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Tony Garcia, Airports Compliance Program Manager, Federal Aviation Administration, Airports Division, **Federal Register** Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Chris Hastert, General Manager, Santa Maria Public Airport District, 3217 Terminal Drive, Santa Maria, CA 93455–1899.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The Santa Maria Public Airport District, Santa Maria, California requested a release from the conditions contained in the Quitclaim Deed and Grant Assurance obligations for approximately 21.09 acres of airport land at Santa Maria Public Airport. The property is located on the north side of the Airport and south of Fairway Drive. The property is mostly undeveloped and served as a 9-hole golf course. The Santa Maria Airport District requested approval to sell the parcel because the land is not presently needed for airport purposes or for future airport development. The sale price will be based on its appraised market value and the sale proceeds will be used for airport purposes. The future commercial use of the property represents a compatible use that will not interfere with airport operations. On this basis, the disposal will serve the interests of civil aviation.

Issued in Hawthorne, California, on January 11, 2016.

Brian Armstrong,

Manager, Safety and Standards, Airports Division, Western-Pacific Region.

[FR Doc. 2016–01207 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–09]

Petition for Exemption; Summary of Petition Received; Douglas Trudeau

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0481 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as

described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0481.

Petitioner: Douglas Trudeau.

Section(s) of 14 CFR Affected: 91.119(b), 91.119(c).

Description of Relief Sought: You requested an amendment to revise Condition No. 14 (pilot in command), Nos. 19, 30, 31, 32 (operating parameters), and an expansion of your area of operation within the State of Arizona and increased operational services.

[FR Doc. 2016–01209 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–05]

Petition for Exemption; Summary of Petition Received; Florida State University

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–0621 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0621.

Petitioner: Florida State University.

Section(s) of 14 CFR Affected: 21 subpart H, 45.23(b), 61.113(a), 61.3(d)(2)(iii), 91.103, 91.109, 91.119(b) & (c), 91.121, 91.151(a)(1), 91.203(a) & (b), 91.405(a) & (b), 91.409(a)(1) & (2), 91.417(a) & (b), 91.7(a), and 91.9(b)(2).

Description of Relief Sought: The petitioner requests to conduct commercial UAS operations for the purpose of training tuition-paying students in the use and operation of sUAS platforms in the field of disaster management.

[FR Doc. 2016–01210 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–10]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: You may send comments identified by Docket Number FAA–2016–0072 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Timoleon Mouzakis, Federal Aviation Administration, Engine and Propeller Directorate, Standards Staff, ANE–111, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7114; facsimile: (781) 238–7199; email: *timoleon.mouzakis@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 14, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0072.

Petitioner: Rolls-Royce plc.

Section of 14 CFR Affected: Section 33.27 (f)(6).

Description of Relief Sought: Rolls-Royce plc petitions for exemption from § 33.27 (f)(6) for the Rolls-Royce Trent XWB–84, XWB–79B, XWB–79, and XWB–75 engine models. Rolls-Royce seeks to exclude the entire high-pressure shaft system from consideration in determining the highest overspeed that would result from a complete loss of load on a turbine rotor.

[FR Doc. 2016–01203 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–07]

Petition for Exemption; Summary of Petition Received; Hazon Solutions LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–0218 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0218.

Petitioner: Hazon Solutions Inc.

Section(s) of 14 CFR Affected: 91.119(c).

Description of Relief Sought: The petitioner requests to conduct commercial UAS operations within 500 feet of any person, vessel, vehicle, or structure in a manner consistent with 14CFR 91.119(d). The petitioner states that they will not operate over persons non-participating in the operation unless they are under a covered structure.

[FR Doc. 2016–01193 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–06]

Petition for Exemption; Summary of Petition Received; Auburn University

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 10, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–1014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments,

without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 15, 2016.

James M. Crotty,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–1014.

Petitioner: Auburn University.

Section(s) of 14 CFR Affected: 21 subpart H, part 27, 45.23(b), 45.27(a), 61.113, 61.3, 91.103, 91.109, 91.119, 91.121, 91.151(a), 91.203, 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.417(a)&(b), 91.7(a), and 91.9(b)(2) & (c).

Description of Relief Sought: The petitioner requests to conduct UAS commercial operations to conduct unmanned aircraft systems training as part of their Flight Instruction Program.

[FR Doc. 2016–01204 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. 2016–0001]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for new information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 21, 2016.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2016–0001 by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Garland, 202–366–6221, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Transportation Planning Excellence Awards Nomination Form.

OMB Control #: 2125–0615.

Background: Transportation Planning Excellence Awards Nomination Form. The Transportation Planning Excellence Awards (TPEA) Program is a biennial awards program developed by the FHWA and the Federal Transit Administration (FTA) to recognize outstanding initiatives across the country to develop, plan and implement innovative transportation planning practices. The program is co-sponsored by the American Planning Association.

The on-line TPEA nomination form is the tool for submitters to nominate a process, group, or individual involved in a project or process that has used the FHWA and/or the FTA funding sources to make an outstanding contribution to the field of transportation planning. The information about the process, group or individual provided by the submitter may be shared and published if that submission is selected for an award.

The TPEA Program is a biennial awards program and individuals will be asked to submit nominations via the online form every two years. The participants will provide their information by means of the Internet.

Respondents: For the TPEA, 35 participants biennially.

Frequency: For the TPEA, nominations are solicited every two years.

Estimated Average Burden per Response: For the TPEA Program, approximately 90 minutes.

Estimated Total Annual Burden Hours For the TPEA Program, 225 hours in the first year and 225 hours in the third year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 15, 2016.

Michael Howell,

Information Collection Officer.

[FR Doc. 2016–01153 Filed 1–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 15, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 22, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0260.

Type of Review: Extension of a currently approved collection.

Title: Form 706–CE—Certificate of Payment of Foreign Death Tax.

Form: Form 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so

that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 3,870.

OMB Control Number: 1545–0495.

Type of Review: Extension of a currently approved collection.

Title: Form 4506–A—Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

Form: Form 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 50(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 19,400.

OMB Control Number: 1545–1833.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.

Abstract: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Internal Revenue Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by section 1.861–9T(g)(1)(iii) of the regulations. It also sets forth the procedure to be followed in the case of elections to use the fair market value method.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 625.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–01140 Filed 1–20–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Commission on Care

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act, 5 U.S.C., App. 2, the Commission on Care gives notice that it will meet on Monday, February 8, 2016 at the Washington Marriott at Metro Center, 775 12th St. NW., Washington, DC 20005. The meeting will convene at 8:00 a.m. and end no later than 6:00 p.m. The meeting is open to the public.

The purpose of the Commission, as described in section 202 of the Veterans Access, Choice, and Accountability Act of 2014, is to examine the access of veterans to health care from the Department of Veterans Affairs and strategically examine how best to organize the Veterans Health Administration, locate health care resources, and deliver health care to veterans during the next 20 years.

No time will be allocated at this meeting for receiving oral presentations from the public. The public may submit written statements for the Commission's review to *commissiononcare@va.gov*. Any member of the public wanting to attend may also register their intention to attend by emailing the same address.

Dated: January 15, 2016.

John Goodrich,

Designated Federal Officer, Commission on Care.

[FR Doc. 2016–01128 Filed 1–20–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the subcommittees of the Rehabilitation Research and Development Service Scientific Merit Review Board will meet from 8:00 a.m. to 5:00 p.m. on the dates indicated below:

Subcommittee	Date(s)	Location
Aging & Neurodegenerative Disease	February 23, 2016	VHA National Conference Center.
Brain Injury: TBI & Stroke	February 23, 2016	VHA National Conference Center.
Spinal Cord Injury	February 23, 2016	VHA National Conference Center.
Career Development Award Program	February 23–24, 2016	VHA National Conference Center.
Regenerative Medicine	February 24, 2016	VHA National Conference Center.
Sensory Systems/Communication Disorders	February 24, 2016	VHA National Conference Center.
Psychological Health & Social Reintegration	February 25, 2016	VHA National Conference Center.
Rehabilitation Engineering & Prosthetics/Orthotics	February 25, 2016	VHA National Conference Center.
Musculoskeletal/Orthopedic	February 25–26, 2016	AECOM.
VA–ORD Historically Black College and University Research Scientist Training Program.	February 26, 2016	*VA Central Office.
Center and Research Enhancement Award Program	April 9, 2016	VHA National Conference Center.

The addresses of the meeting sites are:
(*Teleconference). VA Central Office, 1100 First Street NE., Washington, DC 20002.
VHA National Conference Center, 2011 Crystal Drive, Arlington, VA 22202.
AECOM, 2450 Crystal Drive, Suite 500, Arlington, VA 22202.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

The subcommittee meetings will be open to the public for approximately one-half hour at the start of each meeting to cover administrative matters and to discuss the general status of the program. Members of the public who wish to attend the open portion of the teleconference sessions may dial 1 (800) 767–1750, participant code 35847. The

remaining portion of each subcommittee meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research applications and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to attend the open portion of a subcommittee meeting should contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, at Department of Veterans Affairs (10P9R), 810 Vermont Avenue NW., Washington, DC 20420, or email *tiffany.asqueri@va.gov* at least five days before the meeting. For further information, please call Mrs. Asqueri at (202) 443–5757.

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2016–01036 Filed 1–20–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Thursday,

No. 13 January 21, 2016

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, et al.

Carrier Safety Fitness Determination; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2015–0001]

RIN 2126–AB11

Carrier Safety Fitness Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to revise the current methodology for issuance of a safety fitness determination (SFD) for motor carriers. The proposed new methodologies would determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on the carrier's on-road safety data in relation to five of the Agency's seven Behavior Analysis and Safety Improvement Categories (BASICs); an investigation; or a combination of on-road safety data and investigation information. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from the Nation's roadways.

DATES: FMCSA will be accepting both initial comments and reply comments in response to this NPRM. Send your initial comments on or before March 21, 2016 and reply comments on or before April 20, 2016.

ADDRESSES: You may submit comments (initial and reply) identified by the docket number FMCSA–2015–0001 using any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. David Yessen, (609) 275–2606, *David.Yessen@dot.gov.* FMCSA office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is organized as follows:

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I. Acronyms and Abbreviations

ATRI	American Transportation Research Institute.
BASIC	Behavior Analysis and Safety Improvement Categories.
CDL	Commercial Driver's License.
CMV	Commercial Motor Vehicle.
CVOR	Commercial Vehicle Operators Registration.
CR	Compliance Review.
CSA	Compliance, Safety, Accountability.
DOT	United States Department of Transportation.
FHWA	Federal Highway Administration.
FMCSA	Federal Motor Carrier Safety Administration.
FMCSRs	Federal Motor Carrier Safety Regulations, 49 CFR parts 350 through 399.
FR	Federal Register.
HM	Hazardous Materials.
HMR	Hazardous Materials Regulations, 49 CFR parts 171 through 180.
MCMIS	Motor Carrier Management Information System.
MCSAC	Motor Carrier Safety Advisory Committee.
MCSAP	Motor Carrier Safety Assistance Program.
NPRM	Notice of Proposed Rulemaking.
NTSB	National Transportation Safety Board.
OMB	Office of Management and Budget.
PHMSA	Pipeline and Hazardous Materials Safety Administration.
PU	Power Unit.
SFD	Safety Fitness Determination.
SMS	Safety Measurement System.
VMT	Vehicle Miles Traveled.
VOLPE	U.S. DOT Office of the Assistant Secretary for Research and Technology's John A. Volpe National Transportation Systems Center, Cambridge, MA.

II. Executive Summary

As the Federal government agency responsible for commercial motor vehicle (CMV) safety, FMCSA must identify unfit motor carriers. Under the existing regulations, a compliance review must be conducted to issue a Safety Fitness Determination (SFD) and, if a motor carrier receives a final unsatisfactory safety rating, FMCSA declares that motor carrier to be unfit to operate on the Nation's highways. The current SFD process does not permit the Agency to use all of the on-road safety data in the Motor Carrier Management Information System (MCMIS) in making each SFD. Based on experience and empirical data from the Safety Measurement System (SMS) and interventions, the integration of on-road safety data into the SFD process would improve the assessment of motor carriers and the identification of unfit motor carriers. Such integration is a longstanding recommendation of the National Transportation Safety Board (NTSB). Under this proposal, unfit determinations could be based on a carrier's on-road safety data alone. In this NPRM, FMCSA proposes to eliminate the current three-tier rating system (*i.e.,* satisfactory–conditional–unsatisfactory) for determining safety fitness in favor of a single determination of unfit. FMCSA's statutory requirement is to determine which owners or operators are unfit to operate on the Nation's roadways, and prescribe specific consequences for motor carriers found to be unfit. By statute, such carriers are prohibited from operating in interstate commerce or transportation that affects interstate commerce.

Using data from inspections or investigations or both, FMCSA proposes to evaluate carriers monthly to determine if they failed two or more Behavior Analysis and Safety Improvement Categories (BASICs) and thus should be proposed unfit. A motor carrier would be proposed unfit if it: (1) Failed two or more BASICs based exclusively on on-road safety data from 11 or more inspections with 1 or more violations in each, in a single BASIC, before a carrier could fail the BASICs; (2) had violations of the proposed set of critical and acute regulations, identified through an investigation, that cause the motor carrier to fail two or more BASICs; or (3) failed two or more BASICs based on a combination of data from inspections and investigation results. The Agency's analysis and reasoning for these proposals is explained in more detail later in this document.

FMCSA's MCMIS automatically takes each motor carrier's safety data from on-road safety inspections and converts the data into a BASIC measure and a rank/percentile using the methodology in ''Carrier Safety Measurement System (CSMS) Methodology.'' [1] This methodology, available to the public since December 2010, provides the details of the SMS currently used for identifying unsafe behaviors and prioritizing and selecting motor carriers for interventions, including investigations and compliance reviews. Each motor carrier's measure in each BASIC is a quantifiable determination of safety behavior in that BASIC. Percentile ranking allows the safety behavior of a motor carrier to be compared with the safety behavior of carriers with similar numbers of safety events. Within each safety event group, a percentile is computed on a 0–100 scale for each motor carrier that receives a non-zero measure, with 100 indicating the worst performance. Currently, when a motor carrier's SMS measures percentile ranking meets or exceeds the intervention thresholds shown in Table 3 below, the Agency prioritizes the carrier for interventions, including possibly a compliance review.

In SMS, a carrier's performance is compared to other carriers in its safety event group every month. As a result, improved safety performance by other carriers could result in the carrier having higher (worse) percentiles without having committed any additional violations. In contrast, under the proposed SFD methodology, every month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change from month to month, changes in another company's performance would not impact the motor carrier. The failure standard will only be changed after rulemaking by the Agency, with notice and comment. The carrier's SFD measure would reflect its own performance against the failure standard, and would not be impacted by other carriers' performance.

From the motor carrier's measures, percentile ranking, and intervention thresholds, FMCSA developed proposed SFD failure standards at higher levels of noncompliance with the FMCSRs and HMRs, which provide stronger correlations to previous crashes.[2] The proposed SFD failure standards would be equivalent to the measures that would determine a motor carrier unfit at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs, that is, a person would know the carrier is in the worst 4 percent of carriers that have measurable (non-zero) data in the MCMIS. The proposed SFD standards would determine that a motor carrier is unfit at the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. Likewise, a person would know the carrier is in the worst 1 percent of carriers that have measurable data in the MCMIS. A carrier's absolute BASIC performance measure in any given month, *not the carrier's percentile within a given month,* would be used to determine if the carrier failed the BASIC. A carrier with an absolute performance measure that equals or is greater than the failure standard proposed in this document for the carrier's safety-event group would fail that BASIC using only on-road safety data.

Thus, the failure standards for a proposed unfit SFD would require significantly more evidence of non-compliance than the thresholds in SMS that the Agency uses to prioritize a carrier for interventions. The Agency's proposed approach would ensure that only the worst performing motor carriers would be issued a proposed unfit determination based solely on on-road safety performance data.

In addition, the proposed standards for an unfit SFD would be set at absolute values that would be higher measures (*i.e.*, poorer safety performance) than those used currently in SMS for interventions (see Table 3 below). The proposed SFD process would also require more inspections with violations—*i.e.*, 11 versus 3 to 5—to trigger a proposed SFD.

Failure standards would be established in each BASIC for several safety event groups. A carrier meeting or exceeding the failure standard in its safety event group would fail the BASIC.

The Crash Indicator BASIC and the Controlled Substances/Alcohol Compliance BASIC would be evaluated only during investigations, because the Crash Indicator BASIC currently does not include preventability determinations and controlled

[1] See ''Safety Measurement System Changes, June 2012'' page 5 in docket FMCSA–2012–0074 at *http://www.regulations.gov/#!documentDetail;D=FMCSA-2012-0074-0039* referencing version 3.0 of ''Carrier Safety Measurement System (CSMS) Methodology.'' The latest version, 3.0.2 of June 2014, is available in the rulemaking docket and at *http://csa.fmcsa.dot.gov/Documents/SMS Methodology.pdf.*

[2] The term ''crash'' is synonymous to the term ''accident'' as defined in 49 CFR 390.5 and may be used interchangeably in this document. See 79 FR 59457, October 2, 2014.

substances and alcohol violations from on-road safety data would rarely meet the data sufficiency standards. Thus, these two BASICs would not be used to make a proposed unfit determination based on on-road performance data alone, although data relating to the Crash Indicator BASIC and Controlled Substances/Alcohol BASIC would certainly be used during investigations. To be proposed unfit based solely on on-road safety data, a motor carrier would have to meet or exceed the absolute failure standard established for its safety event group for two BASICs.

Further, only preventable crashes would be used in calculating an SFD. This differs from the current SFD process which only determines the preventability of crashes to contest a motor carrier's recordable crash rate after the SFD. As described below, crash data could trigger a failure in a BASIC during the investigative process only if a certified safety investigator makes a ''preventability determination'' on the crashes and the preventable crashes exceed the failure standard.

It is important to note that while the relative percentiles in SMS are not used in making Safety Fitness Determinations under this NPRM, the same data are used. Some groups have expressed concerns about that data, and many of those concerns are proactively addressed concerns about the SMS in the development of this SFD proposal. In addition to the differences noted above, it is important to point out that other concerns about the system including disparities for long-haul and short-haul carriers; differences for urban and rural motor carriers, and enforcement differences by the States have all been considered. The long and short haul differences are minimized by the combination (long-haul) and straight truck (short haul) segmentation. The impacts of urban and rural transportation are factored into the calculation of the Crash Indicator BASIC failure rates. Lastly, while enforcement differences exist between the States, the nature of the high failure standard in this rule is that the patterns of non-compliance for the carriers that are proposed unfit are not the result of these disparities but are the result of recurring non-compliance.

After a proposed unfit SFD, a motor carrier would have three different administrative proceedings available: (1) A review for material errors in assigning a proposed unfit SFD; (2) a review claiming unconsidered on-road performance inspection data; (3) a review after a request to operate under a compliance agreement. Consistent with current procedures, requests for one or more administrative reviews would not automatically stay a proposed unfit determination. After a final unfit determination, the motor carrier could request a review to resume operations.

The revised SFD methodology and rule would be used to identify and take legal action against unfit motor carriers that have failed to implement and maintain adequate safety management controls for achieving compliance with the FMCSRs and HMRs.

The Agency would maintain the current administrative review processes provided under § 385.15, would propose a compliance agreement procedure similar to the existing § 385.17 upgrade process for carriers with a proposed unfit SFD, and would add an opportunity to submit missing inspection data under § 385.16. FMCSA proposes to reduce the time for filing a petition for administrative review from the current 90 days to 15 days after the issuance of the proposed unfit SFD. Further, a new process, under § 385.18, explains the requirements for demonstrated corrective action and compliance agreements for entities with revoked registration due to an unfit safety rating.

Under this proposal, the Agency estimates in its separate Regulatory Evaluation that it would have proposed as unfit 3,056 motor carriers in 2011, about 2.5 times the number of proposed unfit SFDs relative to 1,232 under the current process, known as proposed unsatisfactory safety ratings. FMCSA estimates that the 3,056 proposed unfit SFD motor carriers would consist of:

- 262 motor carriers based solely upon on use of inspection data,
- 2,674 motor carriers based upon the result of investigations, and
- 120 motor carriers based on a combination of inspection and investigation data.

FMCSA then evaluated how many of these 3,056 motor carriers would have been in active service 12 months following a hypothetical final unfit determination in 2011 and found that most, 2,822 carriers, were active. The actual crash involvement and crash rates experienced by this population of 2,822 carriers over the course of the 12 months after the hypothetical final unfit determination provides a baseline and means of estimating benefits had these carriers been identified by the proposed process. The separate Regulatory Evaluation analyzing the costs and benefits of the proposed rule is available in the docket.

Application of the proposed method to data from a supporting analysis [3] identified 1,805 additional poor-performing carriers beyond those identified by the current SFD process, while the current SFD process identified 106 carriers that the proposed SFD method would not (1,017 carriers were identified by both the current and proposed methods). On net, of the 1,699 of these 1,805 carriers—the subset of carriers which remained in active operation during the twelve months following the date upon which each would have received a final unfit determination under the proposed rule—the switch from the current to the proposed method identifies carriers that were involved in 41 more fatal crashes, 508 more injury crashes, and 872 more tow-away crashes in those subsequent 12 months. The crash reduction elicited from these carriers constitutes the benefits of the rule.

The costs of the rulemaking are those incurred by:

(1) Drivers who were employed by additional carriers ordered out of service (OOS) who are now forced to seek new employment. It is estimated that 1,855 drivers would have been adversely affected in this manner annually.

(2) The additional carriers identified as deficient under the proposed SFD that opt to improve performance, thereby incurring costs to achieve compliance.

(3) FMCSA, resulting from information technology system update and modification expenses (estimated as a one-time cost of $3.0 million incurred in year 2017 under both Option 1 and Option 2).

Given (1) an assumed 2.17 percent annual increase in the carrier population, and hence the number of drivers, and (2) no change in real wages for drivers over time,[4] for the ten years from 2017 through 2026 the annualized costs (discounted at seven percent) of this proposed rule are estimated at $9.9 million. Were the real wages of drivers to increase by one percent annually, then the annualized cost from 2017 through 2026 rises to $10.6 million. Were drivers' real wages to increase by two percent annually, the annualized

[3] ''Estimating the Safety Impact of Proposed Safety Fitness Determination (SFD) Criteria,'' FMCSA, May 2015.

[4] This is a central assumption of the regulatory evaluation, and affects only the costs side of the net benefits projections. The Agency opted in this evaluation to consider costs under alternate 1% and 2% annual real wage growth assumptions to demonstrate the minimal degree to which potential growth in drivers' future real wages affects the net benefits of the rule.

cost of this proposed rule is $11.3 million.

Given (1) the estimated current monetized value of a statistical life component for a fatal crash of $10,885,000, for an injury crash of $393,000, and for a tow-away crash of $50,000, (2) annual increases in each of these values due to projected real growth of the value a statistical life of 1.18 [5] percent, (3) additional fixed crash costs not projected to increase annually of $134,000 for each fatal crash, $60,000 for each injury crash, and $22,000 for each tow-away crash, (4) an assumed 2.17 percent annual increase in the carrier population and hence the number of crashes, (5) an estimated 52.8 percent improvement in the 16.1 percent of carriers placed out of service (OOS), and (6) an estimated 17.4 percent improvement in the 83.9 percent of carriers that opted to correct deficiencies and remain in service, for the ten years from 2017 through 2026, the annualized benefits of the rule (discounted at seven percent) would be $240.9 million.[6]

With $240.9 million in annualized benefits and $9.9 million in annualized costs with no projected real wage growth among drivers, the annualized net benefits of the proposed rule would be $231.1 million. Table 1 summarizes the Agency's annualized benefit, cost, and net benefit projections of this rule utilizing a 7 percent discount rate under a range of annual real wage growth assumptions of 0 to 2 percent.

TABLE 1—ANNUALIZED NET BENEFITS (7% DISCOUNT RATE) OF THE RULE FROM 2017 THROUGH 2026

[in millions of 2013$]

	Real wage growth		
	0%	1%	2%
Benefits	$240.9	$240.9	$240.9
Costs	9.9	10.6	11.3
Net Benefits	231.1	230.4	229.6

Note: Compliance costs to carriers that improve performance to achieve compliance are not estimated.

Cumulative benefits, costs, and net benefits of the proposed rule are presented in Table 2 for not discounted, 3% discounted, and 7% discounted bases. For brevity, corresponding tables associated with the 1% and 2% annual real wage growth scenarios are not included here as the projections are nearly identical under these alternate assumptions, and the minimal differences resulting from utilization of positive real wage growth assumptions are demonstrated in the annualized values in the preceding table.

TABLE 2—CUMULATIVE BENEFITS AND COSTS OF THE RULE FROM 2017 THROUGH 2026

[in millions of 2013$]

Discount rate—>	0%	3%	7%
Benefits	$2,290.9	$1,997.5	$1,692.0
Costs	92.2	81.0	69.2
Net Benefits	21,98.7	1,916.5	1,622.8

Note: Compliance costs to carriers that improve performance to achieve compliance are not estimated.

III. Legal Basis

The proposed rule would replace the current safety fitness rating methodology with new methodologies. The new methodologies incorporate on-road safety data and the results of safety investigations.

This rulemaking is based primarily on the authority of section 215 of the Motor Carrier Safety Act of 1984 (1984 Act),[7] which directs the Secretary of Transportation (Secretary) to determine whether an owner or operator is fit to operate safely commercial motor vehicles and to maintain by regulation a procedure for determining the safety fitness of an owner or operator. [49 U.S.C. 31144(a), (b)] Congress intended that the safety fitness procedure required by this section would supersede all previous rules regarding DOT safety fitness assessments and ratings of motor carriers.[8] FMCSA's authority to determine the safety fitness of owners or operators of CMVs was broadened with major amendments in 1998 by the Transportation Equity Act

[5] The real growth rate of the VSL is in keeping with DOT's Office of the Secretary of Transportation guidance, available on the web at *http://www.dot.gov/sites/dot.gov/files/docs/VSL_Guidance_2014.pdf*. This growth factor represents real growth in the median hourly wage at a macroeconomic level and is not specific to drivers or the motor carrier industry. While real median hourly wages are projected to grow at 1.18% per year at a macroeconomic level, this assumption does not apply to drivers, as the real median hourly wage of drivers has declined or remained static in recent years. Nevertheless, the Agency considered a sensitivity analysis regarding real wage growth of drivers to demonstrate the costs of this proposed rule in the event that drivers' wages grow at 1 or 2 percent per year.

[6] Comparisons of the crash rates of carriers identified as unfit under the current and proposed SFD are presented in Section 2 of this rulemaking's Regulatory Evaluation.

[7] Motor Carrier Safety Act of 1984, sec. 215, Pub. L. 98–554, Title II, 98 Stat. 2829, 2844–2845, Oct. 30, 1984, now codified at 49 U.S.C. 31144. See *http://www.gpo.gov/fdsys/pkg/STATUTE-98/pdf/STATUTE-98-Pg2829.pdf* (PDF page 16 of 25).

[8] Sen. Report No. 98–424 at 16, May 2, 1984. Federal Highway Administration (FHWA) had been required to determine the safety fitness of for-hire motor carriers seeking operating authority from the Interstate Commerce Commission since 1967 when the Department of Transportation was created (see section 1653(e) of the Department of Transportation Act of 1966, Pub. L. 89–670, Oct. 15, 1966 (DOT Act)), see sec. 4(e) at *http://www.gpo.gov/fdsys/pkg/STATUTE-80/pdf/STATUTE-80-Pg931.pdf* (PDF page 4 of 20). FHWA codified in 49 CFR part 385 the for-hire motor carrier safety fitness regulations to address the DOT Act on June 17, 1982 (47 FR 26137) and revised them on May 19, 1983 (48 FR 22566). The 1984 Act expanded the Agency's safety fitness determinations to all motor carriers and owners and operators of CMVs operating in interstate commerce.

for the 21st Century (TEA–21)[9] and in 2005 by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).[10] Another amendment was made by the Commercial Motor Vehicle Safety Enhancement Act of 2012, part of the Moving Ahead for Progress in the 21st Century Act (MAP–21).[11]

As amended, the statute now requires the Secretary to: (1) Determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—(A) in operations that affect interstate commerce within the United States; and (B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States; (2) periodically update such safety fitness determinations; (3) make such final safety fitness determinations readily available to the public; and (4) prescribe by regulation penalties for violations of 49 U.S.C. 31144 consistent with 49 U.S.C. 521.[12]

It also provides that the Secretary shall maintain by regulation a procedure for determining the safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements: (1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness; (2) a methodology the Secretary will use to determine whether an owner or operator is fit; (3) specific time frames within which the Secretary will determine whether an owner or operator is fit.[13]

This proposed rule also relies on 49 U.S.C. 31133, which gives the Secretary broad administrative powers to assist in the implementation of the provisions of the 1984 Act.[14] These powers include, among others, authority to conduct inspections and investigations, compile statistics, require production of records and property, prescribe recordkeeping and reporting requirements, and perform other acts considered appropriate. The Agency also has broad authority to inspect the equipment of a motor carrier or lessor, and to inspect and copy any record of a motor carrier or person controlling, controlled by, or under common control with, a motor carrier.[15] These powers are exercised to obtain the data used in the proposed new methodology for SFDs.[16]

FMCSA has authority to revoke the operating authority registration of any motor carrier that has been prohibited from operating as the result of a final unfit SFD.[17] MAP–21 grants FMCSA the authority to take similar action to revoke or suspend a motor carrier's safety registration on the same grounds.[18] FMCSA also has statutory authority to adopt a requirement that States receiving MCSAP grants enforce orders issued by FMCSA related to CMV safety and hazardous materials (HM) transportation safety.[19]

The Secretary has delegated the authority to carry out all of these functions to the FMCSA Administrator.[20]

IV. History of Past Actions

A. History of SFDs

The Federal Highway Administration (FHWA), the predecessor of FMCSA, promulgated Safety Fitness Procedures[21] in 1988 to determine the safety fitness of motor carriers through an onsite visit at the motor carrier's premises and to establish procedures to resolve safety fitness disputes with motor carriers, as required by the 1984 Act.[22] In 1991, FHWA issued an interim final rule[23] based on provisions of the Motor Carrier Safety Act of 1990 (1990 Act).[24] This interim final rule prohibited certain motor carriers rated unsatisfactory from operating CMVs in interstate commerce to transport more than 15 passengers or placardable quantities of HM starting on the 46th day after being found unfit. The regulation has been in effect since August 1991. FHWA stated that it would use a safety-rating formula to determine safety ratings, but the formula, while publicly available, was not included in the safety fitness regulation.[25]

In March 1997, in *MST Express* v. *Department of Transportation*,[26] the U.S. Court of Appeals for the District of Columbia Circuit ruled in favor of a motor carrier that had appealed its conditional safety fitness rating. The court found that FHWA did not carry out its statutory obligation to establish, by regulation, a means of determining whether a carrier has complied with the safety fitness requirements of the 1984 Act.[27] Because the carrier's conditional safety rating was based, in part, upon the formula that was publicly available, but was not included in the promulgated 1988 final rule or 1991 interim final rule, the court vacated the petitioner's conditional safety rating and remanded the matter to FHWA for further action.

In response, FHWA issued a second interim final rule in May 1997 incorporating the safety fitness rating

[9] Sec. 4009(a) of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, 405 (June 12, 1998). See *http://www.gpo.gov/fdsys/pkg/STATUTE-112/pdf/STATUTE-112-Pg107.pdf* (PDF page 299 of 403).

[10] Sec. 4114(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144, 1725 (Aug. 10, 2005). See *http://www.gpo.gov/fdsys/pkg/STATUTE-119/pdf/STATUTE-119-Pg1144.pdf* (PDF page 582 of 835).

[11] Sec. 32707(a), Div. C., Title II of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 813 (July 6, 2012). See *http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf* (PDF page 409 of 584).

[12] 49 U.S.C. 31144(a). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31144.pdf.*

[13] 49 U.S.C. 31144(b).

[14] See Sen. Report No. 98–424 at 9 (May 2, 1984). The amended provisions of the Motor Carrier Safety Act of 1984 are now found in subchapter III of chapter 311 of 49 U.S.C. See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII.pdf.*

[15] 49 U.S.C. 504(c). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleI-chap5-subchapI-sec504.pdf.*

[16] The statute provides FMCSA authority to determine the safety fitness of both motor carriers and employers owning and operating CMVs and drivers or other employees operating CMVs. Cf. 49 U.S.C. 31132(2) and (3). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31132.pdf.* This proposed rule involves the procedures and standards for determination of the safety fitness of only motor carriers and other employers that own or lease CMVs.

[17] 49 U.S.C. 13905(f)(1)(B). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleIV-partB-chap139-sec13905.pdf.*

[18] 49 U.S.C. 31134(c). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31134.pdf.*

[19] 49 U.S.C. 31102(a) and (b). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapI-sec31102.pdf.*

[20] 49 CFR 1.87(f).

[21] 53 FR 50961 (Dec. 19, 1988), codified at 49 CFR part 385.

[22] FHWA codified safety fitness regulations for motor carriers seeking operating authority from the Interstate Commerce Commission (for-hire motor carriers) in 49 CFR part 385 on June 17, 1982 (47 FR 26137) and revised them on May 19, 1983 (48 FR 22566). The 1984 Act expanded the Agency's safety fitness determinations from for-hire motor carriers to all motor carriers operating in interstate commerce.

[23] 56 FR 40802 (Aug. 16, 1991), Regulatory Identification Number (RIN) 2125–AC71.

[24] Motor Carrier Safety Act of 1990, Pub. L. 101–500, sec. 15(b)(1), 104 Stat. 1218 (Nov. 3, 1990). See *http://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg1213.pdf.* These provisions formerly found at 49 U.S.C. 5113 are now found at 49 U.S.C. 31144(c)(2) and (3) and (f) (as amended later). See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleVI-partB-chap311-subchapIII-sec31144.pdf.*

[25] 56 FR at 40803.

[26] 108 F.3d 401 (D.C. Cir. 1997).

[27] 49 U.S.C. 31144.

methodology into the safety fitness regulations [28] and a companion NPRM published the same day [29] proposed to adopt the formula or methodology for use in assigning safety fitness ratings to all classes of motor carriers. This companion NPRM discussed the public comments received in response to the 1991 interim final rule.

In November 1997, FHWA published a final rule incorporating the Agency's revised safety fitness rating methodology in appendix B to 49 CFR part 385, Safety Fitness Procedures.[30] In November 1998, FHWA published amendments to the rule that corrected several minor errors.[31] These changes withstood judicial review in 1999 in *American Trucking Associations, Inc.* v. *U.S. DOT*.[32] The court in the *ATA* case gave deference to the FHWA's interpretation of its statutory directive as it related to the level of specificity required in regulation and related interpretive guidance. On the reason for the Agency's use of interpretive guidance rather than notice and comment rulemaking to implement aspects of the methodology, the court noted: ''It is easy to imagine an affirmative reason for the agency's decision not to subject the sampling procedure to notice and comment rulemaking—the desire to be able to vary these technical elements of the process without excessive delay as experience accrues.'' [33]

In 1998, TEA–21 added a prohibition applicable to all owners and operators of CMVs not previously subject to the 1990 Act's prohibition—that is, those CMV owners and operators not transporting more than 15 passengers or HM in quantities requiring placarding. Following that change, all owners and operators, including those not transporting more than 15 passengers or HM in quantities requiring placarding, were prohibited from operating CMVs in interstate commerce, starting on the 61st day after being found unfit.[34] It also prohibited Federal agencies from using those owners and operators that were prohibited from operating to provide interstate transportation of non-HM freight. FHWA proposed the regulations implementing the TEA–21 amendments in 1999, and FMCSA, which was established in 2000, published the final rule on August 22, 2000.[35]

FMCSA published several additional amendments in 2000.[36] These changes updated the list of acute and critical regulations [37] to conform it to changes in FMCSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. In 2007, the Agency further revised the safety fitness procedures regulations and appendix B to implement SAFETEA–LU statutory amendments.[38]

In 2007, in response to a motorcoach crash with numerous fatalities, NTSB recommended that FMCSA use all motor carrier violations when assessing a carrier's safety fitness. (See NTSB recommendation H–07–003 in ''Highway Accident Report: Motorcoach Fire on Interstate 45 During Hurricane Rita Evacuation Near Wilmer, Texas, September 23, 2005.'' [39]). A copy of the NTSB report and a related Motor Carrier Safety Advisory Committee (MCSAC) report have been placed in the docket. The MCSAC recommended unanimously to FMCSA that it implement the NTSB proposal to use all motor carrier violations when assessing a carrier's safety fitness. NTSB closed the recommendation on September 15, 2015, after NTSB accepted FMCSA's alternative actions. A copy of NTSB's letter closing the recommendation is also in the docket.

B. Analytical Basis for the Proposed Changes

FMCSA proposes to base SFDs on data from driver/vehicle inspections and investigations. Three reports regarding the Agency's existing SMS form the technical basis for the proposed methodology for this rulemaking. Two of the reports were prepared by FMCSA. The third report was developed and published by the American Transportation Research Institute (ATRI). Copies of all three reports are in the docket for this document.

The most recent report is titled ''Carrier Safety Measurement System (CSMS) Methodology–Version 3.0.2'' (June 2014).[40] It provides the details of the measurement system currently used for identifying unsafe carriers and prioritizing and selecting them for interventions under the Compliance, Safety, Accountability (CSA) initiative.

The second report, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights'' (December 2010),[41] involved quantifying the relative crash risk of violations of the FMCSRs and HMRs. The results from this study were used to assign risk-based weights to driver/vehicle inspection violations in the SMS which would also be used in the proposed methodology for determining safety fitness. (See proposed appendix B to part 385.)

The third report, a study titled, ''Compliance, Safety, Accountability: Evaluating a New Safety Measurement System and Its Impacts'' (December 2012), ATRI, involved an analysis of carriers assessed by BASICs. The results from this study confirmed that SMS is better at targeting carriers and identifying safety problems. In addition, the ATRI study indicated that the number of ''alerts'' a carrier has is the best indicator of future crashes.

Additionally, the Agency's CSA Operational Model Test [42] and additional analysis by the University of Michigan Transportation Research Institute [43] and FMCSA indicate that

[28] 62 FR 28807 (May 28, 1997) adding appendix B to 49 CFR part 385. RIN 2125–AC71.

[29] 62 FR 28826 (May 28, 1997), discussion of 1991 interim final rule comments at page 28827, RIN 2125–AC71.

[30] 62 FR 60035 (Nov. 6, 1997). RIN 2125–AC71.

[31] 63 FR 62957 (Nov. 10, 1998). RIN 2125–AC71.

[32] 166 F.3d 374 (D.C. Cir. 1999).

[33] 166 F.3d at 378–380. See also *Animal Legal Defense Fund, Inc.* v. *Glickman*, 204 F.3d 229, 235 (D.C. Cir. 2000) and cases therein cited.

[34] Section 4009 of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, 112 Stat. 107, at 405, June 9, 1998. Section 4009 added the additional prohibition and recodified the statutory prohibitions of using unsatisfactory-rated motor carriers in 49 U.S.C. 5113 to 49 U.S.C. 31144.

[35] 65 FR 50919 (Aug. 22, 2000).

[36] 65 FR 11904 (Mar. 7, 2000).

[37] FHWA proposed acute and critical regulations for determining safety fitness in 59 FR 47203 (Sept. 14, 1994) and made them final in 62 FR 28807 (May 28, 1997).

[38] 72 FR 36760 (July 5, 2007).

[39] Report No. NTSB/HAR–07/01, PB2007–916202, Notation 7774C, Adopted Feb. 21, 2007. You may download the report by visiting *http://www.ntsb.gov/investigations/AccidentReports/Reports/HAR0701.pdf* on the Internet. H–07–003: ''To protect the traveling public until completion of the Comprehensive Safety Analysis 2010 Initiative, immediately issue an Interim Rule to include all FMCSRs in the current CR process so that all violations of regulations are reflected in the calculation of a carrier's final rating.'' See also NTSB recommendations H–99–006 ''Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier'' and H–12–017 ''Include safety measurement system rating scores in the methodology used to determine a carrier's fitness to operate in the safety fitness rating rulemaking for the new Compliance, Safety, Accountability initiative.''

[40] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Methodology–Version 3.0.2'' FMCSA, June 2014.

[41] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

[42] The CSA operational model test was a two-phase, 30-month (February 2008 to December 2010) field test to assess the validity, efficiency, and effectiveness of the CSA operational model.

[43] Green and Blower, ''Evaluation of the CSA 2010 Operational Model Test,'' FMCSA, August 2011, Report No. MC–RRA–11–019, *http://csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-Model-Test.pdf.*

SMS is more effective than SafeStat, the Agency's previous intervention prioritization system, because it improves identification of high-risk carriers and provides information for determining the specifics of their safety performance problems.

V. Existing Safety Monitoring and Data Quality Programs

The CSA program, implemented in December 2010, is FMCSA's current initiative to improve large truck and bus safety. It is a set of enforcement and compliance tools that allow FMCSA and its State partners to address the safety and compliance problems of motor carriers before crashes occur. There are two elements of the Agency's existing CSA Program that are part of the Agency's safety monitoring programs: (1) The Safety Measurement System (SMS); and (2) the use of a varied set of interventions on motor carriers identified by SMS. FMCSA has provided significant information about the CSA program and its initiatives through public listening sessions, **Federal Register** notices, a comments docket, and a dedicated Web site. As a result, this rulemaking provides only summary level information about CSA to explain its relationship to the proposed changes in the SFD process.[44]

The remaining element of the Agency's existing safety monitoring programs is the compliance review or investigation that results in a safety rating.

A. Safety Measurement System (SMS)

The SMS is an automated system that runs monthly and measures on-road safety performance of motor carriers to: (1) Identify candidates for intervention, (2) identify specific safety problems, and (3) monitor whether a carrier's performance is improving or getting worse. SMS groups the safety performance data of motor carriers and drivers into seven BASICs. The BASICs are:

1. Unsafe Driving BASIC

The Unsafe Driving BASIC addresses the requirement to avoid driving a CMV in a dangerous or careless manner, and it includes driving and parking rules for drivers transporting HM. Some safety violations that may cause a motor carrier to rank poorly in this BASIC include speeding, reckless driving, improper lane change, distracted driving, failure to wear safety belt while operating a CMV, and texting or using a mobile telephone while operating a CMV.

2. Hours of Service (HOS) Compliance BASIC

The HOS Compliance BASIC addresses the requirements to obey the HOS rules and not to drive when fatigued. This BASIC includes violations of the regulations pertaining to maximum driving time during the work day, maximum on-duty time that may be accumulated before driving is prohibited during the work day and during the work week, and preparation in proper form and manner and retention of records of duty status (RODS) as they relate to HOS requirements. Safety violations that may cause a motor carrier to rank poorly in this BASIC include a driver operating more hours than allowed under HOS regulations, failure to prepare and maintain RODS and falsification of RODS.

3. Driver Fitness BASIC

The Driver Fitness BASIC addresses the requirements concerning commercial driver's licenses (CDLs) and disqualifying offenses for persons operating CMVs, as defined in 49 CFR 383.5. This BASIC also captures violations of the regulations for driver qualifications, including medical qualifications for interstate drivers of CMVs, as defined in 49 CFR 390.5. High scores in this BASIC are an indication that a carrier has allowed the operation of CMVs by drivers who are not qualified due to a lack of knowledge, skills, medical qualifications, or a valid license.

4. Controlled Substances/Alcohol BASIC

The Controlled Substances/Alcohol BASIC addresses the requirements for controlled substances and alcohol testing for CDL holders. Safety violations that may cause a motor carrier to rank poorly in this BASIC include a driver found to be in possession of alcoholic beverages or operating under the influence of a controlled substance.

5. Vehicle Maintenance BASIC

The Vehicle Maintenance BASIC addresses the requirements for equipment inspection, proper maintenance, and repair of a CMV, and the prevention of shifting loads and spilled or dropped cargo. Proper maintenance includes ensuring that lamps or reflectors are working, brakes are in proper working condition, and tires are not dangerously worn. Some safety violations that may cause a motor carrier to rank poorly in this BASIC are operating a vehicle with inoperative brakes, lights, or other mechanical defects; failure to make required repairs; improper load securement to prevent shifting upon or within the CMV to such an extent that the CMV's stability or maneuverability is adversely affected; or operating a vehicle placed OOS for safety deficiencies.

6. HM Compliance BASIC

The HM Compliance BASIC addresses the Federal safety regulations related to the packaging, transportation, and identification of HM. In the event of a crash or spill, the HM Compliance BASIC also covers the proper communication of the hazard of the cargo on board. The general public is subject to a greater safety risk if HM is involved in a motor carrier crash; and unmarked or poorly marked HM cargo can result in less effective emergency response, as well as injuries and fatalities for emergency responders and others. At present, the HM Compliance BASIC scores can be seen only by enforcement personnel and by a motor carrier that accesses its own safety profile; it is not publicly available. The public can, however, see information on the number and types of HM violations involving the motor carrier.

7. Crash Indicator BASIC

The Crash Indicator BASIC identifies histories or patterns of crash involvement, such as frequency and severity. It is based on information from State-reported crashes that meet recordable crash standards. Multiple State-reported crashes raise the percentile rank of the Crash Indicator BASIC, which signals potential safety problems. The SMS cannot currently factor in the role of the carrier in causing the crash—or crash preventability. (See discussion of crashes below.) At present, the Crash Indicator BASIC can be seen only by enforcement personnel and by a motor carrier that accesses its own safety profile; it is not publicly available. The public can, however, see information on the number and severity of crashes involving the motor carrier.

B. Interventions

Interventions are a suite of enforcement tools ranging from warning letters to comprehensive investigations that provide carriers with the information necessary to understand

[44] For more detailed information, please go to the CSA Web site at *http://csa.fmcsa.dot.gov/* and review documents in the program's docket at *www.regulations.gov*, docket number FMCSA–2004–18898. In a one year period from 2012 to 2013, there were 46 million visits to the SMS Web site. Therefore, FMCSA believes that the industry and the public are already very familiar with this system and the information it provides.

their safety problems and to change unsafe behavior.

Currently, when a motor carrier's SMS scores meet or exceed established intervention thresholds the Agency prioritizes it for investigations or enforcement. The SMS intervention thresholds are as follows:

TABLE 3—INTERVENTION THRESHOLDS FOR SMS

Basic	SMS Intervention thresholds		
•	Passenger	HM	All others
Unsafe Driving, HOS, Crash Indicator	Greater than or equal to (≥) 50%	≥60%	≥65%
Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance	≥65%	≥75%	≥80%
HM	≥80	≥80%	≥80%

It is important to note that the thresholds FMCSA currently uses to select carriers for an intervention, using SMS, are not the same measures that are being proposed in this NPRM for the SFD failure standards. (See Section 2.4 of proposed appendix B to part 385 below.)

C. Current SFD Process

SFDs are currently determined based on data collected during a CR or other investigation. The existing SFD process uses six factors to rate carriers' safety performance. Portions of the regulations (the FMCSRs and the HMRs) with similar characteristics are grouped together into six factors:

Factor 1 General—Parts 387 and 390
Factor 2 Driver—Parts 382, 383, and 391
Factor 3 Operational—Parts 392 and 395
Factor 4 Vehicle—Parts 393 and 396
Factor 5 HM—Parts 171, 177, 180, and 397
Factor 6 Accident[45] factor—Recordable accident rate per million miles

FMCSA calculates a vehicle out-of-service rate, reviews crash involvement, and conducts an in-depth examination of the motor carrier's compliance with the acute and critical regulations of the FMCSRs and HMRs, currently listed in 49 CFR part 385, appendix B, part VI.

• ''Acute regulations'' are those where noncompliance is so severe as to require immediate corrective action, regardless of the overall safety management controls of the motor carrier.

• ''Critical regulations'' are related to management or operational systems controls.

Overall noncompliance is calculated and rated on a point system according to the six factors. During the investigation, for each instance of noncompliance with an acute regulation or each pattern of noncompliance with a critical regulation one point is assessed. Patterns of noncompliance with HOS are assessed two points. For a critical regulation, the number of violations required to meet the threshold for a pattern is equal to at least 10 percent of those sampled, and more than one violation must be found to establish a pattern. In addition, on-road safety data is used in calculating the vehicle and crash factors.

If any of the six factors is assessed one point, then that factor is rated as ''conditional.'' If any of the six factors is assessed two points, then that factor is rated as ''unsatisfactory.'' Two or more individual factors rated as ''unsatisfactory'' will result in an overall rating of ''unsatisfactory.'' One individual factor rated as ''unsatisfactory'' and more than two individual factors rated as ''conditional'' will also result in an ''unsatisfactory'' rating overall. See Table 4 below:

TABLE 4—CURRENT SFD RATING TABLE

Factor ratings		Overall safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	More than 2.	Conditional
1	2 or fewer	Conditional
1	More than 2.	Unsatisfactory
2 or more	0 or more	Unsatisfactory

The Agency's current SFD process is resource-intensive and reaches only a small percentage of motor carriers. In FY 2012, FMCSA and its State partners conducted approximately 17,000 ratable reviews out of a population of more than approximately 525,000 active motor carriers. A ratable review is one that could potentially result in a conditional or unsatisfactory safety rating. Table 5 presents the distribution of ratable reviews conducted.

TABLE 5—DISTRIBUTION OF RATABLE INVESTIGATIONS TYPES IN FY 2012[46]

Investigation type	Number
Ratable Full CRs/Comprehensive On-Site Investigations	6,641
Ratable Focused CRs/Focused On-Site Investigations	10,361
Total	17,002

Of the 17,002 ratable reviews conducted in FY 2012, 1,013 resulted in a proposed unsatisfactory safety rating, while an additional 3,618 resulted in a proposed or final safety rating of conditional.

The Agency concludes that changes to the SFD process are needed for many reasons. First, the current SFD methodology evaluates a motor carrier's compliance using only a limited range of inspection data. Additionally, the current process does not integrate all of the data that is available in MCMIS. Over 3.5 million inspections are conducted each year, and this information is not effectively used to remove unsafe operators from our Nation's roadways.

Second, the safety rating is a snapshot of a company's safety performance on a specific date. The Agency's MCMIS database reflects safety ratings dating back to 1986, and many of the ratings are not likely to reflect the carriers' current safety compliance.

Third, the current SFD process is not designed to continually monitor motor carrier on-road safety data. In addition, the assignment of a ''satisfactory'' safety rating implies to the public, correctly or not, that the Agency has approved the current operations of a motor carrier, when actually FMCSA has merely rated the operations for the specific period covered by the CR. The assigned safety rating thus may not reflect the company's current compliance and could be misleading to those who might interpret it as a reflection of a motor carrier's current safety status.

[45] The term ''crash'' is synonymous to the term ''accident'' as defined in 49 CFR 390.5 and may be used interchangeably in this document. See 79 FR 59457, October 2, 2014.

[46] Motor Carrier Safety Progress Report, FMCSA, as of March 31, 2013. Under the ''Carrier Reviews'' section, figures are summed to obtain counts in Table 5. Accessed April 29, 2015 at *https://cms.fmcsa.dot.gov/safety/data-and-statistics/motor-carrier-safety-progress-report-33113.*

Fourth, under the current SFD process, a motor carrier may continue to operate indefinitely with a conditional rating even if a ratable review reveals breakdowns in safety management controls in multiple areas. For example, a motor carrier with noncompliance documented by an investigation in areas such as vehicle maintenance (factor 4) and controlled substances and alcohol testing (factor 2) would receive only a proposed conditional rating, which, if it became final, still allows the motor carrier to continue operating.

Fifth, as noted above, the current regulations only allow the Agency and its State partners to assess or rate the safety fitness of a small population of motor carriers on an annual basis. This proposal expands the number of assessed and rated carriers.

Lastly, FMCSA has two open NTSB recommendations related to changing the safety fitness methodology on which the Agency has agreed to take action: [47]

- H–99–006: Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier.
- H–12–017: Include safety measurement system rating scores in the methodology used to determine a carrier's fitness to operate in the safety fitness rating rulemaking for the new Compliance, Safety, Accountability initiative.

For these reasons, the Agency proposes to make the changes to the SFD process reflected in this NPRM.

D. Data Quality Program

Over the past several years, the Agency has significantly improved the quality of safety data on motor carriers and considers the State-reported driver and vehicle inspection and crash data to be reliable. All of the States receive MCSAP grant funds from FMCSA and are required to establish programs to ''ensure that . . . accurate, complete, and timely motor carrier safety data is collected and reported'' and to participate in a national motor carrier safety data correction system.[48] FMCSA sets a goal for States to provide standard, basic information about large truck and bus crashes within 90 days of the crash event and results of driver/vehicle inspections within 21 days. In addition, FMCSA implemented a comprehensive set of data quality initiatives to assist the States in improving the accuracy, timeliness, completeness, and consistency of crash and inspection data. The process provides the States and FMCSA with a monthly report that summarizes the latest performance results and tracks progress toward meeting FMCSA's goals. Also, evaluation teams made up of technical experts from the DOT's John A. Volpe National Transportation Systems Center and FMCSA conduct reviews of the data collection processes for State-reported crash and inspection data. These reviews identify areas for potential process improvement. These initiatives have resulted in a significant improvement in the quality of State-reported data over the past several years.

In addition, FMCSA developed the DataQs online system to facilitate data corrections and to track corrective actions.[49] DataQs provides a single, Web-based location that allows the industry to file and monitor Requests for Data Review (RDRs) concerning Federal and State data released to the public. Through the DataQs system, data concerns are forwarded automatically to the appropriate office for resolution, including State partners. The system also allows filers to monitor the status of each request. Requests for changes to data based on adjudicated citations are also processed through the DataQs system.

FMCSA also evaluates State-reported crash and inspection data and releases evaluation data to the public on a quarterly basis on the FMCSA Web site. The evaluation uses the State Safety Data Quality map to rate the States on the completeness, timeliness, accuracy, and consistency of State-reported crash and inspection data reported to MCMIS (*http://ai.fmcsa.dot.gov/DataQuality/dataquality.asp* [50]). As of October 2015, only the District of Columbia and Massachusetts had a ''poor'' rating and two States (Connecticut and Maryland) have ''fair'' ratings. All other States have ''good'' ratings.

VI. Proposed SFD Changes

A. Numbers of Inspections and Violations Used in This Proposal

FMCSA uses 11 inspections as the minimum number for several different analyses and considerations in Tables 6 through 16. Table 6 below is provided to clarify the various applications of the 11-inspection requirement. To receive a safety fitness determination based on inspections a motor carrier must have had at least 11 inspections in the previous 24 months.

TABLE 6—NUMBER OF INSPECTIONS WITH VIOLATIONS REQUIRED

Action	Minimum number of inspections required	Minimum number of inspections with violations required	Explanation
Assess	11	0	If a motor carrier has 11 inspections in MCMIS, the Agency has sufficient information to assess it.
Data Sufficiency for Potential to Fail a BASIC.	11	11	This is the data threshold that must be met before a carrier could fail a BASIC.

[47] These recommendations are available through the NTSB Safety Recommendations-Search and View Web pages. Retrieved April 6, 2015, from: *http://www.ntsb.gov*.

[48] 49 U.S.C. 31102(b)(1)(Q). See also (1) section 4128 of SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1742 (Aug. 10, 2005) (providing for State Safety Data Improvement Program Grants ''to improve the accuracy, timeliness, and completeness of . . . safety data''), (2) section 32603(c) of Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405 (July 6, 2012) (additional State Safety Data Improvement grant funding was provided for fiscal years 2013 and 2014), and (3) 49 CFR 350.201(s), 350.211, 350.327(b)(3) and (5).

[49] FMCSA established the DataQs system in accordance with the Office of Management and Budget (OMB) Guidelines for Implementing Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554). OMB directed Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35) to establish and implement written guidelines to ensure and maximize the quality, utility, objectivity, and integrity of the information they disseminate.

[50] Accessed on April 6, 2015.

B. Only One SFD—Unfit

In this NPRM, FMCSA proposes to eliminate the current three-tier rating system (*i.e.*, satisfactory–conditional–unsatisfactory). FMCSA proposes to change its SFD system to a single determination—unfit. The Agency has statutory discretion to establish the nomenclature for safety fitness determinations.[51] In addition, the safety fitness statute requires FMCSA to determine only ''whether an owner or operator is fit'' to continue to operate on the Nation's roadways, and it prescribes specific consequences for motor carriers found to be not fit. It prohibits such carriers from engaging in interstate transportation [52] or transportation that affects interstate commerce.[53] It also prohibits any U.S. Government agency from using such carriers for transportation.[54]

This change to the SFD process would address some of the shortcomings of the current safety rating system. Most importantly, it would help focus the Agency's resources on removing unsafe carriers from the Nation's highways. In addition, it would eliminate the misperception that a satisfactory rating means that FMCSA approves of the current operations of a motor carrier. FMCSA believes that the term ''unfit'' conveys a clearer and more accurate message to the public than the term ''unsatisfactory.'' These changes better align the safety fitness regulations with the Agency's mission to remove unsafe operators from the Nation's roadways. At the same time, the change makes clear that the Agency will not devote its limited enforcement resources toward reviews initiated for the sole purpose of assigning a more positive safety rating label to carriers that are not prohibited from operating in interstate or intrastate commerce.

C. Three Paths to ''Proposed Unfit''

Based on the Agency's experience with SMS and interventions, FMCSA believes that integration of on-road safety data into the SFD process would improve the safety evaluation of motor carriers and the identification of unsafe motor carriers as unfit. Under this proposal, unfit determinations could be based on one of three methodologies.

- Unfit Method 1: Carrier with Two or More Failed BASICs from On-Road Safety Performance
- Unfit Method 2: Carrier with Violations of the Revised Critical and Acute Regulations Identified Through an Investigation
- Unfit Method 3: Combination of Inspection Data and Investigation Results

Figures 1, 2, and 3 illustrate how, under this proposal, carriers could receive proposed unfit safety fitness determinations. This information is also provided in appendix B. Extensive detail for each method is provided below. These paths to a proposed unfit determination are not mutually exclusive. For example, even though an owner or operator regularly undergoes the monthly assessment under Unfit Method 1, at any time, if circumstances warrant, FMCSA can conduct an investigation under Unfit Method 2 to determine whether the owner or operator is fit.

[51] 49 U.S.C. 31133(a)(10), 31144(b).

[52] 49 U.S.C. 31144(c)(1)–(3).

[53] 49 U.S.C. 31144(c)(5).

[54] 49 U.S.C. 31144(f).

Figure 1: Example for Unfit Method 1

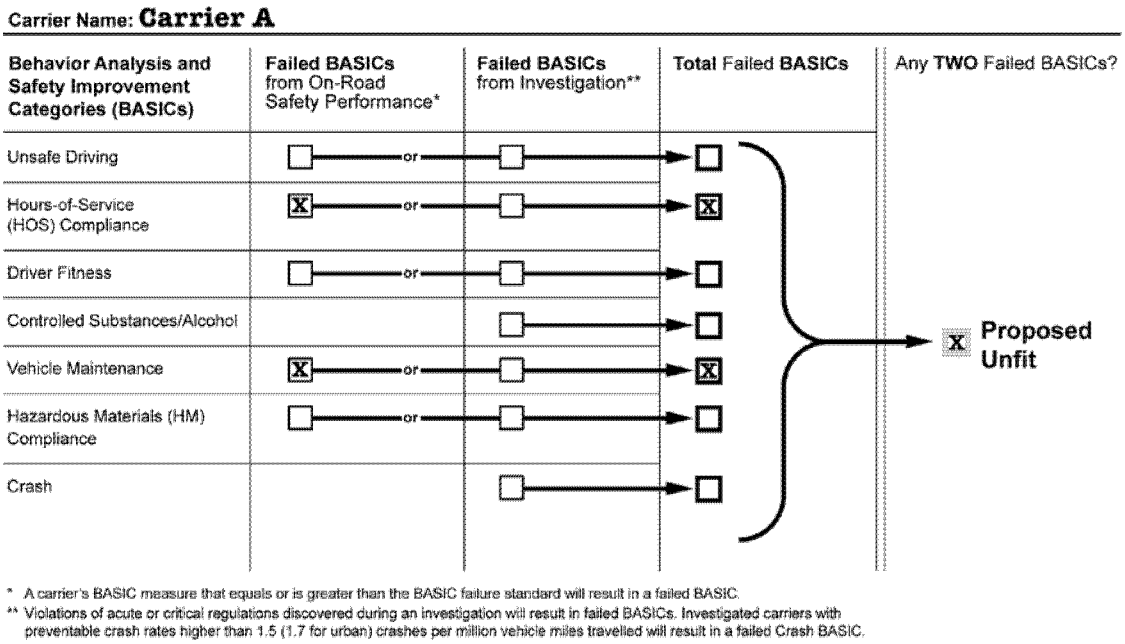


Figure 2: Example for Unfit Method 2

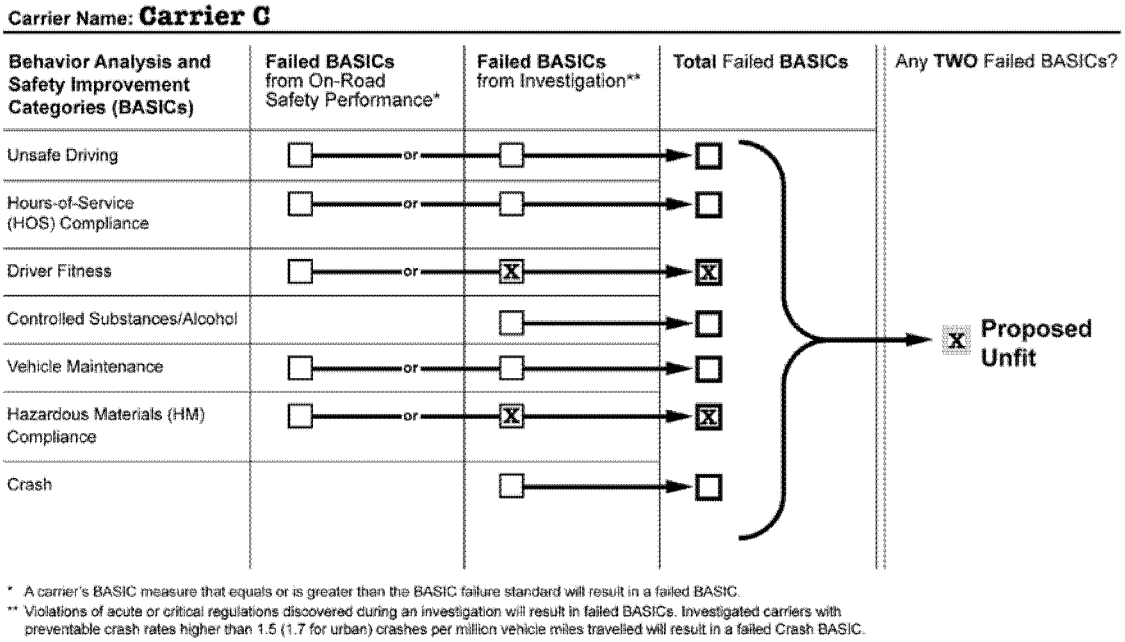
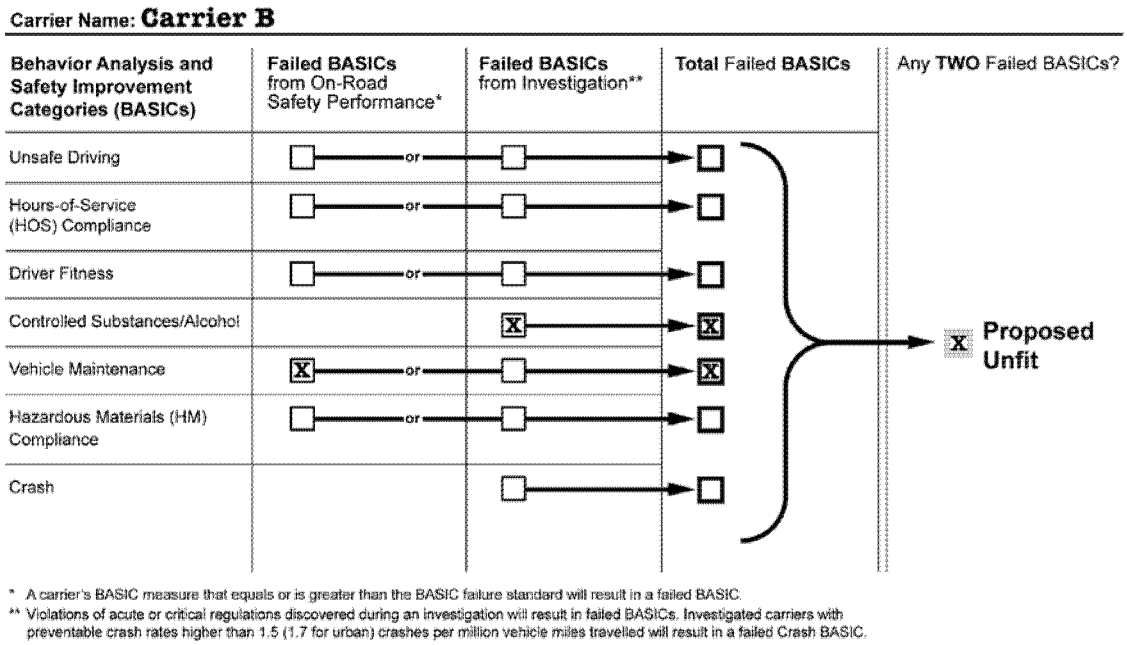


Figure 3: Example for Unfit Method 3



1. Unfit Method 1: Carrier With Two or More Failed BASICs From On-Road Safety Performance Is Proposed Unfit

Under Unfit Method 1, violations recorded on inspections would be sorted into the five BASICs for which on-road safety data is considered under the proposed SFD process: Unsafe Driving, HOS Compliance, Driver Fitness, Vehicle Maintenance, and HM Compliance. (Under the proposed SFD process, a motor carrier can fail the Crash Indicator BASIC or the Controlled Substances and Alcohol BASIC only based upon investigation findings under Unfit Method 2.)

The proposed rule would require 11 or more inspections with 1 or more violations in each, in a single BASIC, before a carrier could fail the BASIC for SFD purposes. The Agency proposes 11 or more inspections with violations, rather than the minimum of 3 to 5 inspections with violations required for SMS intervention, because this higher number provides a higher confidence level in assessing safety fitness, which is appropriate due to the seriousness of the regulatory consequences.

While more inspections with violations might be an even stronger indicator of non-compliance, as was recommended by the Government Accountability Office (GAO) for the Agency's SMS,[55] a significantly greater data requirement—*e.g.,* 20 inspections with violations—would mean that an unreasonably large percentage of carriers would never reach this threshold in a 24-month period. FMCSA believes that a more than twofold difference from the higher SMS inspection requirement is sufficient and appropriate for SFD. The Agency's analysis indicates that requiring 11 or more inspections with 1 or more violations in each increases the proportion of medium to large carriers falling within the ''SFD eligible'' population, compared to a 5 or more inspection requirement, but still does not result in small motor carriers escaping scrutiny. The Agency notes that carriers with 10 or fewer inspections with violations are still subject to safety fitness determinations under Unfit Method 2. The Agency also notes that raising the inspection requirement above 20 violations as GAO recommends for SMS as shown in tables 8 to 13, the groups of 11 to 20 inspections showed the highest crash risk compared to carriers with more inspections.

Table 7 illustrates the number of carriers that have 11 or more inspections with 1 or more violations in each in a 24-month period and, therefore, would have sufficient data to be evaluated for an SFD, compared to carriers with 5 or more inspections.

TABLE 7—NUMBER OF CARRIERS THAT HAVE 11 OR MORE OR 5 OR MORE INSPECTIONS IN A 24-MONTH PERIOD

Power units	11+ inspections (SFD)		5+ inspections (intervention)	
	Number of carriers	Percent of total shown (percent)	Number of carriers	Percent of total shown (percent)
5 or fewer	31,957	42.1	86,486	59.5
6 to 15	21,885	28.9	32,974	22.7
16 to 50	14,843	19.6	18,122	12.5
51 to 500	6,558	8.6	7,058	4.9

[55] ''Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers,'' U.S. Government Accountability Office, Report No. GAO–14–114, February 3, 2014. See *http://www.gao.gov/products/GAO-14-114*, accessed April 6, 2015.

TABLE 7—NUMBER OF CARRIERS THAT HAVE 11 OR MORE OR 5 OR MORE INSPECTIONS IN A 24-MONTH PERIOD—Continued

Power units	11+ inspections (SFD)		5+ inspections (intervention)	
	Number of carriers	Percent of total shown (percent)	Number of carriers	Percent of total shown (percent)
501+	585	0.8	597	0.4
Total	75,828	100	145,237	100

The weight of a safety event would decrease over time, with more recent events having a greater impact on a motor carrier's BASIC scores than events from the more distant past. Under this proposal the Agency would not use events older than 24 months in determining a motor carrier's safety performance measure.

FMCSA emphasizes that a carrier that receives a proposed unfit determination under Method 1 may have the opportunity to enter into a compliance agreement which could provide it an opportunity to improve its safety performance and avoid a final determination of unfit. Therefore, the increased scrutiny that comes with poor results from 11 inspections with violations within 24 months does not mean the carrier would automatically face an operations out-of-service order. It would be required, however, to correct deficiencies in its safety management controls sooner than it would if the Agency waited for a larger number of inspections. The Agency requests comments on the minimum number of inspections and minimum number of violations that should be considered in making a proposed unfit determination.

Proposed Failure Standards for Unfit Method 1

The proposed failure standard for an SFD would be set at an absolute value that would equate to higher levels (*i.e.,* poorer safety performance) than those used in SMS for interventions. That absolute value—a figure based on time- and severity-weighted violations divided by the number of relevant inspections or vehicles for different safety event groups—would be set at the time when the SFD rule becomes final.

The Agency's goal is to establish failure standards that would identify motor carriers with a high crash risk. However, the Agency must take into consideration existing enforcement resources and strike a balance between the population identified and the ability to handle the associated workload.

In considering what absolute failure standards to propose, the Agency considered four options, based on different SMS percentiles. The standards considered equate roughly to the 95th, 96th, 98th, and 99th percentiles for all motor carriers with 11 or more inspections with violations for the 24-month period that ended on March 22, 2013. The proposed failure standards for each BASIC, as calculated through inspections, are presented in Tables 8 through 13. But the standards in the final rule will be based on a more current data and calculation completed closer to the final rule's publication date.

For purpose of analysis in this rulemaking, the Agency proposes to use the absolute failure standards that equate to the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. This failure standard is equivalent to the absolute value that defines the worst 1 percent of motor carriers with 11 or more inspections, each with 1 or more violations, in a BASIC as of the date of the calculation—March 22, 2013. (See also Table 16 below.)

The failure standard for Unsafe Driving and HOS Compliance would be more stringent than the other BASICs and require a higher level of compliance. A measure equivalent to the 96th percentile would be used for the Unsafe Driving and HOS Compliance BASICs. FMCSA based this standard on the stronger correlation of these BASICs to previous crashes.[56] During CSA development, the Agency discussed having these two BASICs be ''stand-alone'' BASICs in the SFD rulemaking;[57] meaning that failing even one of these two BASICs would result in a proposed unfit SFD. However, based on both the Agency's analysis for this proposal and the ATRI research, mentioned above, using more BASICs to determine a carrier's safety fitness has been shown to be a better measure of the overall safety performance of the carrier.

The Crash Indicator BASIC and the Controlled Substances/Alcohol Compliance BASIC would be examined only during investigations, because the Crash Indicator BASIC currently does not include preventability determinations, and controlled substances and alcohol violations from on-road safety data would rarely meet the data sufficiency standards.

Failure standards for each of the five BASICs relevant to Unfit Method Number 1 would be established for up to four different safety event groups. (A full explanation of safety event groups is provided below.) A carrier meeting or exceeding the failure standard in its safety event group in the specific BASIC would fail that BASIC for SFD purposes. Tables 8 through 16 below show the options FMCSA considered for each BASIC.

In SMS, a carrier's performance is compared every month to other carriers in its safety event group. As a result, improved performance by other carriers could result in the carrier having higher (worse) percentiles, without the carrier having committed any additional violations. By contrast, in the proposed SFD process, each month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change by the month but instead would only change after rulemaking by the Agency, with notice and an opportunity to comment, changes in another company's performance would not impact the motor carrier. The carrier's measure would reflect its own performance against the failure standard.

Tables 8 through 13 below show proposed failure standards that would apply for each of the five BASICs used in this methodology. For all of the BASICs except Unsafe Driving, the threshold would be determined by

[56] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

[57] See 72 FR 62293, at 62299, (Nov. 2, 2007), Comprehensive Safety Analysis 2010 Initiative, Notice of public listening session.

dividing the number of time- and severity-weighted violations by the number of relevant inspections. The specific numerators and denominators that would be used to determine the proposed failure standard for each BASIC are identified in appendix B. For purposes of clarifying and analyzing this proposal only, failure standards are presented below based on the data available as of March 22, 2013. But the standards in the final rule will be based on a more current calculation completed closer to the final rule's publication date.

TABLE 8—UNSAFE DRIVING FAILURE STANDARDS (GENERALLY, WEIGHTED VIOLATIONS DIVIDED BY POWER UNITS—SEE APPENDIX B, SECTION 2.4)—COMBINATION [58] VEHICLE SEGMENT—ALTERNATIVES CONSIDERED

Safety Event Group (number of inspections with unsafe driving violations)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 21	12.74	14.21	18.54	27.25
22–57	8.77	9.58	13.5	18.98
58–149	5.47	6.26	8.10	9.71
150+	2.77	2.80	2.90	3.00

TABLE 9—UNSAFE DRIVING FAILURE STANDARDS: (WEIGHTED VIOLATIONS DIVIDED BY POWER UNITS) STRAIGHT TRUCK [59] SEGMENT—ALTERNATIVES CONSIDERED

Safety event group (number of inspections with unsafe driving violations)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 18	8.19	9.64	11.47	15.99
19–49	4.59	5.12	7.31	12.05
50+	1.36	1.47	1.89	2.05

TABLE 10—HOURS OF SERVICE COMPLIANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY DRIVER INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of driver inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	3.88	4.15	4.94	5.65
21–100	2.94	3.13	3.66	5.21
101–500	2.09	2.20	2.44	2.69
501+	1.46	1.54	1.73	1.91

TABLE 11—DRIVER FITNESS FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY DRIVER INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of driver inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	1.54	1.68	2.19	2.74
21–100	0.78	0.86	1.11	1.39
101–500	0.29	0.31	0.39	0.50
501+	0.14	0.15	0.19	0.24

TABLE 12—VEHICLE MAINTENANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY VEHICLE INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of vehicle inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	14.19	14.93	16.94	18.79

[58] Combination vehicle segments include those motor carriers that operate either truck tractors or motor coaches.

[59] Straight truck segments include all carriers that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with capacity of 9 or more passengers. These different types of power units are defined on the FMCSA Registration/Update(s) (Application for USDOT Number/Operating Authority Registration), Form MCSA–1. See *http://www.regulations.gov/#!documentDetail;D=FMCSA-1997-2349-0195*.

[60] Tversky, A.; Kahneman, D. (1971). ''Belief in the law of small numbers''. Psychological Bulletin 76 (2): 105–110. *http://psycnet.apa.org/journals/bul/76/2/105/*.

TABLE 12—VEHICLE MAINTENANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY VEHICLE INSPECTIONS)—ALTERNATIVES CONSIDERED—Continued

Safety event group (number of vehicle inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
21–100	11.96	12.62	14.38	16.12
101–500	8.84	9.18	10.36	11.82
501+	6.54	6.77	7.9	8.91

TABLE 13—HM COMPLIANCE FAILURE STANDARDS (WEIGHTED VIOLATIONS DIVIDED BY PLACARDED HM INSPECTIONS)—ALTERNATIVES CONSIDERED

Safety event group (number of placarded HM inspections)	BASIC Failure standard equivalent to 95%	BASIC Failure standard equivalent to 96%	BASIC Failure standard equivalent to 98%	BASIC Failure standard equivalent to 99%
11 to 20	4.18	4.34	5.55	6.87
21–100	2.81	2.99	3.65	4.82
101–500	1.86	1.96	2.34	2.56
501+	1.33	1.46	1.83	1.95

The percentage of carriers and crash rates of carriers under FMCSA's jurisdiction are presented in Tables 14 and 15 below for the purpose of comparison. Table 14 displays the frequency with which motor carriers are identified as ''unfit,'' based on the number of power units (PU) the carrier operates. Table 15 show the crash rates for the same motor carriers.

TABLE 14—DISTRIBUTION OF PROPOSED UNFIT DETERMINATIONS BY POWER UNITS (PU) GROUPS FOR EACH ALTERNATIVE CONSIDERED

Alternatives considered	5 or fewer PU (%)	6 to 15 PU (%)	16 to 50 PU (%)	51 to 500 PU (%)	501+ PU (%)
General Population of Carriers with Recent Activity* as of March 2013 (Baseline for comparison)	82.8	11.2	4.4	1.5	0.1
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS and 98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	63.1	22.2	10.8	3.5	0.3
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS and 99th percentile for Driver Fitness, Vehicle Maintenance, and HM (based on 11+ inspections with violations)	63.9	22.3	10.2	3.3	0.3

* Recent Activity means a motor carrier has had any recorded activity in the past 36 months related to an inspection, crash, investigation (including new entrant audit), MCS–150 update, registration activity, insurance or Unified Carrier Registration payment, process agent update or name/ownership change. Also, any carrier with active for-hire operating authority is considered as having ''recent activity.'' Using this definition, FMCSA intends to remove from its motor carrier census motor carriers with ''active status'' that have left the industry years ago but still remain in the census because they never notified FMCSA that they stopped operating CMVs.

Both considered options noted above result in inclusion of a smaller proportion of small (5 or fewer power units) carriers than small carriers represent nationally. Therefore, neither of these options is numerically biased against small carriers, as demonstrated in Tables 15 and 16.

TABLE 15—CRASH RATES OF CARRIERS DETERMINED TO BE UNFIT—BY ALTERNATIVES CONSIDERED

[in crashes per 100 power units (PU)]

Alternatives considered	5 or fewer PU	6 to 15 PU	16 to 50 PU	51 to 500 PU	501+ PU
General Population of Carriers with Recent Activity as of March 2013 (Baseline for comparison)	2.2	2.3	2.4	2.2	1.8
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS and 98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	6.7	5.3	4.8	3.6	2.6

TABLE 15—CRASH RATES OF CARRIERS DETERMINED TO BE UNFIT—BY ALTERNATIVES CONSIDERED—Continued

[in crashes per 100 power units (PU)]

Alternatives considered	5 or fewer PU	6 to 15 PU	16 to 50 PU	51 to 500 PU	501+ PU
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS and 99th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	6.5	5.2	4.7	3.8	3.5

The highest crash rates identified (between 6.5 and 6.7) are all in the small (5 or fewer power units) carrier population. This suggests that small carriers are not unfairly selected under either of the two proposed models.

Table 16 presents the overall crash rates of carriers identified by two or more failed BASICs from inspections. The nation-wide crash rate of the general carrier population is 2.13 per 100 power units. The general carrier population crash rate was calculated on a consistent time frame as that of the carriers identified under the proposed process.

TABLE 16—NUMBER OF TOTAL FAILED CARRIERS AND THE CORRESPONDING CRASH RATE

Alternatives considered	Number of carriers unfit based on 2 or more failed BASICs (inspection violations only)	Crash rate (crashes per 100 power units)	Active carriers	Crashes for active carriers	Power units for active carriers
Option 1: Equivalent to 95th percentile for Unsafe Driving and HOS/98th percentile for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	479	3.75	387	569	15,161
Proposed Option: Equivalent to 96th percentile for Unsafe Driving and HOS/99th for Driver Fitness, Vehicle Maintenance, and HM (Based on 11+ inspections with violations)	262	8.28	211	300	3,625

Of the two options presented, the proposed option identifies the carriers (262) that have the highest overall crash rate (8.28 crashes per 100 power units).

Although Option 1 has a higher net benefit than Option 2, the Agency notes that selecting Option 1 may require additional resources while Option 2 is largely resource neutral. The Agency can accommodate under Option 2 the number of investigations resulting in proposed unfit determinations based on its current resources. The number of enforcement cases, compliance agreements, and oversight required from this population approaches the capacity of the Agency's existing staff. Option 2 represents the best balance for the Agency with its limited resources. It should be noted that the cost of reallocating Agency resources is not included in this analysis. FMCSA seeks comment on this policy choice.

FMCSA proactively addressed concerns about the SMS in the development of this SFD proposal. In addition to the differences noted above, it is important to point out that other concerns about the system including disparities for long-haul and short-haul carriers; differences for urban and rural motor carriers, and enforcement differences by the States have all been considered. The long and short haul differences are minimized by the combination (long-haul) and straight truck (short haul) segmentation. The impacts of urban and rural transportation are factored into the calculation of the Crash Indicator BASIC failure rates. Lastly, while enforcement differences exist between the States, since the failure standards proposed in this rule are significantly higher than the SMS intervention thresholds, the patterns of non-compliance for the carriers that are proposed unfit are not the result of these disparities but are the result of recurring non-compliance.

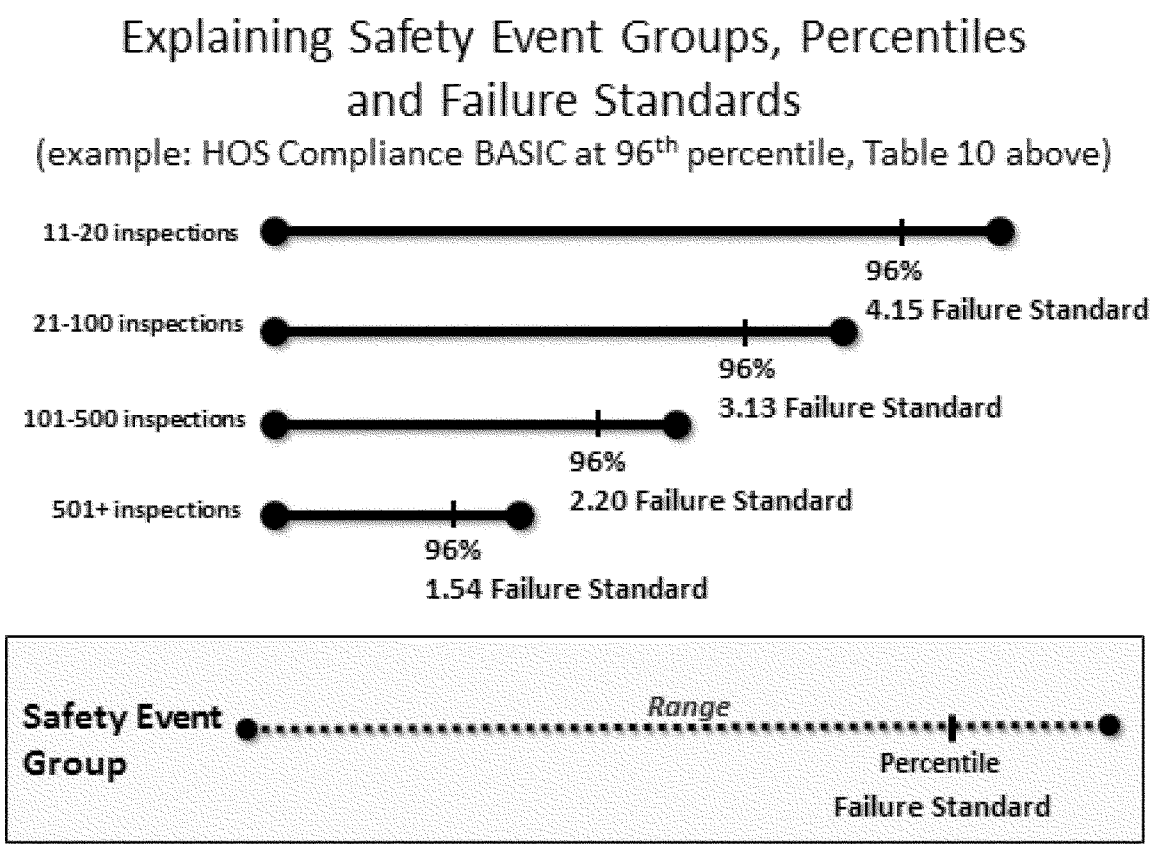
Safety Event Groups

As noted above, the Agency is proposing different SFD failure standards within each BASIC. The applicable failure standard for each motor carrier would be based on its assigned safety event group. If FMCSA did not establish different SFD failure standards for each safety event group, a disproportionately high number of small carriers (*i.e.,* carriers with few safety events) would be found to be unfit. Larger carriers (with many safety events) would rarely fail. The Agency believes the reason for this disparity is attributable to the statistical phenomenon of higher fail rates among carriers with few safety events—''the law of small numbers.'' [60]

Diagram 1 below shows an example of the absolute failure standard that corresponds to the worst performing 4 percent of carriers for the HOS Compliance BASIC. This data comes from Table 10 above.

[60] Tversky, A.; Kahneman, D. (1971). ''Belief in the law of small numbers''. Psychological Bulletin 76 (2): 105–110. *http://psycnet.apa.org/journals/bul/76/2/105/.*

DIAGRAM 1



The above diagram shows that establishing a single failure standard, without reference to the number of safety events to which a motor carrier is exposed, would disproportionately affect those carriers with fewer safety events—typically smaller carriers. For example, if the HOS Compliance BASIC SFD failure standard were set at 4.15 for all carriers, 4 percent of carriers with 11–20 inspections would fail. However, very few carriers in the remaining safety event groups have measures as high as 4.15. A carrier with many inspections (21 or more relevant inspections with violations) would be essentially immune to BASIC failure from on-road safety performance. Therefore, the SFD failure standard needs to be proportionate to the number of safety events.

FMCSA uses the same percentile equivalent (*e.g.* 96 percentile for HOS Compliance BASIC) to make sure all carriers are held to similar safety standards regardless of the number of inspections and the variance associated with number of inspections. This allows the Agency to treat carriers of all sizes as equitably as possible. To adjust the failure standard based on the number of inspections would imply that carriers of a certain size are inherently more unsafe. This would open the Agency to criticism that the rule is biased against small carriers or large carriers (depending on how the percentiles are adjusted). Given that this proposal is designed to get the most non-compliant carriers off the road (regardless of size), the straightforward approach is applying the same percentile equivalent to all safety event groups.

A baseball analogy may provide some insight into this impact. A major league baseball player's number of at-bats is important to evaluating whether his batting average warrants demotion to the minor leagues. Likewise, a motor carrier's number of inspections is important in evaluating whether its performance warrants adverse SFD consequences. For example, 2 hits in 20 at-bats at the beginning of the baseball season (*i.e.,* a 0.100 batting average) would generally not get a baseball player demoted to the minor leagues. However, 80 hits in 400 at-bats (*i.e.,* a 0.200 batting average) across an entire season likely would get a baseball player demoted, even though his batting average is twice as high (0.200 vs. 0.100).[61]

Similarly, motor carriers with few inspections exhibit a wider range of performance measures than carriers with many more inspections. A batter might bat 5 for 10 (0.500 average) in the first week of the season (corresponding to a high absolute measure), but no batter sustains that level through 400 at bats. Similarly, a carrier could have an HOS Compliance BASIC violation in each of 5 inspections, but it would be almost impossible that a carrier would have 500 HOS Compliance BASIC violations in 500 inspections. The greater the number of events, be they at-bats or inspections, the narrower the range of realistic outcomes. Failure standards that incorporate the number of safety events thus ensure that the worst performing motor carriers across all sizes and numbers of safety events are subject to an absolute standard.

When appropriate, the motor carrier's BASICs measures are normalized to reflect differences in inspection and

[61] The average batting average for all of Major League Baseball in 2014 was 0.251. See *http://espn.go.com/mlb/stats/team/_/stat/batting/year/2014/seasontype/2*, accessed on April 6, 2015.

other safety oversight exposure among motor carriers. The HOS Compliance and Driver Fitness measures are normalized by adding the number of time-weighted driver inspections, while Vehicle Maintenance BASIC measures are normalized by adding the number of time-weighted vehicle inspections. The HM Compliance BASIC is normalized by adding the number of time-weighted vehicle inspections where placardable quantities of HM were present. The inspections used to normalize a BASIC measure are considered relevant inspections.

Motor carrier exposure for the Unsafe Driving BASIC is normalized by carrier size using power units and vehicle miles traveled (VMT). Carriers with above-average CMV utilization, in terms of VMT per power unit as reported from MCMIS, receive a positive adjustment to account for the increased exposure to violations that result from miles operated by incorporating an Unsafe Driving Utilization Factor. The Unsafe Driving BASIC accounts for further carrier differences by dividing the carrier population into two segments based on the current mix of vehicles operated. This differentiates the levels of exposure associated with carriers that have fundamentally different types of operations.

The Unsafe Driving Utilization Factor is a multiplier that adjusts the average power unit values based on utilization in terms of VMT per average power unit where VMT data from the past 24 months are available. In cases where the VMT data have been obtained multiple times over the past 24 months for the same carrier, FMCSA proposes to use the most current VMT figure reported by the motor carrier during an investigation, reported online biennially, or reported on Forms MCSA–1 or MCS–150. The Utilization Factor would be calculated as follows:

(1) Determine carrier segment based on the types of vehicles the carrier operates (The types of vehicles are ''combination'' [62] or ''straight truck.'' These different types of power units are defined on the Application for USDOT Registration/Operating Authority (Form MCSA–1) [63] instructions);

(2) Calculate the VMT per average power unit by taking the most recent positive VMT data [64] and dividing it by the average power units;

(3) Use the information in (1) and (2) to find the utilization factor in Tables 2–3 and 2–4 to appendix B to part 385: VMT per Power Unit.

Use of failure standards that consider the number of safety events has precedent. The province of Ontario, Canada uses a similar approach in its Commercial Vehicle Operators Registration (CVOR) motor carrier safety rating system. A technical document that illustrates Ontario's safety rating failure standards based on a motor carrier's number of inspections is included in the docket for this document.[65] The Ontario Ministry of Transportation ''analysed the on-road safety performance of a large sample of carriers operating in Ontario during the two-year period from July 1, 2003 until June 30, 2005. Collision rates and safety related conviction rates for each carrier were plotted and compared for carriers with varying rates of travel, resulting in a standard that identifies acceptable levels of performance. A similar standard was developed for vehicle inspection performance based on frequency of inspection. Performance standards were determined based on monthly kilometric travel. . . . An overall performance level or threshold was established for each carrier by weighting the collision, conviction and inspection performances in the ratios of 2:2:1. In other words, collisions and convictions are given double the weight of inspections in determining an operator's overall violation rate (performance level)'' page 25.

FMCSA proposes that the failure standard for each safety event group be the absolute performance measure corresponding to a given BASIC percentile at the time the standard is set. For example, the absolute failure standards that correspond to the 96th percentile in the HOS Compliance BASIC are presented above in Table 10. FMCSA specifically seeks comments on the use of absolute failure standards based on a motor carrier's number of inspections. In addition, the Agency requests information on the impact to commenters if the Agency were to move to a different safety event grouping approach—similar to Ontario's CVOR process. Under such a different approach, there would be more safety event groups in each BASIC and more corresponding BASIC failure standards. The carrier groupings would be narrower and more closely aligned to the motor carrier's exact number of inspections. For example, rather than grouping all motor carriers with 11–20 inspections for the Vehicle BASIC, as is proposed in this NPRM, a different approach might establish safety event groups and corresponding BASIC failure standards for all motor carriers with, for example, 11–13 inspections, 14–16 inspections, and 17–20 inspections.

FMCSA seeks comment on setting the standard at the same percentile for each safety event group. Would it be appropriate to allow the threshold to vary across safety event groups? If so, please provide data to support your position.

2. Unfit Method 2: Carrier With Violations of the Revised Critical and Acute Regulations Identified Through an Investigation

Unfit Method 2 would use data only from investigations. For example, investigations may begin after receipt of a complaint alleging a substantial violation of a regulation is occurring or has occurred, a crash report suggesting a substantial violation of a regulation occurred, or when a motor carrier's SMS BASIC percentiles meet or exceed intervention thresholds. The Agency proposes to use any of the investigation types used by the Agency during interventions—either an offsite focused, onsite focused, or an onsite comprehensive investigation to issue proposed SFDs. This approach would modify the Agency's current requirement for an onsite investigation in order to issue an SFD. Documentation supporting an unfit determination would be collected using existing enforcement guidelines and standards—including sampling methodologies.

[62] The combination segment includes those carriers that operate either truck tractors or motor coaches. The instructions for ''Application for USDOT Registration/Operating Authority'' (Form MCSA–1) define a ''motor coach'' as ''a vehicle designed for long distance transportation of passengers, usually equipped with storage racks above the seats and a baggage hold beneath the passenger compartment.'' See *http://www.regulations.gov/#!documentDetail;D=FMCSA-1997-2349-0195*. Carriers are placed in the combination category if 70 percent or more of the carrier's total power units meet that definition. The straight truck segment includes all other carriers, including those that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers.

[63] The Motor Carrier Identification Report (Form MCS–150) will be replaced by the Application for USDOT Registration/Operating Authority (Form MCSA–1) for most motor carriers on September 30, 2016, as required by the Unified Registration System final rule published on August 23, 2013 (78 FR 52608) and the extension of effective dates final rule published on October 21, 2015 (80 FR 63695). The form MCS–150 will continue to be used by Mexico-domiciled motor carriers requesting authority to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border. The Agency is considering eliminating the MCS–150 altogether and would do so by separate rulemaking.

[64] Reported by the motor carrier during an investigation, reported online biennially, or reported on Forms MCSA–1 or MCS–150.

[65] Ontario's CVOR and Carrier Safety Rating Public Guideline, Ministry of Transportation, St. Catharines, Ontario, November 2011.

If a motor carrier is cited for a violation of an acute regulation associated with a BASIC, it would fail that BASIC. If a motor carrier is cited for a violation of a critical regulation with violations discovered in a minimum of 10 percent violation of the records examined, it would fail that BASIC. If a motor carrier failed two or more BASICs due to violations of the proposed critical and/or acute regulations, this would result in a proposed unfit determination. This proposed SFD methodology raises the safety standard above that used in the current process. Only one violation of a critical regulation, at a 10 percent or higher violation rate, would be required to fail a BASIC, whereas, in the current process, two violations of critical regulations are generally required to fail a Factor.

The costs and benefits associated with this proposal only use investigation results from a one month period prior to a proposed SFD. FMCSA specifically seeks comments on the length of time that failed BASICs from investigations should be reviewed together with failed BASICS from on-road safety data to potentially result in a proposed SFD.

As a result of its analysis and alternatives development, FMCSA proposes to alter the list of critical and acute regulations. Analysis by FMCSA [66] compared the crash rates of motor carriers with violations of the existing list of critical and acute regulations to the crash rates of motor carriers with violations of the proposed list of critical and acute regulations. The revised, refined list of critical and acute regulations correlated to a higher crash rate. For the purpose of proposing unfit SFDs, the refined list of critical and acute regulations is an equally strong, if not a better, indicator of crash risk. A copy of the analysis is included in the docket for this rulemaking.

Table 17 shows the revised acute and critical violations and the BASIC with which they would align. The current critical and acute regulations may be found at 49 CFR part 385, appendix B, section VII. In contrast to on-road inspection violations, violations cited during an investigation are not time or severity weighted, see section 2.3.7, 2.3.8, and 2.3.9 in proposed appendix B to part 385 below.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.	HM Compliance.
Critical	173.24b(d)(2)	Loading bulk packaging (cargo tank) with an HM which exceeds the maximum weight of lading marked on the specification plate.	HM Compliance.
Critical	173.33(a)(1)	Offering or accepting a HM for transportation in an unauthorized cargo tank.	HM Compliance.
Critical	173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed results in an unsafe condition.	HM Compliance.
Critical	173.33(b)(1)	Loading HM in a cargo tank motor would have a dangerous reaction when in contact with the tank.	HM Compliance.
Critical	177.800(c)	Failing to instruct a category of employees in HM regulations	Driver Fitness.
Acute	177.801	Accepting for transportation or transporting a forbidden material	HM Compliance.
Critical	177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.	HM Compliance.
Critical	177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance.	HM Compliance.
Critical	177.848(d)	Failing to store, load, or transport HM in accordance with the segregation table.	HM Compliance.
Critical	180.407(a)	Transporting a shipment of HM in cargo tank that has not been inspected or retested in accordance with § 180.407.	HM Compliance.
Acute	382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).	Controlled Substances.
Acute	382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).	Controlled Substances.
Acute	382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.	Controlled Substances.
Acute	382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Controlled Substances.
Acute	382.215	Using a driver known to have tested positive for a controlled substance.	Controlled Substances.
Critical	382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	Controlled Substances.
Critical	382.303(a)	Failing to conduct post-accident testing on driver for alcohol	Controlled Substances.
Critical	382.303(b)	Failing to conduct post-accident testing on driver for controlled substances.	Controlled Substances.
Acute	382.305	Failing to implement a random controlled substances and/or an alcohol testing program.	Controlled Substances.
Critical	382.305(b)(1)	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	Controlled Substances.
Critical	382.305(b)(2)	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	Controlled Substances.

[66] ''Estimating the Safety Impact of Proposed Safety Fitness Determination (SFD) Criteria,'' FMCSA, May 2015.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS—Continued

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	382.309	Using a driver without a return to duty test	Controlled Substances.
Critical	382.503	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by § 382.605.	Controlled Substances.
Critical	383.3(a)/ 383.23(a)	Using a driver who does not possess a valid CDL	Driver Fitness.
Acute	383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.	Driver Fitness.
Acute	383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.	Driver Fitness.
Acute	391.11(b)(4)	Using a physically unqualified driver	Driver Fitness.
Acute	391.15(a)	Using a disqualified driver	Driver Fitness.
Critical	391.45(a)	Using a driver not medically examined and certified	Driver Fitness.
Critical	391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.	Driver Fitness.
Critical	391.51(a)	Failing to maintain driver qualification file on each driver employed	Driver Fitness.
Critical	392.2	Operating a motor vehicle not in accordance with the safety laws, ordinances, and regulations of the jurisdiction in which it is being operated.	Unsafe Driving.
Critical	392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.	Unsafe Driving.
Critical	392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.	Vehicle Maintenance.
Critical	395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
Critical	395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.	HOS Compliance.
Critical	395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 10 consecutive hours prior to driving.	HOS Compliance.
Critical	395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.	HOS Compliance.
Critical	395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
Critical	395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
Critical	395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours.	HOS Compliance.
Critical	395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.	HOS Compliance.
Critical	395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
Critical	395.8(a)	Failing to require driver to make a record of duty status	HOS Compliance.
Critical	395.8(e)	False reports of records of duty status	HOS Compliance.
Critical	395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.	HOS Compliance.
Critical	395.8(k)(1)	Failing to preserve driver's record of duty status for 6 months	HOS Compliance.
Critical	395.8(k)(1)	Failing to preserve driver's records of duty status supporting documents for 6 months.	HOS Compliance.

TABLE 17—REVISED CRITICAL AND ACUTE REGULATIONS—Continued

Acute or critical	49 CFR section	Description of violation	Behavior analysis and safety improvement category (BASIC)
Critical	396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.	Vehicle Maintenance.
Acute	396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made.	Vehicle Maintenance.
Acute	396.11(c)	Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.	Vehicle Maintenance.

In some forums for SMS purposes, the Agency has referred to violations of certain critical and acute regulations as essential safety management violations and fundamental violations, respectively.[67] However, for the purposes of this rulemaking, the Agency is not proposing to change the current terminology. Instead, FMCSA would revise the list in section VII in appendix B to part 385 and retain the terms ''critical'' and ''acute.'' This terminology is included in the Motor Carrier Safety Improvement Act of 1999, and is familiar to law enforcement and the industry. Proposed revisions to 49 CFR part 385, appendix B, are explained in detail in Part IX of this proposed rule.

The critical and acute violations noted in Table 17 above have been used for the analysis in the Regulatory Evaluation accompanying this proposal. But the Agency is also considering whether to include the following violations and seeks comment specifically on these violations.

- § 390.35—Making, or causing to make, fraudulent or intentionally false statements or records or reproducing fraudulent records.
- § 392.4(b)—Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
- § 392.5(b)(1)—Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
- § 392.5(b)(2)—Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.
- § 392.16—A commercial motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself/herself with the seat belt assembly.
- § 392.80(a)—No driver shall engage in texting while driving.
- § 392.80(b)—No motor carrier shall allow or require its drivers to engage in texting while driving.
- § 392.82(a)(1)—No driver shall use a hand-held mobile telephone while driving a commercial motor vehicle.
- § 392.82(a)(2)—No motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a CMV.
- § 396.7(a)—Requiring or permitting operation of a motor vehicle in a condition likely to cause an accident or breakdown of the vehicle.
- § 396.17(a)—Using a commercial motor vehicle not periodically inspected.

As a result, the Agency seeks comment and data on these regulations and others that should be considered critical or acute. Lastly, the Agency seeks comment and data on how critical and acute regulations should be determined; is associated crash risk the best measurement, or is there a better or additional reason?

Crashes

The statute requires the Agency to consider crashes in determining safety fitness.[68] A motor carrier's crash experience would impact the SFD only if the carrier's recordable crashes had first been evaluated for preventability as part of an investigation. This is consistent with FMCSA's existing methodology. For this purpose, the Agency will consider only recordable crashes. A crash is recordable if it involves a CMV and meets the definition in 49 CFR 390.5 (defining ''accident'').

The Agency proposes to determine preventability by applying the standards and procedures currently utilized in assessing preventability of recordable crashes when determining a safety rating. Those procedures make use of previously issued guidance for making preventability determinations, set out in FMCSA's *A Motor Carrier's Guide to Improving Highway Safety*.[69]

The Agency calculates a motor carrier's crash rate by multiplying the motor carrier's number of recordable interstate and intrastate crashes in the previous 12 months by 1,000,000. That result is divided by the motor carrier's fleet mileage during the previous 12 months. The failure standard for crash rates is 1.5 for general operations and 1.7 for urban operations. If the motor carrier exceeds the failure standard, the crashes will be reviewed for preventability. The crash rate will then be recalculated using only preventable crashes. If the motor carrier's preventable crash rate remains above the failure standard, the motor carrier would then fail the Crash Indicator BASIC.

In 1997, FMCSA's predecessor, the Federal Highway Administration, published a Final Rule (62 FR 60035) indicating that it would use a carrier's *recordable* crash rate as a factor in determining its safety rating, but would continue to consider the *preventability* of such crashes when challenged by individual carriers. The thresholds for unacceptable crash rates were set using recordable crash data from 1994–1996. FMCSA seeks comment on whether either the recordable crash rate or the preventable crash rate would be more appropriate for use in calculating a carrier's SFD and whether the recordable crash rates currently incorporated into 49 CFR part 385, appendix B, should be retained as thresholds under the new SFD.

3. Unfit Method 3: Combination of Inspection Data and Investigation Results

During an investigation, it may be determined that violations of acute or critical regulations result in only one failed BASIC. However, the motor carrier may also have one additional BASIC over the SFD failure standard based on the most recent 24 months of

[67] See 72 FR 62293, at 62299 (Nov. 2, 2007) and 73 FR 53483, at 53487 (Sept. 16, 2008).

[68] 49 U.S.C. 31144(a)(1).

[69] *A Motor Carrier's Guide to Improving Highway Safety*, FMCSA–ESO–08–003, December 2009. Available at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*.

on-road safety data. When, at the time of the investigation, there is one failed BASIC as a result of on-road safety data and one or more additional failed BASICs as a result of violations discovered during the investigation, the motor carrier would be proposed unfit. Crash and controlled substances/alcohol information would be considered, as noted above, only during the investigation.

4. Specific Applications

English Language Proficiency

It should be noted that the Agency's analysis, including the estimated number of proposed unfit motor carriers, does not include violations of 49 CFR 391.11(b)(2) for English Language Proficiency (ELP). These violations are also not included in the proposed violation tables in appendix B of part 385. The Agency chose to do the analysis without this violation based on the Commercial Vehicle Safety Alliance's (CVSA) 2014 decision to remove this violation from it's out of service criteria. The Agency specifically seeks comments on this issue.

Passenger Carriers

Congress and FMCSA have both acknowledged the increased risk associated with transportation of passengers. Currently, FMCSA also holds passenger motor carriers to more stringent intervention thresholds in SMS.

The Agency is considering an alternative, more stringent, proposal for passenger carriers that would result in a proposed unfit SFD. The proposal would have two elements. First, a passenger carrier would receive a proposed unfit SFD when it meets or exceeds failure standards comparable to the 75th percentile for either the Unsafe Driving or HOS Compliance BASIC. Under this part of the alternative proposal, a passenger carrier could be proposed unfit for failing either Unsafe Driving or HOS Compliance, without failing a second BASIC. Secondly, and in addition, FMCSA is considering a structure where a proposed unfit SFD would also result if a passenger carrier meets or exceeds SFD failure standards comparable to the 90th percentile when the absolute thresholds in two of the three other BASICs—Vehicle Maintenance, Driver Fitness or HM Compliance.

The Agency estimates that 270 passenger carriers would be proposed as unfit using these alternate failure standards. This would result in 93 more passenger carriers being proposed unfit than would result from using two failed BASICs comparable to the 96th and 99th percentiles, as elsewhere proposed in this document. Using data from on-road safety data and investigation results, the estimated crash rate for these 270 passenger carriers is 2.08 applying the same approach used in the Regulatory Evaluation. The national average for all passenger carriers is 1.09 crashes per 100 power units. The proposed unfit passenger carriers using these alternate failure standards had experienced a crash rate (2.08 per 100 power units) that was almost twice the national passenger carrier rate (1.09 per 100 power units) or an increase of 90% ((2.08–1.09/1.09)).

As a result, the Agency seeks feedback and data on whether passenger carriers should be held to more stringent SFD failure standards, that is, at an absolute value equivalent to the 75th percentile (or some other percentile less than the 96th percentile) for the Unsafe Driving and HOS Compliance BASICs failure standards, and equivalent to the 90th percentile (or some other percentile less than the 99th percentile) for the Driver Fitness, Vehicle Maintenance, HM Compliance, and Crash Indicator BASICs. The Agency also requests comment on whether the proposed failure standards are appropriate.

The Agency is also interested in alternative methods for identifying high risk passenger carriers during an investigation. It is considering lowering the minimum rate of violations for a pattern, for purposes of a critical regulation violation, from 10 percent to 5 percent or a lower number. FMCSA seeks comments on this concept.

Hazardous Materials Carriers

The SMS also has lower intervention thresholds for HM carriers. As a result, the Agency seeks feedback and data on whether these carriers should be held to a more stringent standard (*i.e.,* lower BASIC failure standards). The Agency is specifically interested in feedback on whether the failure standard should be different for HM safety permit carriers.

Under this proposal, HM safety permit applicants would continue to be required to have a comprehensive onsite investigation comparable to the existing CR, conducted at the motor carrier's principal place of business, and would be issued a HM safety permit as long as they were not unfit and met other applicable requirements. Either inspections or another investigation after issuance of the HM safety permit could result in an unfit determination, however, thus affecting the HM safety permit status.

Foreign Motor Carriers

Under this proposal, the Agency notes that Mexican, Canadian, and Non-North American carriers registered with FMCSA could be found to be unfit based on their inspection data and investigation results.

Mexican long-haul carriers permitted to operate in this country beyond border commercial zones are required to have a compliance review before being granted standard authority. In the future, if long-haul authority is granted, the carrier would be required to have a comprehensive investigation comparable to an existing CR within 18 months of FMCSA granting the carrier provisional operating authority registration before being granted standard authority. Additionally, on-road safety data or findings from another investigation could result in an unfit determination, thus affecting the carrier's provisional authority status.

D. MAP–21 Requirements for Motor Carriers of Passengers and Operators of Motorcoach Services

A MAP–21 amendment requires the Secretary to conduct initial and periodic safety reviews of for-hire motor carriers of passengers.[70] Initial reviews of those motor carriers of passengers that are providers of motorcoach services registered with the Secretary after October 1, 2012, are to begin no later than two years after the dates of their respective registrations. Reviews of such providers registered on or before October 1, 2012, are to begin no later than October 1, 2015.[71] An uncodified statutory provision of MAP–21 directs the Secretary to establish requirements to improve the public accessibility of the safety rating information of providers of motorcoach services, and advises that the Secretary should also consider requirements for public display of such information on motorcoaches, at departure terminals, and at ticket sales locations.[72]

MAP–21 requires the Secretary to determine the safety fitness of each motor carrier of passengers through a simple and understandable rating system that allows passengers to compare their safety performance. MAP–21 also requires the Secretary to assign a safety fitness rating to each

[70] 49 U.S.C. 31144(i)(1), (2) and (4).

[71] 49 U.S.C. 31144(i)(1)(B). A ''motorcoach'' is defined for this purpose to be the same as an ''over-the-road bus,'' a bus characterized by an elevated passenger deck located over a baggage compartment, except a bus used by a public transportation agency or a school bus. See Section 32702(6) of MAP–21 and section 3038(a)(3) of TEA–21 (set out as a note to 49 U.S.C. 5310).

[72] MAP–21 section 32707(b), 126 Stat. 814.

such motor carrier, which is reassessed at least once every 3 years, although motor carriers of passengers that serve primarily urban areas with high passenger volume are to be reassessed annually.[73] In addition, section 32707(b) of MAP–21 requires that FMCSA improve public access to safety fitness information for motorcoach services and operations in interstate commerce.

As discussed previously, the Agency is proposing to determine only one category of safety fitness—unfit. This determination would also be made for some motor carriers of passengers through the monthly assessment of the inspection data. If the passenger carrier did not have 11 inspections in the previous 24 months by which to be adequately assessed, an investigation of the carrier's safety performance would be conducted.

Section 32707(b) also requires the Agency to consider requiring the prominent display of safety fitness rating information in each motorcoach terminal of departure, on the inside of the motorcoach vehicle, and at all points of sale for motorcoach services. The public has access to critical information about the safety record and ratings of motor carriers of passengers, including providers of motorcoach services, on the FMCSA Web site and through the Agency's SaferBus application.[74] FMCSA believes that implementing the statutory requirement to consider prominently displaying SFD information at terminals, ticket sale locations, and on motorcoaches could result in fraudulent information being displayed, and, therefore, is better addressed by directing the traveling public to FMCSA's Web site and the SaferBus application. FMCSA seeks comments on whether the public's access to a for-hire motorcoach operator's safety record on the FMCSA Web site and SaferBus application is sufficient to meet the public access and display requirements of section 32707(b)(2) of MAP–21.

E. Summary Justification for SFD Proposal

FMCSA has structured this SFD proposal to identify those motor carriers with the highest crash risk. Carriers identified through two failed BASICs based solely on on-road safety data (using the 96/99 percentile threshold standard) have a crash rate of 8.28 crashes per 100 power units. All carriers with two failed BASICs (including carriers failing a BASIC due to a finding during an investigation and on-road safety data) have a crash rate of 4.39 crashes per 100 power units. This is compared to the nation-wide average crash rate of 2.13 crashes per 100 power units for all carriers.

The proposed use of on-road safety data would allow the Agency to identify and take action against unsafe motor carriers. Table 18 below illustrates both the number of carriers proposed unfit and the associated crash rate for two different options for failure standards for SFDs. Option 2 is the option proposed in this rulemaking.

TABLE 18—NUMBER OF CARRIERS PROPOSED UNFIT—IDENTIFIED WITH TWO FAILED BASICS

Failure standard option	All proposed unfit methods:			Proposed unfit method 1: Number of carriers proposed unfit based on inspection data (and associated crash rate per 100 PUs)	Proposed unfit method 2: Number of carriers proposed unfit based on investigations (and associated crash rate per 100 PUs)	Proposed unfit method 3: Number of carriers proposed unfit based on inspection and investigation (and associated crash rate per 100 PUs)
	Total number of carriers proposed unfit	Total number of crashes for carriers proposed unfit	Associated crash rate per 100 power units (PUs)			
No. 1—Equivalent to 95 and 98 percentiles	3,291	2,124	3.93	479 (3.75)	2,656 (3.94)	156 (4.66)
No. 2—Equivalent to 96 and 99 percentiles	3,056	1,862	4.39	262 (8.28)	2,674 (3.98)	120 (4.61)

The Agency used lessons learned from SMS and feedback from stakeholders[75] in crafting the proposed SFD process. These include requiring a higher number of inspections before assessing the motor carrier's performance, a higher number of inspections with violations before making an SFD, and using absolute failure standards equivalent to higher compliance levels than SMS uses for prioritization. Because SMS intervention thresholds are lower than the proposed thresholds for SFD, under this proposal it is very unlikely that a proposed unfit SFD would be the first time that the Agency had an intervention with the motor carrier. Most often, the motor carrier would have been subject to previous interventions, such as warning letters, focused reviews, and/or civil penalty enforcement actions. If the safety deficiencies were not corrected, however, the carrier could ultimately meet or exceed the safety failure standards that result in a proposed unfit SFD.

VII. Revised SFD Appeals Process

After receiving a proposed unfit safety fitness determination, a motor carrier would have various administrative proceedings available to it before the proposed determination becomes final.[76] In this proposal, four different administrative proceedings would be available. However, consistent with current procedures, requests for administrative reviews would not automatically stay the unfit determination.

A. Administrative Review of Material Errors

This proposal would continue the existing administrative review procedure to challenge alleged errors committed in assigning the proposed unfit SFD. These requests are decided by FMCSA's Assistant Administrator. The proposed administrative review procedures in revised 49 CFR 385.15 would provide sufficient opportunity

[73] 49 U.S.C. 31144(i)(1), (2) and (4), added by section 32707(a) of MAP–21.

[74] This application is available without charge to Google Android users and Apple iPhone and iPad users from the respective App Stores, or by going to the FMCSA's ''Look Before You Book'' Web site at *www.fmcsa.dot.gov/saferbus.*

[75] See docket FMCSA–2004–18898 titled Comprehensive Safety Analysis 2010 Initiative.

[76] See section IV.A. *History of SFDs* above for an explanation of the 45- and 60-day periods set by statute before a proposed unfit SFD becomes final. 49 U.S.C. 31144(c).

for a motor carrier to allege errors in an SFD, including allegations of error in the validity of violations recorded on a driver/vehicle inspection report, even where State administrative or judicial proceedings might not be adequate or available. The burden of proof for this review would remain with the motor carrier. Such review would now have to be sought within 15 days after service of the notice of proposed unfit SFD. If no such review is sought within 30 days after service of the notice, or the Agency does not agree with the allegations of material error, the proposed unfit SFD may become a final unfit SFD as described above.

As indicated above, FMCSA proposes to reduce the time for filing a petition for administrative review from the current maximum of 90 days to 15 days after the issuance of the proposed unfit SFD. FMCSA specifically requests comment on this proposed change in the general time for filing of petitions for administrative review, which will ensure that decisions will be made before the statutory time periods expire.

B. Claiming Unconsidered Inspection Data

The second proposed administrative review procedure would be new and would provide for review based on missing data. Requests for such review would be decided by FMCSA's Field Administrators [77] of the FMCSA Service Center responsible for the State, province, or country where the carrier's principal place of business is located. Procedures would be added at new § 385.16 for administrative review of an unfit determination that allegedly did not include all reported data from qualifying inspections of the motor carrier's vehicles or drivers, such as missing inspections citing no violations during the SFD period. For this new review, the burden of proof to show that the missing data would impact the proposed unfit SFD would rest with the motor carrier. This review would have to be requested within 10 days after service of the notice of proposed unfit SFD.

C. Requests To Operate Under a Compliance Agreement

The third proposed administrative process would revise FMCSA's existing process by allowing carriers that have a proposed unfit SFD to defer the final unfit SFD and continue to operate under a compliance agreement. The carrier would submit a corrective action plan and would agree to monitoring and performance terms. If the corrective action plan is found to be acceptable to the Agency, the motor carrier could operate under a compliance agreement. This proposal would not remove the proposed unfit determination unless the terms of the compliance agreement were met throughout an agreed upon period of time. In addition, the Agency's Web site would reflect that a motor carrier would be operating under a compliance agreement during the agreement period.

To initiate this process, a carrier would have to submit an acceptable corrective action plan within the time frames specified in proposed § 385.17(d). To be accepted, a corrective action plan would have to demonstrate that the carrier is willing and able to comply with applicable safety statutes and regulations and demonstrate significant changes in its deficient safety management processes. For example the carrier may have to demonstrate clearly defined safety policies and procedures, documented organizational roles and responsibilities for safety compliance, written qualification and hiring standards, training and communication plans, and ongoing compliance monitoring and tracking procedures. Other potential requirements might include, but would not be limited to, installing safety technology, providing reports or other documents, and training. While decisions on the terms of each compliance agreement would be made by FMCSA, standard requirements would include: (1) Monitoring for a defined period of time; and (2) strict safety performance standards that would have to be met or the carrier would be immediately declared unfit. Motor carriers would be expected to maintain performance *below* the SMS intervention thresholds established in the agreement. See Table 3 earlier in this preamble for the current SMS intervention thresholds. Meeting the terms of the compliance agreement for an agreed upon period of time with inspections would provide evidence that the motor carrier was willing and able to comply with applicable statutes and regulations and would result in withdrawal of the proposed unfit SFD. A motor carrier would have limited opportunities for administrative review of any action denying it an entry into a deferral and compliance agreement.

D. Requests To Resume Operations After a Final Unfit Determination

The fourth unfit SFD administrative review available to a motor carrier would be added to establish the new procedures that a motor carrier would follow to resume interstate motor carrier operations following a final unfit SFD. FMCSA would require a motor carrier that has received a final unfit SFD, and wants to begin operating again, to have its safety fitness evaluated. The carrier would also need to have received new safety registration and, if necessary, new operating authority.[78]

Therefore, an unfit motor carrier would be required to submit a corrective action plan with its applications for USDOT and operating authority registration. The corrective action plan must describe the actions the motor carrier completed or is taking to address its safety deficiencies. An unfit motor carrier must receive approval of its corrective action plan from the appropriate Field Administrator before FMCSA would issue a new registration for the motor carrier.

The unfit motor carrier would also be required to demonstrate to FMCSA that it meets the safety fitness standard and is willing and able to comply with all statutory and regulatory requirements before receiving an updated registration to operate. Finally, the unfit motor carrier would have to participate in the New Entrant Safety Assurance Program—subpart D of part 385, or, if applicable, either subpart B of part 385 for Mexico-Domiciled Carriers or subpart H of part 385 for New Entrant Non-North America-Domiciled Carriers, upon resuming motor carrier operations in the United States.

E. Carriers Expected To Receive a Final Unfit SFD

FMCSA estimates that 364 more motor carriers than the number that currently receive a final unsatisfactory safety rating will receive a final unfit SFD after one or more of the administrative review proceedings discussed above. However, these four proceedings provide greater opportunities for motor carriers to comply with the federal safety regulations. For carriers that would have been rated unsatisfactory under the old methodology and would be determined to be unfit under the new methodology, the proposed appeals proceedings give them an opportunity to continue operating while complying with the federal safety regulations under more intense scrutiny from FMCSA. Carriers that do not successfully appeal the proposed unfit SFD, or that choose not to appeal or submit a corrective action plan, would receive a final determination of unfit. In addition, in instances where a motor carrier is

[77] The proposed definition of the term Field Administrator includes the term Regional Field Administrator.

[78] The carrier will retain the same USDOT number. See Unified Registration System final rule, August 23, 2013 (78 FR 52608).

operating under a compliance agreement, a carrier would be issued a final unfit SFD if it violates any of the terms specified in the compliance agreement.

Using MCMIS data from September 2010 to September 2012, the Agency analyzed the hypothetical effect of this proposed compliance agreement rule. The results of the Agency's analysis showed that 490 motor carriers would have received a proposed unfit SFD in the first month of the analysis period—September 2010. To determine how many carriers would receive a final unfit determination within the next 24 months after entering into a compliance agreement in September 2010, the Agency assumed that a carrier with a proposed unfit determination would be required to operate below the more stringent SMS intervention thresholds noted in Table 3 above.

Of the 490 carriers that would have received proposed unfit SFDs in the first analyzed month of September 2010, the Agency's analysis showed that 74 (15%) went inactive or ceased operations within 24 months. Of the remaining 416 carriers, 122 (29%) never had sufficient data in the next 24 months to recalculate their performance measure and, therefore, would be found unfit. Another 169 (41%) would have had sufficient data and would have continued to observe the terms of their compliance agreement and then the proposed unfit would have been retracted, and 125 (30%) would be out of compliance at some time before September 2012 and would be found unfit. This baseline analysis indicated that about half (48%) of the final unfit determinations would occur within the first 6 months of the compliance agreement. The Agency acknowledges that the real rate of carriers becoming unfit is expected to be lower because these carriers would be aware of the consequences of failing to comply with the regulations.

VIII. Implementation of and Transition to Final Rule

A. Proposed MCSAP Requirements

FMCSA proposes one revision to the conditions required for the Agency to provide funds under its MCSAP grant program. FMCSA proposes to amend existing 49 CFR 350.201(a) to add the phrase ''by enforcing orders on commercial motor vehicle safety and HM transportation safety.'' This change would make it clear that States receiving MCSAP grants would be expected to enforce various orders issued by FMCSA, for example, motor carrier out-of-service orders entered by FMCSA under 49 CFR 385.13, 386.72, 386.73, 386.83, or similar provisions. This provision would assist the stopping of vehicles at the roadside when they are operated by motor carriers that disregarded such out-of-service orders, thereby preventing them from continuing to operate CMVs on the Nation's highways. FMCSA notes that for-hire carriers determined to be unfit will have their operating authority revoked. Therefore, each of the company's vehicles are currently required to be placed out of service during a roadside inspection.

For this population of unfit carriers, the proposed change to the MCSAP rules would impose no additional burden on the States. However, for private motor carriers and exempt for-hire carriers, some States may need legislative or regulatory action to enable their roadside inspectors to place CMVs operated by these carriers out of service. The States would have 3 years from the effective date of the final rule to accomplish these legislative or regulatory actions. FMCSA specifically seeks comments on the impacts to the States from these changes and requests information on implementation impacts that should be considered in finalizing this rule.

B. Implementation of a Final Rule and Transition Provisions

FMCSA proposes to begin applying the proposed methodology to all motor carriers registered with the Agency on the effective date of the final rule. FMCSA proposes that the final rule be effective 90 days after publication. As a result, the proposed unfit SFDs would result from failed BASICs resulting from the monthly update of inspection data or from an investigation initiated on or after the 91st day after publication of the final rule.

FMCSA seeks comments on how the Agency might phase in the implementation of the final rule to lessen the initial burden on the motor carrier industry, the Agency, and its enforcement partners.

FMCSA also proposes procedures for carriers that receive a notification of safety rating and fitness determination under the current provisions of 49 CFR 385.11 in the period before this proposed rule is issued as a final rule and becomes effective. Proceedings regarding fitness determinations for such carriers, including administrative reviews under 49 CFR 385.15 and corrective action plans under 49 CFR 385.17, would continue to be handled under the provisions in existence when the proceeding was initiated until those proceedings are completed.

C. General Statements of Enforcement Policy Regarding Violation Severity Weights and Time Weights

The explanation of the SFD methodologies are contained in proposed appendix B to part 385. Although most elements of appendix B are proposed as regulations, FMCSA proposes to issue certain other elements of appendix B as guidance for regulated entities and the public in the form of general statements of enforcement policy. Such statements would be included as part of the text of appendix B and published in the **Federal Register** (and the Code of Federal Regulations), but they would be designated in the final rule as general statements of enforcement policy.

The elements of the proposed SFD methodology that would be treated as statements of enforcement policy in appendix B to part 385 would include the following:

1. Violation Severity Weights in Tables 1 to 5 in section 5 of appendix B to part 385; and
2. Time Weights for violations in BASICs in section 2.3.2 of appendix B to part 385.

Safety-based violations documented through inspections and associated with each BASIC are assigned severity weights. The stronger the relationship between a violation and crash risk, the higher its assigned weight. The Agency based these weights on the ''Carrier Safety Measurement System (CSMS) Violation Severity Weights'' [79] study (December 2010) that quantifies the associations between violation and crash risk. FMCSA adds additional weight for violations that result in a driver or vehicle being placed OOS. This study details how the Agency assigns the violation severity weights.

Publication of the severity and time weights as guidance would advise affected persons and the public of the details of the methodology that the Agency expects to follow. At the same time, it would allow the Agency the flexibility to modify these minor technical elements of the proposed methodology, as needed, based on experience and additional data.

Future revisions or adjustments of these elements would be published in the **Federal Register**, together with an explanation of the basis for the changes. They would not be operative until such publication occurred. If appropriate, public comment would be sought on possible changes in the guidance

[79] John A. Volpe National Transportation Systems Center, ''Carrier Safety Measurement System (CSMS) Violation Severity Weights,'' December 2010.

elements before final publication and implementation.

As explained earlier in this preamble, *American Trucking Associations, Inc.* v. *U.S. DOT*[80] and other judicial decisions recognize that agencies are to be afforded some deference in determining the level of specificity called for in regulation and related interpretive guidance. Publishing some elements of the SFD methodology as guidance is similar to procedures used in other aspects of the Agency's safety regulations. Adjustments to the severity and time weights would be similar, for example, to the adjustments in the threshold crash rates and out-of-service rates for determining when a motor carrier can be issued a Hazardous Materials Safety Permit.[81] If the Agency decides to treat any elements of the proposed methodology as guidance, the final rule will clearly identify those elements, publish them with the final rule, and indicate that they are subject to change in accordance with the procedure outlined above.

IX. Section-by-Section Description of Proposed Rule

To implement the proposed SFD methodology, FMCSA would amend parts 350, 365, 385, 386, 387, and 395. The primary changes would be in subpart A (§§ 385.1 through 385.21) and appendix B to part 385. Most regulatory changes are to the terms used in the proposed new methodology. FMCSA proposes to make conforming changes in all the places where the terms ''satisfactory,'' ''conditional,'' ''unsatisfactory,'' ''less than satisfactory,'' and ''rating'' occur. These include subparts B, D, E, F, H, and I in part 385, as well as part 350, part 365, appendix B to part 386, subparts A and C of part 387, and part 395.

A. Part 350

FMCSA proposes to amend existing 49 CFR 350.201 to add the phrase ''by enforcing FMCSA orders on commercial motor vehicle safety and hazardous materials transportation safety and by'' in paragraph (a). This provision would make it clear that States receiving MCSAP grants would be expected to enforce various orders issued by FMCSA, for example, motor carrier out-of-service orders and Orders to Cease Operations entered by FMCSA under 49 CFR 385.13, 385.325, 386.72, 386.73, 386.83, or similar provisions for for-hire and private motor carriers. This provision would assist FMCSA in stopping vehicles at the roadside that are operated by motor carriers that disregard such out-of-service orders, and would prevent them from continuing to operate CMVs on the Nation's highways.

B. Part 365

FMCSA proposes to revise §§ 365.109(a)(3) and 365.507(f) to make the language consistent with the proposed new methodology.

C. Part 385

Section 385.1 Purpose and Scope

Conforming amendments would be made to paragraph (a) of this section, to delete references to ''safety ratings'' and ''unsatisfactory.'' Current text directing motor carriers to take remedial action when required, and prohibiting motor carriers determined to be unfit from operating a CMV, would remain.

Section 385.3 Definitions and Acronyms

Roughly half of the definitions in § 385.3 would remain substantially the same. However, definitions for the terms ''Reviews'' and ''Safety rating or rating'' (including all four subsidiary definitions) would be removed. Definitions of the terms ''Acute regulation,'' ''Assistant Administrator,'' ''Behavior Analysis and Safety Improvement Category,'' ''Compliance review,'' ''Comprehensive investigation,'' ''Crash,'' ''Critical regulation,'' ''Failure standard,'' ''Field Administrator,'' ''Inspection,'' ''Intervention,'' ''Investigation,'' ''Measure,'' ''Operating authority registration,'' ''Performance standard,'' ''Registration,'' ''Roadability review,'' ''Safety audit,'' ''Safety event group,'' ''Safety management controls,'' ''Safety registration,'' and ''Unfit'' would replace the deleted terms with language to reflect the new SFD terminology and procedures. The new definition of ''Compliance review'' is much shorter than the definition under ''Reviews . . . (1) Compliance review'' that is being removed. The current version has extraneous information, such as when such a review may be done and what a possible outcome could be, which is not directly relevant to defining what the term means. The substantive definition of ''Preventable accident'' would not change, but the term itself would be changed by replacing the word ''accident'' with the word ''crash.'' FMCSA uses the terms ''crash'' and ''accident'' interchangeably, but prefers the term ''crash.''

Section 385.5 Safety Fitness Standard

The section would be revised to add a new paragraph (a) to reflect the inclusion of the alcohol and controlled substances testing requirements in 49 CFR parts 40 and 382. Current paragraphs (a) through (k) would be redesignated as (b) through (l). In addition, in the second sentence of the undesignated introductory paragraph of this section, the words ''To meet the safety fitness standard'' would be replaced by ''To avoid a safety fitness determination of unfit.''

Section 385.7 Factors To Be Considered in Making a Safety Fitness Determination

This section would be revised to add the main data elements of the proposed methodology. The proposed changes to this section would specifically include, in the factors to be considered in the SFD process, information obtained from driver/vehicle inspections, crashes, or investigations. The title of § 385.7 would be changed by replacing the words ''determining a safety rating'' with the words ''making a safety fitness determination,'' so that the title would read ''Factors to be considered in making a safety fitness determination.''

In the first sentence of the undesignated introductory paragraph, all the words after ''The factors to be considered . . .'' would be removed and replaced with language stating that the factors to be considered during a safety fitness determination may include information from operations in the United States, Canada, and Mexico from driver/vehicle inspections, an examination of the carrier's records during investigations, or crash data. FMCSA would also remove the term ''safety review'' because it is obsolete.

Paragraph (a) would be changed by replacing the word ''accidents'' with the word ''crashes.'' As was stated in the analysis for § 385.3, FMCSA uses the terms ''crash'' and ''accident'' interchangeably, but prefers the use of the term ''crash.'' Paragraphs (b), (c), (d) and (e) would be revised to set out the different sources of data and the factors considered in the new methodology. In addition, the word ''accident'' would be replaced with ''crash.'' Existing paragraph (g) would be redesignated as new paragraph (f). In redesignated paragraph (f), the term ''hazardous material,'' would be added between the words ''CMV'' and ''and motor carrier safety rules.'' A new paragraph (g) would be added to provide for the admissibility as evidence in safety fitness proceedings inspection reports

[80] 166 F.3d 374 (D.C. Cir. 1999).

[81] 49 CFR 385.407 and Change to FMCSA Policy on Calculating and Publicizing the Driver, Vehicle, and Hazardous Materials Out-of-Service Rates and Crash Rates, 77 FR 38215 (June 27, 2012).

and data contained in FMCSA's data systems.

Section 385.8 Service and Filing of Documents

A new section 385.8 is proposed to be added to provide specific and clear rules governing the filing and service of documents in safety fitness proceedings.

Section 385.9 Determining a Carrier's Safety Fitness

The title of § 385.9 would be changed to read ''Determining a carrier's safety fitness.''

Paragraph (a) would be revised to describe the new methodology in proposed new appendix B to part 385. The proposed appendix describes in detail the methodology and the standards for determining a carrier's fitness.

Existing paragraph (b) would be redesignated as new paragraph (d) and everything after the phrase ''Unless otherwise specifically provided in this part, a'' would be changed to state that safety fitness determination based upon an investigation of a carrier's safety management controls in accordance with the standard set forth in § 385.5(a) will be issued as soon as practicable. A new paragraph (b) would be added to clarify that a motor carrier's SFD will be based on data received through the date of the proposed SFD under § 385.11(c).

A new paragraph (c) would be added to clarify that the motor carrier's status as unfit would not change during the administrative review process under either § 385.15 or § 385.16, or a review of a request under § 385.18. This new paragraph utilizes a provision moved from current § 385.17(j) with revisions for clarification.

Section 385.11 Notification of Unfit Safety Fitness Determination

Throughout this section, including the heading, changes are made to conform the language to the proposed methodology. In paragraph (a), the words ''safety rating resulting from a compliance review'' and ''the review'' would both be replaced by the words ''unfit safety fitness determination.'' Also, FMCSA is replacing the phrase ''FMCSA's headquarters office'' in the last sentence of paragraph (a) with the word ''FMCSA''. This change would allow the Agency to issue the proposed unfit SFD notice from other FMCSA offices that may be closer to the subject motor carrier or may allow the Agency to realize savings for labor and production costs or contracted services in markets other than Washington, DC Provisions would be added governing service of the notice of proposed unfit SFD on representatives of the carrier in accordance with new § 385.8.

Existing paragraph (b) would be removed because it would no longer be applicable to this proposed rule.

Existing paragraphs (c) through (e) would be redesignated as new paragraphs (b) through (d) with appropriate terminology changes in each paragraph. A new paragraph (e) would be added to alert a motor carrier that it may request FMCSA to perform an administrative review of a proposed or final unfit SFD based upon a claim of unconsidered inspection data as described in proposed new § 385.16.

Existing paragraph (f) would be amended to include appropriate terminology changes to reflect the use of compliance agreements instead of corrective action plans to defer the entry of a final unfit SFD.

A new paragraph (g) would be added to alert a motor carrier of the process set out in new § 385.18 for applying to resume operations after an SFD has become final.

Section 385.12 Revocation Procedures for Unfit Safety Fitness Determinations

A new § 385.12 would provide that issuance of proposed safety fitness determination would also serve as notice to the carrier that its registration would be revoked if the fitness determination becomes final.

Section 385.13 Unfit Motor Carriers: Prohibition on Transportation; Ineligibility for Federal Contracts

Most of the changes we are proposing in this section are conforming amendments to reflect the nomenclature of the proposed methodology. For example, the words ''unsatisfactory safety rating'' would be replaced throughout with ''unfit safety fitness determination.'' Paragraph (a)(2) would be amended by removing the last sentence that allows a motor carrier to operate for up to 60 additional days if FMCSA determines that the motor carrier is making a good-faith effort to improve its safety fitness. Although this provision is allowed by statute,[82] in the interest of safety FMCSA disfavors such extensions, and the Agency is therefore not expressly restating the permissive language in the proposed regulation.

Paragraph (b) would consolidate the existing provisions of paragraphs (b) and (c) prohibiting a Federal agency from using any motor carrier receiving a final unfit determination.

The date the out-of-service order issued under paragraph (d) becomes effective would be the date that the SFD becomes final under paragraph (a). FMCSA seeks comment on this approach. Provisions would also be in revised paragraph (e) to allow for revocation of safety registration and any operating authority registration for any motor carrier receiving a final unfit determination.

Section 385.15 Administrative Review—Material Error

This section is largely based on current administrative review provisions, with some revisions and additions. First, in several paragraphs, the terms ''safety rating'' or ''rating'' would be replaced by the term ''safety fitness determination,'' and the word ''unsatisfactory'' would be replaced with ''unfit.'' The title ''Assistant Administrator'' would be substituted for ''Chief Safety Officer.'' While Assistant Administrator and Chief Safety Officer are titles for the same position within FMCSA, the change in terminology is made for consistency with the administrative review provisions of 49 CFR part 386.

A new paragraph (b) would specify the minimum requirements for the contents of the petition. New provisions would be added to paragraph (c) to require that the original petition for administrative review be served on the appropriate Field Administrator (which would be the official filing). Copies of the petition for administrative review would also be required to be served both on: (1) Adjudications Counsel for the Assistant Administrator; and (2) with the Agency through the U.S. Department of Transportation, Docket Services. Paragraph (c) also provides the time limits within which a motor carrier must petition for administrative review.

A new paragraph (d) provides the Field Administrator with an opportunity to respond to the petition for administrative review.

Paragraph (e) would allow the Assistant Administrator to ask the motor carrier or the Field Administrator for more information or to attend a conference. If the motor carrier did not provide the information, the Assistant Administrator could dismiss the request for review.

Paragraph (f) would establish the time for a decision by FMCSA on the request for review and provide time frames within which FMCSA would complete its review as soon as practicable.

Paragraph (g) would provide for a standard of review that places the burden on the motor carrier to show material error. It also provides a definition of what constitutes material error for the purpose of such review.

[82] 49 U.S.C. 31144(c)(4).

Proposed paragraph (h) provides that the Assistant Administrator makes the final and conclusive decision as to the compliance and inspection data underlying the SFD. It also establishes that in subsequent administrative reviews the Assistant Administrator will not re-review factual matters decided in a prior administrative review.

Proposed paragraph (i) provides that a decision by the Assistant Administrator constitutes final Agency action unless reconsideration is requested.

Proposed paragraph (j) provides the procedures for either the motor carrier or the Field Administrator to petition the Assistant Administrator for reconsideration of a decision. However, the petition does not stay the imposition of a final SFD unless a stay is granted by the Assistant Administrator pursuant to new paragraph (k).

Section 385.16 Request for Review Claiming Unconsidered Inspection Data

Proposed paragraph (a) would provide that a motor carrier may file a request for FMCSA to conduct an administrative review of a proposed unfit SFD because of unconsidered, valid data from an inspection that occurred before the proposed determination. The request would be based on a motor carrier's determination of an FMCSA failure to include inspection data which, if included, would have resulted in a different SFD.

Proposed paragraph (b) would provide that the motor carrier must file its request for administrative review in writing and serve it on the appropriate Field Administrator.

Proposed paragraph (c) would provide that the motor carrier's request for an administrative review of a proposed SFD with unconsidered inspection data must include specific information to be considered a valid request.

Proposed paragraph (d) would provide that such a request must be filed no later than the 10th day after the issuance of the proposed unfit.

Proposed Paragraph (e) would provide that FMCSA would issue a decision and notify the carrier within 10 days after receiving a request from an HM or passenger motor carrier that has received a proposed unfit SFD, and within 20 days after receiving a request from any other motor carrier.

Proposed Paragraph (f) would provide the standard of review of the submitted unconsidered inspection data. The burden of proof would be on the motor carrier to demonstrate that FMCSA did not include all inspection report data.

Proposed paragraph (g) would provide that the decision of the Field Administrator would constitute final Agency action, and no additional request for administrative review by FMCSA would be available. Paragraph (h) would provide that a stay of the final SFD could be requested from and granted by the Field Administrator.

Section 385.17 Request To Defer Final Unfit Safety Fitness Determination and Operate Under a Compliance Agreement

This section is based on the current provisions of § 385.17, with significant revisions, primarily to include the use of compliance agreements between FMCSA and the motor carrier to defer a final unfit determination. Throughout the section, the language would be changed to conform to the proposed SFD methodology. In several places, the term ''safety rating'' or ''rating'' would be replaced by the term ''safety fitness determination.'' FMCSA would also replace the word ''unsatisfactory'' with ''unfit,'' wherever it occurs. In paragraph (a), the Agency would also remove the term ''conditional.''

Existing paragraph (b) would be revised to require service of the request on the appropriate Field Administrator in accordance with proposed new § 385.8. Existing paragraph (c) would be expanded to address the documentation a motor carrier must submit to show that it has taken appropriate corrective action. Paragraph (d) would set the time for submission of a request for deferral and to operate under a compliance agreement. Failure to submit a timely request for deferral and to continue to operate under a compliance agreement would waive any opportunity to seek such administrative relief.

Existing paragraphs (e) through (j) would be removed and replaced with new paragraphs that would establish the procedures and standards for operating under a compliance agreement, as well as providing for the appropriate outcomes if the carrier either complies with or does not comply with the terms of the compliance agreement. Paragraph (f) provides that the Field Administrator's actions either deferring a final SFD or declining to enter into a compliance agreement would not be subject to administrative review, except in certain limited circumstances involving an abuse of discretion, as specified in paragraph (j).

Section 385.18 Resuming Operations After a Final Unfit Determination

A new § 385.18 would be added to describe the procedures a motor carrier would follow to resume interstate and intrastate motor carrier operations following an unfit SFD. In paragraph (a), FMCSA would require a motor carrier that has received a final unfit SFD and wants to begin operating again to demonstrate why it should no longer be considered unfit. The carrier would also need to have received reactivated safety registration and, if required, new operating authority registration. The procedures in this section may be revised in the final rule in order to coordinate with any changes proposed or adopted for the Agency's ''MAP–21 Enhancements and Other Updates to the Unified Registration System,'' Regulatory Identification Number 2126–AB56.

Paragraph (b) would inform the unfit motor carrier that it must submit a corrective action plan (CAP) consistent with § 385.17(c) along with its applications for safety and operating authority registration. The corrective action plan must describe the actions the motor carrier is taking to resolve its safety deficiencies.

Paragraph (c) would provide that the corrective action plan submitted by the unfit motor carrier must be acceptable to FMCSA, and the carrier and the Agency would have to enter into a compliance agreement that conforms to § 385.17(c) and (e) before new registration could be issued.

Paragraph (d) would inform the motor carrier that it may not resume operations until it is notified that it has been granted registration and its USDOT number is active.

Section 385.19 Availability of Safety Fitness Determinations

The heading of § 385.19 would be revised to read, ''Availability of safety fitness determinations.'' In paragraph (a), the word ''ratings'' would be replaced by ''fitness determinations.'' FMCSA would also replace the outdated phrase ''by remote'' with the phrase ''on the Internet available through'' to inform the public that final SFDs will be available on the Agency's Web site.

Paragraph (b) would change the method the Agency would use to make final SFDs and would make information about carriers operating under a compliance agreement available to the public.

Section 385.21 Transition Provisions

A new § 385.21 would be added containing transition provisions that would govern the status of motor carriers that have been issued a final determination of unfit on the basis of an unsatisfactory safety rating under the current procedures. In addition, paragraph (b) contains proposed procedures for carriers that receive a notification of safety rating and fitness determination under the current provisions of 49 CFR 385.11 in the

period immediately before these proposed rules would go into effect.

Subpart B (§§ 385.101–385.117)—Safety Monitoring for Mexico-Domiciled Carriers

FMCSA proposes several conforming amendments to 49 CFR part 385, subpart B, Safety Monitoring System for Mexico-Domiciled Carriers, in light of the proposed changes to the general safety fitness procedures. FMCSA proposes to make conforming amendments to §§ 385.101, 385.105, 385.109, and 385.117.

Currently, Mexico-domiciled carriers seeking permanent operating authority to operate beyond the municipalities and commercial zones on the United States-Mexico border must fulfill certain statutory requirements, including obtaining a satisfactory safety rating after a compliance review under 49 CFR part 385. This proposal, however, would change the number of fitness categories from three to one—''unfit.'' As proposed, a carrier that is not determined to be unfit would have an acceptable degree of safety fitness and would not be prohibited from operating in commerce.[83] Therefore, for the purposes of the requirements of section 350 of the 2002 Department of Transportation Appropriations Act, and subsequent appropriations,[84] a comprehensive investigation resulting in a determination that a Mexico-domiciled motor carrier seeking permanent operating authority is not unfit would be equivalent to a compliance review and finding that the carrier has received a satisfactory rating.

For several reasons, FMCSA believes that the proposed SFD process for long-haul Mexican carriers would be sufficiently stringent to satisfy Congress's intent that carriers possess a satisfactory degree of safety. First, a Mexico-domiciled carrier must satisfactorily complete the FMCSA-administered Pre-Authorization Safety Audit (PASA) required under 49 CFR part 365, to ensure the existence of sound management programs, including compliance with controlled substances, alcohol, and hours-of service regulations, before it is granted provisional authority to operate in the United States. Second, the proposed methodology in Appendix B is more stringent than the current methodology for determining safety fitness, and this proposal for conforming changes ensures continued stringent and comparable oversight of long-haul Mexican carriers. As a result of this proposal, Mexican carriers could be proposed unfit based on on-road safety data, or an investigation, or a combination of these two sources of data. Under 49 CFR 385.119, Mexico-domiciled motor carriers are subject to the safety monitoring system in part 385, subpart B. They are also subject to the general safety fitness procedures established in subpart A of part 385 and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Subpart C (§§ 385.201–385.205)—Certification of Safety Auditors, Safety Investigators, and Safety Inspectors

FMCSA proposes conforming amendments to 49 CFR part 385, subpart C, Certification of Safety Auditors, Safety Investigators, and Safety Inspectors. In light of the proposed addition of the term ''investigation'' in relation to the types of interventions that may result in an unfit SFD, FMCSA would amend §§ 385.201 and 385.203.

Currently, an FMCSA employee, or a State or local government employee funded through the MCSAP, must be certified to perform a compliance review, safety audit, roadability review, or roadside inspection.[85] Certified FMCSA, State, and local government employees must obtain and maintain certification through quality-control and periodic re-training requirements adopted by FMCSA in 2002 to ensure the maintenance of high standards and familiarity with amendments to the FMCSRs and HMRs.[86]

The proposed SFD relies to a much greater extent on on-road safety data and investigations, regardless of whether the investigations are done offsite, onsite, or are focused or comprehensive. Because this proposal would replace the term ''compliance review'' in many places throughout the FMCSRs, FMCSA needs to add ''investigation'' to the types of interventions for which FMCSA, State, and local government employees must obtain and maintain certification as required by statute.

FMCSA proposes to add the phrase ''an investigation'' before the phrase ''a compliance review'' wherever it appears in §§ 385.201 and 385.203. This proposal would require that any FMCSA, State, or local government employee who performs any review of a motor carrier's operations to determine compliance with the appropriate regulations (*i.e.,* the FMCSRs and HMRs as defined in 49 CFR 385.3) be certified as required by 49 U.S.C. 31148.

Section 385.307—What happens after a motor carrier begins operations as a new entrant?

FMCSA would modify the New Entrant Safety Assurance Program by adding a new paragraph (a) to § 385.307 and redesignating current paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d). This proposed new paragraph (a) would adopt provisions similar to §§ 385.119 and 385.717 on the continuing applicability of safety fitness and enforcement procedures. FMCSA proposes to add this provision to ensure that each new entrant is aware that during the monitoring period under the New Entrant Safety Assurance Program, these new entrants are subject to:

(1) The general safety fitness procedures established in subpart A of part 385 and any final rule modifying subpart A; and

(2) Compliance and enforcement procedures applicable to all carriers regulated by FMCSA.

Part 385, Subpart E (Sections 385.407, 385.409, 385.413, 385.421, and 385.423)—HM Safety Permits

FMCSA proposes conforming amendments to 49 CFR part 385, subpart E, HM Safety Permits. Sections 385.407, 385.409, 385.413, 385.421, and 385.423 would all be changed to reflect changes in the language and procedures for the SFD methodology proposed in this rulemaking.

Section 385.503 Results of Roadability Review

In § 385.503(a), FMCSA proposes to delete the term ''safety rating'' and replace it with the term ''safety fitness determination,'' to conform the language to the proposed SFD methodology.

Part 385 subparts H (§ 385.607) and I (§§ 385.701, 385.707, 385.709, 385.711, 385.713, and 385.715)—Non-North America-Domiciled Carriers

FMCSA proposes conforming and nomenclature changes to the Non-North America-domiciled carrier provisions,

[83] 49 U.S.C. 31144(c).

[84] See sec. 350(a)(2) of the Department of Transportation and Related Agencies Appropriations Act, 2002, Pub. L. 107–87, 115 Stat. 833, 864–865, December 18, 2001, 49 U.S.C. 13902 note.

[85] Section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159), 113 Stat. 1765, Dec. 9, 1999, codified at 49 U.S.C. 31148. Section 211 of the MCSIA required the Secretary of Transportation to improve training and provide for the certification of motor carrier safety auditors, investigators, and inspectors to conduct safety inspection audits and reviews. The legislation also gave the Secretary oversight responsibility for the motor carrier auditors and investigators it certifies, including the authority to decertify them.

[86] 67 FR 12776, March 19, 2002, as amended at 72 FR 55701, Oct. 1, 2007; 73 FR 76819, Dec. 17, 2008.

part 385, subparts H (§ 385.607) and I (§§ 385.701, 385.707, 385.709, 385.711, 385.713, and 385.715). These changes are largely parallel to the changes to all other motor carriers, explained above.

Appendix B to Part 385 Explanation of Safety Fitness Determination Methodology

Because appendix B to part 385 would set out all of the proposed SFD methodology, it would be considerably changed. FMCSA would replace certain terms in the headings and body of appendix B consistent with the changes discussed above for other sections of part 385. Current terms would be replaced with new terms, including ''safety fitness determination'' and ''unfit.'' The codification system for the appendix would be changed to make it easier to reference and amend, and the introductory paragraphs would be considerably revised.

Five Proposed New Sections

Proposed section 1, Safety Fitness Determination (SFD) Background, would serve as a roadmap for appendix B. It incorporates the sense of what is currently in introductory paragraphs (a), (b), and (c) of existing appendix B, much changed to reflect the proposed new methodology. Existing paragraphs (d), (e), and (f) would be removed.

Proposed section 2, Role of BASICs in the SFD Process, describes the BASICs, their data sources and the process for determining a failed BASIC. Under section 2.4, SFD BASIC Failure Standards, sections 2.4.1 through 2.4.7 describe the mechanics for determining the severity for each applicable BASIC violation. They provide tables of failure standards, where appropriate, and descriptions of applicable violations. Tables 2–1 through 2–8 of proposed section 2 show the proposed SFD BASIC failure standards. The proposed failure standards are equivalent to the measures that would place a motor carrier at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs and the 99th percentile for the Driver Fitness, Vehicle Maintenance, and Hazardous Materials (HM) Compliance BASICs for each safety-event group on the day the requirements are established when the final rule is published.

Proposed section 3, Investigation Results in the SFD Process, describes the violations that the Agency would use to determine safety fitness for each motor carrier. The proposed critical violations are listed in Table 3–1 of proposed section 3. The proposed acute violations are listed in Table 3–2. The standards and procedures for assessing a carrier's crash experience for safety fitness purposes are described in section 3.3 of appendix B.

Proposed section 4, SFD Methodology, describes the proposed methodology, including the criteria for a carrier receiving an unfit determination. Section 4 provides an example of a proposed SFD worksheet, and it also gives several examples of how SFDs could be calculated for sample motor carriers.

Proposed section 5, Appendix B Violation Severity Tables, contains five tables that describe violations and the applicable severity weightings for the five BASICs that use such weights as part of the determination of safety performance under SMS. They are:

- Table 1 Unsafe Driving BASIC Violations
- Table 2 HOS Compliance BASIC Violations
- Table 3 Driver Fitness BASIC Violations
- Table 4 Vehicle Maintenance BASIC Violations
- Table 5 Hazardous Materials Compliance BASIC Violations

FMCSA is considering the use of low, medium, and high weightings rather than the numeric weightings currently used in SMS and specifically seeks comments on this issue.

Certain Portable and Cargo Tank Citations in Table 5

In Table 5 of the violation severity tables, HM Compliance BASIC Violations, 43 violations of 49 CFR part 178 have been marked with a (1) or a (2) to indicate their dates of publication in the *Code of Federal Regulations.*[87] These 43 violations are HM portable tank and cargo tank specification packages that PHMSA allows motor carriers to continue to use if the HM tanks are maintained properly in accordance with applicable regulations.[88]

The applicable regulations for MC 330 compressed gas cargo tanks are referenced in Table 5 with a (1). Current PHMSA regulations[89] authorize continued use of specification MC 330 cargo tanks if the tanks are maintained according to the applicable cargo tank testing and inspection regulations.[90]

The applicable regulations for DOT 51, 56, and 57, and IM 101 and 102, portable tanks are also referenced in Table 5 with a (1). DOT 51, 56, and 57, and IM 101 and 102 portable tanks may continue to be used in commerce, if the tanks are maintained according to the applicable portable tank testing and inspection regulations.[91]

The applicable regulations for MC 306, 307, and 312 concerning cargo tanks are referenced in Table 5 with a (2). Current PHMSA regulations[92] authorize continued use of specification MC 306, 307, and 312 cargo tanks if the tanks are maintained according to the applicable cargo tank testing and inspection regulations.[93]

FMCSA will make the applicable former rules for these HM specification tanks, as well as the applicable ICC and DOT final rules concerning these HM specification tanks, available on the FMCSA Web site at *www.fmcsa.dot.gov*. These materials are also available through Federal Depository Libraries.[94] Anyone may visit a Federal depository library and will have free access to all collections.

D. Part 386

Appendix B to part 386 would be changed to conform the language to the new SFD methodology. Throughout paragraph (f), everywhere the phrase ''final 'unsatisfactory' safety rating'' appears it would be replaced by the phrase ''final unfit safety fitness determination.''

A new paragraph (j) would be added to describe the violations that the Agency proposes to take into account for purposes of section 222 of the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 49 U.S.C. 521 note (''Minimum and Maximum Assessments'').[95] Section 222 generally

[87] Violation citations from previous editions of 49 CFR part 78 marked with a (1) may also be found at 29 FR 18652 (December 29, 1964) and those violation citations marked with a (2) may also be found at 32 FR 3452 (March 2, 1967).

[88] See 49 CFR 180.405, Qualification of cargo tanks, and 180.603, Qualification of portable tanks. PHMSA, however, forbids manufacturers from building these as new specification cargo and portable tanks after certain dates in 1967, 1990, 1993, and 2005. Because these HM packages are still in use by motor carriers in commerce, FMCSA regularly finds and cites these violations of the old design specification regulations that were in effect before PHMSA and its predecessors removed the regulations from the annual CFRs.

[89] See 49 CFR 173.240(b), 173.241(b), 173.242(b), 173.243(b), 173.244(b), 173.247(b), 173.315(a)(2), 180.405, and 180.603 of the October 1, 2010, edition of the CFRs.

[90] See 49 CFR 180.407, Requirements for test and inspection of specification cargo tanks.

[91] See 49 CFR 180.605, Requirements for periodic testing, inspection and repair of portable tanks.

[92] See §§ 173.33, 173.240, 173.241, 173.242, and 173.247 for authorized DOT 51, 56, 57, and IM 101 and 102 portable tanks and MC 306, 307, 312, and 330 cargo tanks that may be used in commerce, but are no longer allowed to be constructed in the U.S.

[93] See 49 CFR 180.407, Requirements for test and inspection of specification cargo tanks.

[94] See *http://www.gpo.gov/libraries.* Accessed on April 6, 2015.

[95] See *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title49/pdf/USCODE-2013-title49-subtitleI-chap5-subchapII-sec521.pdf.* Accessed on April 6, 2015.

requires that the Agency assess maximum civil penalties where it finds that a person has either committed a pattern of violations of critical or acute regulations or has previously committed the same or a related violation of critical or acute regulations. The proposed list in new paragraph (j) is different than the proposed lists of critical and acute regulations found earlier in preamble Table 17 and in Tables 3–1 and 3–2 in proposed appendix B to part 385. The proposed list in paragraph (j) is based on regulations currently designated as critical and acute. The critical and acute regulations set forth in Tables 3–1 and 3–2 above include new regulations. The Agency seeks comment whether these should be included for maximum civil penalty assessments under section 222.

E. Part 387

Sections 387.7 and 387.309 would be changed to reflect the proposed new SFD determination methodology, removing references to the former safety rating system.

F. Part 395

Section 395.15 would be changed to reflect the proposed new SFD determination methodology, removing references to the former safety rating system.

X. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563, 76 FR 3821 (January 21, 2011), and within the meaning of the Department of Transportation regulatory policies and procedures, because the annualized net benefits are $231.1 million and because of the level of public interest. Congress, industry, NTSB, and safety advocates alike have significant interest in how FMCSA determines the safety fitness of motor carriers. All of these groups have expressed concerns over how the Agency currently determines the safety fitness of motor carriers.

The revised SFD would be used to identify and take action against unfit motor carriers that have failed to implement and maintain adequate safety management controls for achieving compliance with the FMCSRs and HMRs. It would also evaluate the degree to which a motor carrier complies with applicable regulations. The additional carriers found unfit under the proposed rule may bear compliance costs to return to compliance, which as discussed further in the separate Regulatory Evaluation are not quantified at this stage of the rulemaking. FMCSA expects that the proposed rule would also impose costs on drivers of carriers ordered out-of-service, specifically, those drivers who would have to search for new driving work. Nevertheless, the new SFD methodology would involve more efficient and effective utilization of currently available data and resources. The Agency's proposed approach would ensure that only the worst performing motor carriers would be issued a proposed unfit determination based solely on on-road safety performance data, while striking a balance between the population identified and the ability of enforcement resources to handle the associated workload. The full Regulatory Evaluation is in the docket for this rulemaking, and a brief summary is set out below.

Under the proposed SFD methodology, every month a carrier's performance would be compared to an absolute failure standard that would be set in regulation based on each safety event group. Because the absolute failure standard would not change from month to month, changes in another company's performance would not impact the motor carrier. The carrier's SFD measure reflects its own performance against the failure standard, not other carriers' performance.

The Agency considered options for failure standards based on absolute measures. Using today's levels of safety performance across all carriers in SMS, these measures would equate roughly to the 95th, 96th, 98th, and 99th percentiles for all carriers in SMS. In addition, before failing the BASIC, the carrier would have to have 11 or more inspections, each with 1 or more violations, for the previous 24-month period. The proposed failure standards for each BASIC, as calculated by analyzing inspections with violations, are presented in tables in the NPRM. The Agency's preferred Option 2 proposes to use the absolute failure standards that equate to the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs. This failure standard, which would be set in the final rule, is equivalent to SMS percentile that defines the worst 1 percent of motor carriers with 11 or more inspections, each with 1 or more violations.

The Regulatory Evaluation in the docket examines two options for failure standards used to identify motor carriers for a proposed unfit SFD. For Option 1, identification of unfit carriers under the proposed process uses failure standards equivalent to the measures that would place a motor carrier at the 95th percentile for the Unsafe Driving and HOS Compliance BASICs and the 98th percentile for the Driver Fitness, Vehicle Maintenance, HM Compliance, and Crash Indicator BASICs. For Option 2 (the Agency's preferred option), these failure standards are equivalent to measures based on the 96th and 99th percentiles, respectively. For example, a carrier at the 96th percentile in the Unsafe Driving BASIC has worse safety performance in that BASIC than 96 percent of carriers. Carriers that are identified at or above these failure standards are proposed as unfit and then either placed OOS or remain in service under a compliance agreement subject to approval by FMCSA.

Carriers that are identified at or above these failure standards would be proposed as unfit and then would be either placed OOS or remain in service under a compliance agreement subject to approval by FMCSA. Motor carriers that remain in service but fail to significantly improve their safety performance within a set period of time under the compliance agreement—for example, those that fail to achieve an appropriate level of compliance with the applicable regulations—would be required to cease operations. That is, the initial proposed unfit determination would be made final.

Under this proposal's preferred Option 2—with the failure performance standards at or above the 96th and 99th percentiles—the proposed method identified 1,805 more poor-performing carriers than the current SFD process, while the current SFD process identified 106 carriers that the proposed unfit SFD method would not, and 1,017 carriers were identified by *both* the current and proposed methods.

Given that identification and the final unfit date remove a portion of the poorly-performing carriers from active service while the remainder improve their safety performance and remain in service, a portion of the crashes of these carriers that takes place in the next 12 months (from the time of the final unfit) are thus prevented, and comprise the annual benefits of the rule. The *annual* benefits of the rule are *net reductions in crashes* that come from switching from the current to the proposed process. The proposed process identifies carriers that suffered an additional 41 fatal crashes ($41 = 43 - 2$), 508 injury crashes ($508 = 526 - 18$), and 872 tow-away crashes ($872 = 887 - 15$) when compared with the current process. Table 19 below

presents a comparison of data between the effectiveness of the current SFD and that proposed in this rulemaking.

TABLE 19—ANNUAL CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)

Carriers identified as unfit under:	Relation	Carriers	Power units	Crashes	Crash rate	Fatal crashes	Injury crashes	Tow-away crashes
Proposed SFD [A]	A	2,822	42,437	1,862	4.39	55	688	1,119
Current SFD [B]	B	1,123	11,365	441	3.88	14	180	247
Both Current and Proposed SFD	C	1,017	10,123	406	4.01	12	162	232
Proposed SFD, But *Not Current* SFD	A—C	1,805	32,314	1,456	4.51	43	526	887
Current SFD, But *Not Proposed* SFD	B—C	106	1,242	35	2.82	2	18	15
Net Gain Attributable to Proposed SFD	A—B	1,699	31,072	1,421	4.57	41	508	872

[A] The ''proposed SFD'' category includes 1,017 of the 1,123 carriers identified under the current SFD. Therefore, the ''proposed SFD'' category is a hybrid of carriers that were proposed unfit that remained in operation by entering into compliance agreements and carriers that would have been proposed unfit if the proposed rule had been in effect during the period studied. Crash rates specific to the subset of carriers identified under the current SFD may reflect improvements in response to receipt of proposed unfit ratings.

[B] The ''current SFD'' category consists solely of the 1,123 carriers that were proposed unfit under the current SFD and remained in operation by entering into compliance agreements. Crash rates specific to carriers identified under the current SFD may reflect improvements in response to receipt of proposed unfit ratings.

In 2011, under the *current* process, 16.1 percent of identified carriers were deemed unfit and ordered OOS upon completion of the SFD process. Relatedly, a pending rating of unsatisfactory under the current process equates such carriers with an SFD of ''proposed unfit'' under the proposed process. Given the performance comparison between the current and proposed SFD-process-identified groups (as measured by both having crash rates per 100 power units considerably greater than the national average), it is assumed that 16.1 percent of the additional carriers identified under the proposed SFD process will ultimately be ordered out of service.

The remaining 83.9 percent of carriers identified but not ultimately shut down improve their safety-performance. These improvements (specifically, those involving the net differential group of carriers identified by the proposed process relative to the current process) should be credited as benefits to the proposed process. The Compliance Review Effectiveness Model (CREM) [96] estimates the safety improvement of carriers that receive a compliance review, in terms of crashes avoided. For the four most recent years of analysis (since measurement based on fiscal years (rather than calendar years) began in 2005), the estimated percentage reduction in the average crash rate due to compliance reviews was 16.3 percent in 2005, 18.6 percent in 2006, 14.7 percent in 2007, and 19.9 percent in 2008.[97] We assume that issuing a proposed unfit SFD to a carrier identified under the proposed process would result in performance improvement similar to that of a compliance review. Given the year-to-year variability in the estimated reduction from 2005–08, the Agency uses the four-year average for the period of 17.4 percent. As such, the safety improvement percentages estimated in the Compliance Review Effectiveness Model can be applied to the crashes attributed to the 83.9 percent of carriers that were *not* ordered out of service.

The CREM has several limitations that are common to transportation safety research. For one, there is no pure control group, because FMCSA does not have the option to not intervene with carriers it knows to be unsafe. Workarounds for the lack of pure statistical control are discussed in more detail in the CREM. The newer model, Carrier Intervention Effectiveness Model (CIEM), which has been peer reviewed, uses size group-specific comparison groups and measures the statistical significance of the net improvement in crash rates of reviewed carriers. While the two models' results are not directly comparable due to their differing methodologies, their estimates of crash rate reductions among reviewed carriers have similar orders of magnitude across the carrier size groups.

There is also the potential for ''regression to the mean'' to obscure the true benefits of interventions. This phenomenon is a possible statistical consequence of the rarity of crash events. It can occur when an individual carrier experiences a period of high crash rate; this is likely to be followed by a period of low crash rate, regardless of interventions or changes in safety practices, simply due to the infrequency of crash events.

However, the low probability of a spike in crashes at any given time makes it unlikely that ''regression to the mean'' is a substantial contributor to the reduction in crash rate attributed by the CREM to the compliance review process. Carriers that receive a compliance review may not be in the midst of a crash spike. Carriers that have a crash spike may not get a compliance review shortly after the spike. This is because carriers are not primarily selected for compliance reviews based on their current crash rate, but rather their overall safety performance as assessed through roadside inspection and/or investigation results. For ''regression to the mean'' to be a substantial issue for this analysis, it would need to be the case that carriers are being identified during a period of usually high crash rate for that carrier. As the intervention process is implemented now, if a carrier's crash rate drops after they receive a compliance review, there is no reason to assume that drop is a correction to the carrier's ''actual'' mean crash rate as opposed to a response to FMCSA's intervention.

Next, consider that most of the services provided by the 16.1 percent of carriers that are ordered out of service are likely to be shifted to new or existing carriers. This contrasts with a crash rate of 4.51 crashes per 100 power units for those carriers identified under the proposed process. This suggests the replacement of an identified carrier with one from the carrier population in general would result in a 52.8 percent improvement ($0.528 = (4.51 - 2.13) \div 4.51$).[98] The Agency believes that the subset of carriers placed OOS would likely perform worse than the total carrier group identified as unfit by the proposed SFD, and therefore that the 52.8 percent improvement is a conservative estimate for the gains in safety resulting from the replacement of

[96] Volpe National Transportation Center, ''FMCSA Safety Program Effectiveness Measurement: Compliance Review Effectiveness Model, Results for Carriers with Compliance Reviews in Fiscal Year 2008''.

[97] *http://ai.fmcsa.dot.gov/PE/PEReport.aspx?rp=crNat* accessed on April 6, 2015.

[98] The crash rate of the general carrier population (2.13 per 100 power units) was calculated on a consistent time frame as that (4.51 per 100 power units) of the carriers identified under the proposed process.

carriers ordered OOS with carriers of average overall safety performance.

In sum, the safety performance and thus the frequency of crashes attributed to the 83.9 percent of carriers that were not ordered OOS realize an improvement of 17.4 percent, and the safety performance and thus the frequency of crashes attributed to the 16.1 percent of carriers put OOS and replaced by an average carrier realize an improvement of 52.8 percent.

As stated above, the 41 fatal, 508 injury, and 872 tow-away crashes (under Option 2) attributable to the additional carriers identified by the proposed SFD process are where the benefits of the change are realized. Assuming the final rule goes into effect in 2017, the carrier population is assumed to increase at an annual rate of 2.17 percent, and applying that rate to these crashes results in 45 fatal ($44.68 = 41 \times (1.0217^4)$), 554 injury ($553.55 = 508 \times (1.0217^4)$), and 950 tow-away crashes ($950.19 = 872 \times (1.0217^4)$ *in 2017*.

Allocating 83.9 percent of these crashes to carriers that improved performance and were not ordered OOS results in 38 fatal, 465 injury, and 797 tow-away crashes apportioned. Allocating the remaining 16.1 percent of crashes to carriers that were permanently put OOS, results in 7 fatal, 89 injury, and 153 tow-away crashes apportioned. Given that the carriers permanently placed OOS are believed by the Agency to have worse safety performance than that of the carriers that improved, proportioning the crashes by percentage results in a conservatively low number of crashes assigned to those put out of service. Since the carriers permanently placed OOS are replaced with ones realizing an improvement of 52.8 percent, rather than 17.4 percent, assigning by proportion results in a conservatively-low estimate of the overall crash reduction of the rule.

The 83.9 percent of carriers opting to make the necessary changes to become compliant realize improvements of 17.4 percent. Given the 17.4 percent improvement, 7 fewer fatal crashes (6.6 = 17.4% of 38), 81 fewer injury crashes (80.9 = 17.4% of 465), and 139 fewer tow-away crashes (138.7 = 17.4% of 797) occur. The 16.1 percent of carriers placed permanently OOS are replaced with carriers realizing improvements of 52.8 percent. Given the 52.8 percent improvement, 4 fewer fatal crashes (3.70 = 52.8% of 7), 47 fewer injury crashes (46.99 = 52.8% of 89), and 81 fewer tow-away crashes (80.78 = 52.8% of 153) occur. So the total estimated crash reduction for 2017, the first year of the rule, is 11 fewer fatal crashes (11 = 7 + 4), 128 fewer injury crashes (128 = 81 + 47), and 220 fewer tow-away crashes (220 = 139 + 81). The same process applies for all subsequent years. The number of carriers—and thus crashes—is increased by 2.17 percent from the previous year; these crashes are allocated as described above to those carriers put permanently OOS and those that opted to make the necessary changes, and then the improvement rates of 52.8 percent and 17.4 percent are applied to the respective groups.

The average cost of a fatal crash is estimated at $11,019,000 (in 2013 dollars), $10,885,000 of which is the monetized value of a statistical life (VSL) component. The remaining $134,000 is comprised of medical costs, emergency services, property damages, lost productivity from roadway congestion, and environmental costs. It is assumed that the VSL increases at a rate of 1.18 percent annually.[99] By 2017 the VSL component (in 2013 dollars) increases from $10,885,000 to $11,408,000 ($11,408,000 = $10,885,000 $\times (1.0118^4)$). Together with the remaining $134,000 in costs, the cost of a fatal crash in 2017 is estimated to be $11,542,000 in 2013 dollars ($11,542,000 = $11,408,000 + $134,000).

The average cost of an injury crash is estimated at $453,000 (in 2013 dollars), $393,000 of which is the monetized VSL component. The remaining $60,000 is comprised of medical costs, emergency services, property damages, lost productivity from roadway congestion, and environmental costs. By 2017, the VSL component (in 2013 dollars) increases from $393,000 to $412,000 ($412,000 = $393,000 $\times (1.0118^4)$). Together with the remaining $60,000 in costs, the cost of a fatal crash in 2017 is estimated to be $472,000 in 2013 dollars ($472,000 = $412,000 + $60,000).

The average cost of a tow-away crash is estimated at $72,000 (in 2013 dollars), $50,000 of which is the monetized VSL component. The remaining $22,000 is comprised of medical costs, property damages, lost productivity from roadway congestion, and environmental costs. By 2017, the monetized VSL component (in 2013 dollars) increases from $50,000 to $52,000 ($52,000 = $50,000 $\times (1.0118^4)$). Together with the remaining $22,000 in costs, the cost of a fatal crash in 2017 is estimated to be $74,000 in 2013 dollars ($74,000 = $52,000 + $22,000).

The same process applies for all subsequent years. The monetized VSL component is increased by 1.18 percent from the previous year, and added to the $134,000 other costs of a fatal crash, resulting in that year's benefits in 2013 dollars.

Given the cost of a fatal crash of $11,542,000, an injury crash of $472,000, and a tow-away crash of $74,000 in 2017 (in 2013 dollars), and given the 11 fewer fatal, 128 fewer injury, and 220 fewer tow-away crashes estimated in 2017, the benefits of the rule for Option 2 that occur in 2017 total $203.7 million. The fatal crash component is $127 .0 million ($126,962,000 = $11,542,000 $\times$ 11), the injury crash component is $60.4 million ($60,416,000 = $472,000 $\times$ 128), and the tow-away crash component is $16.3 million ($16,280,000 = $74,000 $\times$ 220). The same process applies for all subsequent years. Table 20 below summarizes the benefits for the first year of the rule for preferred Option 2.

TABLE 20—ANNUAL BENEFIT (IN 2017) TO CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)

Net gain to new SFD	Net crash reduction	Cost per crash	Benefit (millions)
Fatal Crashes	11	$11,542,000	$127.0
Injury Crashes	128	472,000	60.4
Tow-Away Crashes	220	74,000	13.3

[99] The real growth rate of the VSL is in keeping with DOT's Office of the Secretary of Transportation guidance, available on the web at *http://www.dot.gov/sites/dot.gov/files/docs/VSL_Guidance_2014.pdf*. This growth factor represents real growth in the median hourly wage at a macroeconomic level and is not specific to drivers or the motor carrier industry. While real median hourly wages are projected to grow at 1.18% per year at a macroeconomic level, this assumption does not apply to drivers, as the real median hourly wage of drivers has declined or remained static in recent years. Nevertheless, the Agency considered a sensitivity analysis regarding real wage growth of drivers to demonstrate the costs of this proposed rule in the event that drivers' wages grow at 1 or 2 percent per year.

TABLE 20—ANNUAL BENEFIT (IN 2017) TO CRASH REDUCTION FROM SWITCH FROM CURRENT TO PROPOSED SFD FOR OPTION 2 (96/99)—Continued

Net gain to new SFD	Net crash reduction	Cost per crash	Benefit (millions)
Benefit of the Switch (Millions)			203.7

For preferred Option 2, ten-year projected benefits are $1.692 billion discounted at seven percent and $1.998 billion discounted at three percent. The rule is proposed to have its first full year of implementation in 2017 based on this proposed rule in 2015 and a final rule in 2016. The costs of the rulemaking are those incurred by:

(1) Drivers who were employed by additional carriers ordered OOS who are now forced to seek new employment. Under preferred Option 2, 1,855 drivers are estimated to be adversely affected in this manner annually.

(2) The additional carriers identified as deficient under the proposed SFD that opt to improve performance, thereby incurring costs to achieve compliance.

(3) FMCSA, resulting from information system update and modification expenses (estimated as a one-time cost of $3.0 million incurred in year 2017 under both Option 1 and Option 2).

The carrier population is assumed to increase at an annual rate of 2.17 percent,[100] so that by 2017 the 1,824 identified carriers under Option 2 would increase to 1,988 (1,988 = 1,824 × (1.0217^4)). Assuming that 16.1 percent remain permanently OOS, 320 carriers (16.1 percent of 1,988) are affected. Given that carriers ordered OOS have on average 4.97 power units per carrier and 1.27 drivers per power unit, this results in 2,020 drivers (2,020 drivers = 1.27 drivers per power unit × 4.97 power units per carrier × 320 carriers) working for carriers ordered OOS that would be adversely affected in this manner.

Assuming that the real wages of drivers remain constant, then the total cost (in 2013 dollars) for each affected driver working for non-compliant carriers ordered OOS affected remains $4,003. So the total cost of the rule to drivers working for non-compliant carriers ordered OOS in 2017, the first year of the rule, is $8.1 million in 2013 dollars ($4,003 per driver × 2,020 drivers = $8,086,060, rounded to the nearest tenth of a million). Assuming the projected 2.17-percent carrier population increase continues through 2026 and real wages for drivers remain constant, then under Option 2, for the ten years from 2017 through 2026, the annualized costs of the rule to drivers working for non-compliant carriers ordered OOS at a seven percent discount rate are $9.4 million ($9.43 million, rounded to the nearest tenth of a million).

In addition to drivers, deficient carriers ordered OOS also adversely affect the shippers, brokers, and freight forwarders that use them regularly. These entities must spend time finding replacement carriers. However, turnover in the trucking and passenger carrying industries is significant enough that establishing new commercial relationships with motor carriers is a routine course of business for shippers, and many shippers have relationships with several carriers that compete for their business. The Agency does not perceive the marginal increase in carrier turnover that may result from this proposed rule as an impact that has quantifiable costs, nor as an impact for which the costs rise to a level of significance. Short-term decreases in the supply of shipping services resulting from deficient carriers being placed OOS may marginally increase the cost of shipping as other carriers adjust to meet the demand for services; however, this also incentivizes market entry by new carriers, thereby minimizing the potential for a shift in the real long-term equilibrium price for shipping services.

Deficient carriers identified by the current or proposed system are either ordered OOS or improve their safety performance to the point that they become compliant. Those carriers opting to improve to achieve compliance incur expenses in making these required improvements. This is true of carriers under both the current and proposed processes, so the additional expenditures related to the rule are those incurred by the additional carriers identified by the proposed process.

FMCSA recognizes that the social benefits of this proposed rule are associated with increased compliance with regulations that motor carriers are already expected to bear the compliance costs of. However, FMCSA notes that a carrier that may be newly identified as deficient under the proposed SFD may under the current SFD be given a conditional safety rating and allowed to continue operating. While the regulations that carriers are expected to be in compliance with are not changing under the proposed SFD, the differing identification methodology introduced with this proposed rule—such that a portion of borderline carriers under the current SFD would be identified as deficient under the proposed SFD—argues in favor of characterizing the costs borne by the newly-identified carriers in order to achieve compliance as new costs resulting from the proposed rule.

The Agency lacks data to evaluate the magnitude of the costs to those additional carriers that would be identified as deficient under the proposed SFD that seek to achieve compliance in order to remain in operation. There are many types of violations that can contribute to a carrier's identification as deficient and the range of compliance costs may differ—even across carriers with similar violations—due to factors such as: Size of carrier, experience and training levels of drivers, and experience of fleet maintenance personnel. For this reason, this cost element is noted as ''not estimated'' throughout summary-level tables in both this document and the supporting Regulatory Evaluation.

The Agency welcomes input on ways to estimate costs that would be borne by these newly-identified carriers to achieve compliance.

FMCSA has placed the complete Regulatory Evaluation for this proposal in the docket identified above. FMCSA seeks comment on any aspect of the Regulatory Evaluation for this proposal.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), when an agency issues a rulemaking proposal, the agency must ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will

[100] FMCSA's estimated annual growth rate of 2.17 percent is similar to the BLS estimate of 2.38 percent (Employment by industry, occupation, and percent distribution, 2010 and projected 2020 484000 Truck Transportation. *http://www.bls.gov/emp/ep_table_109.htm*). FMCSA used the growth rate obtained from MCMIS data because it captures the dynamic nature of the industry and allows for a separate growth rate for carriers with recent activity and new entrants.

''describe the impact of the proposed rule on small entities'' (5 U.S.C. 603(a)). The initial regulatory flexibility analysis must cover the following six topics:

(1) A description of the reasons why action by the Agency is being considered.

Utilizing a crash and data driven new process, SFD is an improvement on the efficiency of the current method of determining carrier safety fitness. This rulemaking would (primarily) revise 49 CFR part 385, Safety Fitness Procedures (the Agency's current procedure) through a Notice of Proposed Rulemaking (NPRM; RIN 2126–AB11). It would make conforming amendments to 49 CFR parts 365, 386, 387, and 395.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed SFD process would improve the effectiveness of the current safety fitness determination. Its goal is a more performance-based method of determining the safety-fitness of motor carriers conducting commercial operations in interstate commerce. The efficiency gains mean more carrier contacts for the same expenditure of resources.

This NPRM is based primarily on the authority of 49 U.S.C. 31144, as amended. It also relies on the provisions of 49 U.S.C. 31133. Delegation of authority is conferred from the Secretary of Transportation to FMCSA under 49 CFR 1.87(f). A full description of the legal basis for this proposal is contained in the Legal Basis section of the NPRM.

(3) A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.

Because FMCSA does not have direct revenue figures for all carriers, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit.

With regard to truck power units, the Agency has estimated that a power unit produces about $186,000 in revenue annually (in 2013$). According to the SBA, motor carriers with annual revenue of $27.5 million are considered small businesses. This equates to 148 power units (147.77 = $27,500,000 ÷ $186,100/power unit). Thus, FMCSA considers motor carriers of property with 148 power units or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 148 power units or fewer). The results show that over 99 percent of all interstate property carriers with recent activity have 148 power units or fewer. This amounts to about 493,000 carriers. Therefore, the overwhelming majority of interstate carriers of property would be considered small entities.

With regard to passenger-carrying vehicles, the Agency conducted a preliminary analysis to estimate the average number of power units for a small entity earning $15 million annually, based on an assumption that passenger carriers generate annual revenues of $161,000 per power unit. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($186,000). A lower estimate was used because passenger-carrying CMVs generally do not accumulate as many vehicle miles traveled (VMT) per year as trucks, and it is therefore assumed that they would generate less revenue per power unit on average. The analysis concluded that passenger carriers with 93 power units or fewer ($15,000,000 ÷ $161,000/power unit = 93.2 power units) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that have no more than 93 power units. The results show that about 98% of active passenger carriers have 93 power units or less, which is about 10,000 carriers. Therefore, the overwhelming majority of passenger carriers would be considered small entities to which this NPRM would apply.

Every active motor carrier would be, in essence, subject to this regulation because each has the chance of being identified under the new system if their performance warrants it (that is, if it is poor enough). Hence the rulemaking would apply to all of the estimated 503,000 motor carriers (493,000 property + 10,000 passenger) that are considered as small entities.

Under Option 2 (FMCSA's preferred option), there are an expected 1,530 additional carriers (1,824—294) identified under the proposed process that would opt to improve to the point of achieving compliance, and all should be considered small entities. However, while all 503,000 small entities are subject to the rule, about 1,824 carriers (this carrier count includes those carriers that went OOS in the year following final unfit determination under the proposed SFD) are expected to be impacted and an estimated 1,530 of them are projected to opt to improve after being identified under the proposed process.

Under Option 1, there are an expected 1,728 additional carriers (2,059—331) identified under the proposed process that would opt to improve to the point of achieving compliance (again, these counts include those carriers that went OOS in the year following final unfit determination under the proposed SFD), and all should be considered small entities. However, while all 503,000 small entities are subject to the rule, about 2,059 carriers are expected to be impacted and an estimated 1,728 of them are projected to opt to improve after being identified under the proposed process; therefore, the proposed rule requires no added burden of any type on compliant small entities.

(4) Reporting, record keeping, and other compliance requirements (for small entities) of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

The proposed rule would require no additional reporting, record keeping, or other compliance requirement burden on small entities.

(5) Duplicative, overlapping, or conflicting Federal rules.

The FMCSA is not aware of any other rules which duplicate, overlap, or conflict with the proposed action. FMCSA is the sole Federal Agency responsible for determining the safety fitness of motor carriers and operators—and that safety fitness is in fact the subject of this rule.

(6) A description of any significant alternatives to the proposed rule which minimize any significant impacts on small entities.

FMCSA is considering whether to phase the implementation of the final rule over a period of time, such as one or two years. A recent memorandum from the President directed Executive departments and agencies to consider ways of lessening the burden of compliance on small entities, such as a phased or delayed implementation, when a rule may have a significant economic impact on a substantial number of small entities.[101] Although FMCSA has reached a preliminary determination that this proposed rule would cover a substantial number of small entities, it will have a negligible economic impact. Nonetheless, the Agency would like comments from small entities on whether a phased implementation of the SFD proposal should be incorporated into the final

[101] Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation, 76 FR 3827 (Jan. 21, 2011).

rule. FMCSA also requests comments on this Initial Regulatory Flexibility Analysis and whether there would be significant economic impacts on substantial numbers of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995,[102] that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million or more in any 1 year based on calendar year 2014 inflation adjustments.[103]

As discussed earlier in this proposed rule, the Agency estimates proposing unfit SFDs for 262 motor carriers per year based on inspection data, 2,674 motor carriers based on investigations, and 120 motor carriers based on a combination of inspection and investigation data. The rule is set to have its first full year of implementation in 2017 based on proposed rule in 2015 and a final rule in 2016. The costs of the rulemaking are those incurred by drivers who were employed by additional carriers ordered OOS who are now forced to seek new employment. The carrier population is assumed to increase at an annual rate of 2.17 percent as noted earlier, so that by 2017 the 1,824 identified carriers under Option 2 would increase to 1,988 (1,988 = 1,824 × (1.0217^4)). Assuming that 16.1 percent remain permanently OOS, 320 carriers (16.1 percent of 1,988) are affected. Given that carriers ordered OOS have on average 4.97 power units per carrier and 1.27 drivers per power unit, this results in 2,020 drivers (2,020 drivers = 1.27 drivers per power unit × 4.97 power units per carrier × 320 carriers) working for carriers ordered OOS that would be adversely affected in this manner.

Assuming that the real wages of drivers remain constant, then the total cost (in 2013 dollars) for each driver affected remains $4,003. So the total cost of the rule in 2017 to drivers working for non-compliant carriers ordered OOS the first year of the rule, is $8.1 million in 2013 dollars ($4,003 per driver × 2,020 drivers = $8,086,060, rounded to the nearest tenth of a million). Assuming the projected 2.17-percent carrier population increase continues through 2026 and real wages for drivers remain constant, then under Option 2, for the ten years from 2017 through 2026, the annualized costs of the rule to drivers working for non-compliant carriers ordered OOS at a seven percent discount rate are $9.4 million ($9.43 million, rounded to the nearest tenth of a million). Thus, expenditures by State, local, and tribal governments, and the private sector, of $9.4 million annually do not rise to the threshold of $155 million or more in any 1 year for the Unfunded Mandates Reform Act of 1995. Comments are welcome on this analysis.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

Executive Order 13132 requires FMCSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this NPRM does have Federalism implications or a substantial direct effect on the States. Under this rule, the States may choose to participate in MCSAP grants to conduct inspections and motor carrier investigations that will be the basis for FMCSA's SFDs. FMCSA has statutory authority to adopt a requirement that States receiving grants from MCSAP enforce orders issued by FMCSA related to CMV safety and HM transportation safety, to include placing an unfit motor carrier's driver and CMV OOS after FMCSA has determined a motor carrier is unfit.[104] FMCSA will develop the detailed procedures for the program in consultation with the States.

FMCSA notes that it has communicated with the States on the proposed requirements for States. Most recently, FMCSA sent a letter to the States through the National Governors' Association advising them this proposed rule would be published this year proposing requirements for the States to make changes to enforce orders issued by FMCSA related to CMV safety and hazardous materials transportation safety. The letter briefly summarized section 49 U.S.C. 31102, and asked them to participate in this NPRM's comment period.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [105] requires that FMCSA consider the impact of paperwork and other information collection burdens imposed by the Agency. The Paperwork Reduction Act does not apply to collections of information during the conduct of administrative actions or investigations involving an agency against specific individuals or entities, unless the collection of information is to conduct a general investigation undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.[106] This exception applies both before and after formal charges or administrative action is taken.[107]

FMCSA is not proposing to conduct general investigations on a category of individuals or entities. The collections of information in this SFD proposal would be against specific entities on which the Agency has opened a case file. Such a case file would be opened when a motor carrier is charged with one or more applicable violations of Federal, State, or local laws or regulations that occurred while

[102] 2 U.S.C. 1501, *et seq.*

[103] Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995, DOT Office of Transportation Policy, December 11, 2013. The value equivalent of $100,000,000 in calendar year 1995, adjusted for inflation to calendar year 2014 levels by the Consumer Price Index for All Urban Consumers (CPI–U) as published by the Bureau of Labor Statistics, is $155,000,000. Series CPI–U CUUR0000SA0, may be retrieved at *http://www.bls.gov/data/*. Also see the current DOT guidance regarding this threshold, available at *https://www.transportation.gov/sites/dot.gov/files/docs/2015%20Threshold%20of%20Significant%20Regulatory%20Actions%20Under%20the%20Unfunded%20Mandates%20Reform%20Act%20of%201995.pdf*.

[104] 49 U.S.C. 31102(a) and (b).

[105] 44 U.S.C. 3501 *et seq.*

[106] 44 U.S.C. 3518(c)(1)(B)(ii).

[107] 5 CFR 1320.4(c).

operating CMVs on the highways in the United States.

FMCSA has therefore determined that there are no new information collection requirements associated with this proposed rule requiring approval under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) [108] and our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680). The Agency has performed an Environmental Assessment on this action. The analysis of the potential impacts of this proposed rule indicates that, if crash reductions estimated to occur from the implementation of the requirements in the final rule actually occur, there would be a small net benefit to the environment and public health and safety. Projected benefits result mainly from the reduction in air emissions and hazardous materials releases occurring from CMV crashes, from the reduction of lives lost and injuries prevented, and from the reduction of solid waste generated in a CMV crash. FMCSA has preliminarily determined that the environmental impacts from the proposed action are not significant enough to warrant preparation of an environmental impact statement.

FMCSA has also analyzed this proposed rule under the Clean Air Act, as amended, section 176(c),[109] and implementing regulations promulgated by the Environmental Protection Agency. FMCSA performed a conformity analysis according to the procedures outlined in appendix 14 of FMCSA Order 5610.C. This rulemaking would not result in any emissions increase, nor would it have any potential to result in emissions above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the proposed rule change would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order, because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this NPRM in accordance with Executive Order 12898 and determined that there are neither environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's deliberations would result in high and adverse environmental impacts on these groups.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposal under Executive Order 13045, titled ''Protection of Children from Environmental Health Risks and Safety Risks.'' The Agency does not believe this Executive Order is implicated, because the proposed rule would neither be economically significant, nor would it pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

FMCSA analyzed this rulemaking in accordance with the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. This rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on tribal governments. Thus, the funding and consultation requirements of Executive Order 13175 do not apply and no tribal summary impact statement is required.

Privacy Impact

Rulemakings may affect how personally identifiable information (PII) about individuals is kept and shared. FMCSA ownership of the information is not relevant in determining the need to ensure that FMCSA regulations do not impose, or require or encourage others to impose, privacy intrusions that are not reasonably necessary to achieve the purpose of the regulations.

Section 522 of the Transportation, Treasury, Independent Agencies and General Government Appropriations Act, 2005,[110] instructs FMCSA to conduct a privacy impact assessment (PIA) of proposed rules that will affect the privacy of individuals. The PIA should identify potential threats relating to the collection, handling, use, sharing, and security of the data; the measures identified to mitigate these threats, and the rationale for the final decisions made for the rulemaking as a result of conducting the PIA.

In order to ensure the Agency's data handling conforms to applicable legal, regulatory, and policy requirements regarding privacy, FMCSA analyzed this proposed rulemaking to determine whether it would impact the way information is handled. It analyzed the risks and effects the rulemaking might have on collecting, maintaining, and sharing PII and examined and evaluated protections and alternative processes for handling information to mitigate potential privacy risks. PII is any information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means, singly or in combination with other data. Examples of PII include but are not limited to physical and online contact information, Social Security number, and driver's license number.

The Agency does not believe this proposed rulemaking would change the Agency's data collection, handling, use, sharing, and security of PII data. The current PII data handling requirements conform to applicable legal, regulatory, and policy requirements regarding privacy. The proposal would not have any effects on collecting, maintaining, and sharing PII, but would continue the Agency's protections and processes for handling PII to mitigate potential privacy risks.

Waiver of Advance Notice of Proposed Rulemaking

FMCSA is aware of the requirements in section 5202 of the recently enacted Fixing America's Surface Transportation Act, Public Law 114–94 (FAST Act) (Dec. 4, 2015) (adding 49 U.S.C. 31136(g)). FMCSA finds, however, that publication of an advance notice of proposed rulemaking is unnecessary and contrary to the public interest in this case. The rule proposed today has been under development at FMCSA for over 10 years, and it represents a public investment of thousands of Federal employee and contractor hours and

[108] 42 U.S.C. 4321 *et seq.*

[109] 42 U.S.C. 7401 *et seq.*

[110] Public Law 108–447, Div. H, 118 Stat. 2809, 3268–3270 (Dec. 8, 2004).

millions of taxpayer dollars. There have also been several public listening sessions conducted during its development, which served the important purpose of soliciting early public comment to inform this NPRM which would have been one of the goals of an ANPRM. With the benefit of this public outreach and internal research, the decision whether to devote agency resources to developing a proposed rule, which is at the core of any ANPRM, has thus already been made. A full opportunity for public participation in this rulemaking is provided and encouraged through the public comment process, including the opportunity to submit reply comments.

XI. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments, reply comments, and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

Initial comments may address any issue raised in the NPRM and the background documents in the docket (*e.g.,* Regulatory Evaluation, studies). Initial comments will be made available promptly online on *http://www.regulations.gov* and for public inspection in room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. In order to allow sufficient opportunity for interested parties to prepare and submit any reply comments, late-filed initial comments will not be considered. Reply comments must address only matters raised in initial comments and must not be used to present new arguments, contentions, or factual material that is not responsive to the initial comments.

If you submit a comment or a reply comment, please include the docket number for this rulemaking (FMCSA–2015–0001), indicate the specific section of this document to which each comment or reply comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments, reply comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment or reply comment online, go to *http://www.regulations.gov* and insert ''FMCSA–2015–0001'' in the ''Search'' box, and then click the ''Search'' button to the right of the white box. Click on the top ''Comment Now'' box which appears next to the document. Fill in your contact information, as desired and your comment or reply comment, uploading documents if appropriate. 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 or reply comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments, reply comments and material received during the comment period and may change this proposed rule based on your comments.

B. 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* and insert ''FMCSA–2015–0001'' in the ''Search'' box and then click on ''Search.'' Click on the ''Open Docket Folder'' link and all the information for the document, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services 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.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

List of Subjects

49 CFR Part 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

■ 2. Amend § 350.201 by revising paragraph (a) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(a) Assume responsibility for improving motor carrier safety by enforcing FMCSA orders on all commercial motor vehicle safety and hazardous materials transportation safety, and by adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs (49 CFR parts 390 through 397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171 through 173, 177, 178, and 180), except as may be determined by the Administrator to be inapplicable to a State enforcement program.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 3. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; and 49 CFR 1.87.

■ 4. Amend § 365.109 by revising paragraph (a)(3) to read as follows:

§ 365.109 FMCSA review of the application.

(a) * * *

(3) All motor carrier applications will be reviewed for consistency with FMCSA's safety fitness determination criteria. Applicants with unfit safety fitness determinations from FMCSA will have their applications rejected.

* * * * *

■ 5. Amend § 365.507 by revising paragraph (f) to read as follows:

§ 365.507 FMCSA action on the application.

* * * * *

(f) FMCSA may grant standard long-haul operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted and only after a comprehensive investigation or on-road safety data determines that the Mexico-domiciled carrier is not ''unfit'' as set out in subpart B of part 385 of this chapter and the Mexico-domiciled carrier is not proposed ''unfit'' based on the Agency's safety fitness determination criteria.

PART 385—SAFETY FITNESS PROCEDURES

■ 6. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31133, 31134, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311, 108 Stat. 1676; Sec. 408, Pub. L. 104–88, 109 Stat. 958 (49 U.S.C. 31136 note); Sec. 350, Pub. L. 107–87, 115 Stat. 864 (49 U.S.C. 13902 note); and 49 CFR 1.87.

■ 7. Amend § 385.1 by revising paragraph (a) to read as follows:

§ 385.1 Purpose and scope.

(a) This part establishes FMCSA's procedures to determine the safety fitness of motor carriers, to direct motor carriers to take corrective action when required, and to prohibit motor carriers determined to be unfit from operating a CMV.

* * * * *

■ 8. Amend § 385.3 as follows:

■ a. Add an undesignated introductory paragraph;

■ b. Remove the definitions of ''Preventable accident,'' ''Reviews,'' and ''Safety ratings''; and

■ c. Add the definitions of ''Acute regulation,'' ''Assistant Administrator,'' ''Behavior Analysis and Safety Improvement Category,'' ''Compliance review,'' ''Comprehensive investigation,'' ''Critical regulation,'' ''Failure standard,'' ''Field Administrator,'' ''Inspection,'' ''Intervention,'' ''Investigation,'' ''Measure,'' ''Operating authority registration,'' ''Performance standard,'' ''Preventable crash,'' ''Registration,'' ''Roadability review,'' ''Safety audit,'' ''Safety event group,'' ''Safety management controls,'' ''Safety registration,'' and ''Unfit,'' in alphabetical order.

The additions read as follows:

§ 385.3 Definitions and acronyms.

The definitions in part 390 of this chapter apply to this part, except where otherwise specifically noted.

Acute regulation means an applicable safety regulation where noncompliance with it, discovered during an investigation, is so serious as to require immediate corrective action, even if the motor carrier's safety record is not otherwise deficient.

* * * * *

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the Agency pursuant to 49 U.S.C. 113(e). Decisions of the Assistant Administrator in administrative review proceedings under this part are administratively final.

Behavior Analysis and Safety Improvement Category (BASIC) means a category into which violations are sorted to identify compliance patterns. The seven BASICs are:

(1) Unsafe driving;

(2) Driver fitness;

(3) Vehicle maintenance;

(4) Hours of service (HOS) compliance;

(5) Hazardous materials (HM);

(6) Controlled substance/alcohol; and

(7) Crash indicator.

* * * * *

Compliance review means a comprehensive or focused review of a motor carrier's operations by an investigator who is certified to perform the review under the provisions of subpart C of this part. It is used to determine if adequate safety management controls are in use.

Comprehensive investigation. See *Compliance review.*

Critical regulation means an applicable safety regulation is related to management or operational systems controls. A pattern of noncompliance with a critical regulation must be found to affect a safety fitness determination. The number of violations required to meet the threshold for a pattern is equal to at least 10 percent of those records sampled and more than one violation must be found.

Failure standard means an absolute measure that if met or exceeded, based on a motor carrier's own safety performance alone, will cause a BASIC to be failed.

Field Administrator means a position in an FMCSA Service Center who has been delegated authority to decide administrative reviews under this part on behalf of FMCSA. Field Administrator includes the term Regional Field Administrator. The geographical boundaries and mailing addresses of each of the four Service Centers are specified in § 390.27 of this chapter.

* * * * *

Inspection means an examination of a commercial motor vehicle and/or its driver by an inspector who is certified to perform the examination under the provisions of subpart C of this part.

Intervention means one of several different means of contacting a motor carrier to advise of observed safety deficiencies. This may include, but is not limited to, warning letters, investigations, Notices of Violation, or the issuance of a Notice of Claim.

Investigation means an examination of a motor carrier's operations to determine compliance with the FMCSRs, Hazardous Materials Regulations (HMRs), or other applicable regulations and statutes by an investigator who is certified to perform the review under the provisions of subpart C of this part.

Measure means an absolute quantifier of an individual motor carrier's safety performance that is derived from that carrier's time-weighted and severity-weighted violations cited during an inspection, divided by the number of inspections or number of vehicles depending on the BASIC.

* * * * *

Operating authority registration means the registration that a for-hire, non-exempt motor carrier is required to obtain under 49 U.S.C. 13901 and 13902.

Performance Standard means an absolute measure, based on a motor carrier's safety performance alone.

* * * * *

Preventable crash on the part of a motor carrier means that if a driver, who exercises normal judgment and foresight could have foreseen the possibility of the crash that in fact occurred, and avoided it by taking steps within his or her control which would not have risked causing another kind of mishap, the crash was preventable. The Agency procedures make use of guidance for making preventability determinations as set out in FMCSA's *A Motor Carrier's Guide to Improving Highway Safety,* FMCSA–ESO–08–003, December 2009 (available at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*).

Registration includes operating authority registration and/or safety registration.

Roadability review means an onsite examination of the intermodal equipment provider's compliance with the applicable FMCSRs by an investigator who is certified to perform the review under the provisions of subpart C of this part.

Safety audit means an examination of a new entrant motor carrier's operations to gather critical safety data needed to evaluate the carrier's safety performance and basic safety management controls, and to assess the carrier's compliance with safety and operational requirements. Safety audits do not result in a safety fitness determination. Safety audits must be performed by an auditor who is certified to perform the review under the provisions of subpart C of this part.

Safety event group. In the BASICs that are assessed with on road safety data except ''Unsafe Driving,'' means a grouping of motor carriers based on the number of inspections in a 24 month period. In the Unsafe Driving BASIC, means a grouping of motor carriers based on the number of inspections with Unsafe Driving violations in a 24 month period. Safety event groups are used to determine the applicable safety fitness determination failure standard within a BASIC for a specific motor carrier.

Safety management controls means the systems, policies, programs, practices, processes, and procedures used by a motor carrier to ensure compliance with applicable Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations.

Safety registration means the registration an employer or person subject to FMCSA's safety jurisdiction is required to obtain under 49 U.S.C. 31134.

Unfit means a safety fitness determination by FMCSA that a motor carrier does not meet the safety fitness standard in § 385.5 and may not operate a commercial motor vehicle in interstate or intrastate commerce.

■ 9. Revise § 385.5 to read as follows:

§ 385.5 Safety fitness standard.

A motor carrier must meet the safety fitness standard set forth in this section. Intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part must meet the equivalent State requirements. To avoid a safety fitness determination of unfit, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

(a) Controlled substances and alcohol use and testing requirement violations (parts 40 and 382 of this title);

(b) Commercial driver's license standard violations (part 383 of this chapter);

(c) Inadequate levels of financial responsibility (part 387 of this chapter);

(d) The use of unqualified drivers (part 391 of this chapter);

(e) Improper use and driving of motor vehicles (part 392 of this chapter);

(f) Unsafe vehicles operating on the highways (part 393 of this chapter);

(g) Failure to maintain crash registers and copies of crash reports (part 390 of this chapter);

(h) Non-compliance with the Agency's Hours of Service Regulations (part 395 of this chapter);

(i) Inadequate inspection, repair, and maintenance of vehicles (part 396 of this chapter);

(j) Transportation of hazardous materials, driving and parking rule violations (part 397 of this chapter);

(k) Violation of hazardous materials regulations (parts 170 through 180 of this title); and

(l) Motor vehicle crashes, as defined in § 390.5 of this chapter, and hazardous materials incidents, as defined in §§ 171.15 and 171.16 of this title.

■ 10. Revise § 385.7 to read as follows:

§ 385.7 Factors to be considered in making a safety fitness determination.

The factors to be considered during a safety fitness determination may include information from operations in the United States, Canada, and Mexico from driver/vehicle inspections, an examination of the carrier's records during investigations, or crash data. The factors may include any or all of the following:

(a) *Adequacy of safety management controls.* Safety management controls may be considered inadequate if they are found to be substantially below the norm for similar carriers. Violations, crashes, or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

(b) Frequency and severity of regulatory violations identified during investigations and whether similar violations have increased or decreased over time.

(c) Frequency and severity of regulatory violations identified during roadside inspections of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(d) Number and frequency of out-of-service violations of motor carrier operations in commerce and, if the motor carrier operates in the United States, of operations in Canada and Mexico.

(e) For motor carrier operations in commerce and, if the motor carrier operates in the United States, in Canada and Mexico: Frequency of crashes; hazardous materials incidents; crash rate per million miles; indicators of preventable crashes; and whether such crashes, hazardous materials incidents, and preventable crash indicators have increased or declined over time.

(f) Number and severity of violations of CMV, hazardous material and motor carrier safety rules, regulations, standards, and orders that are both issued by a State, Canada, or Mexico and compatible with Federal rules, regulations, standards, and orders.

(g) *Admissibility of inspection data.* Inspection reports and summaries of inspection data maintained in any existing or future FMCSA data systems, such as the Motor Carrier Safety Measurement System and the Motor Carrier Management Information System, are self-authenticating and are admissible as evidence that violations identified in the inspection report or data system occurred.

■ 11. Add § 385.8 to read as follows:

§ 385.8 Service and filing of documents.

(a) *In general.* Unless the provisions of this part provide otherwise, each of the following papers must be served as described in this part.

(b) *Service; how made.* Unless otherwise provided in this part, a paper is served by:

(1) Handing it to the person;

(2) Leaving it at the person's office with a clerk or other person in charge or, if not one is in charge, in a conspicuous place in the office; or

(3) If the person has no office or the office is closed, at the person's dwelling

or usual place of abode with someone over the age of 18 who resides there;

(4) Mailing it using the United States Postal Service or a commercial delivery service, in which case service is complete upon mailing;

(5) Sending it by electronic means if the person consented in writing and the service is effected in the manner identified in the consent, in which case service is complete upon transmission but is not effective if the serving party learns that it did not reach the person to be served; or

(6) Delivering it by any other means that the person consented to in writing, in which case service is complete when the person making service delivers it to the agent designated to make delivery.

(c) *Presumption of service.* A properly addressed paper served in accordance with this part which is returned as unclaimed or refused is presumed to have been served. A paper is presumed to have been served in accordance with this part if the Agency serves a document on a motor carrier at the address provided by the carrier to the Agency in any filing required to be made by FMCSA's statutes or regulations.

(d) *Certificate of service.* All papers filed after the notice of proposed unfit safety fitness determination must contain a certificate of service showing the date and manner of service and be signed by the person making service.

(e) *Filing of documents.* Every paper served in proceedings under § 385.15 must be filed with U.S. DOT Docket Services in accordance with this part.

(f) *Electronic signatures and filings.* The Agency may permit electronic signature and filing by electronic means. If permitted by the Agency, a paper filed electronically is considered a written paper under this part.

■ 12. Revise § 385.9 to read as follows:

§ 385.9 Determining a carrier's safety fitness.

(a) FMCSA, using the factors prescribed in § 385.7 as computed under the safety fitness determination methodology set forth in Appendix B of this part and based upon data received by FMCSA through the date of the proposed determination, shall determine whether the motor carrier ensures compliance with the regulations set forth in § 385.5 and shall assign a safety fitness determination accordingly.

(b) Except as noted in §§ 385.16 and 385.17, a motor carrier's safety fitness determination will be based on data received by FMCSA through the date of the proposed determination under § 385.11(c).

(c) If the proposed determination becomes final under this part, it shall remain in effect during the period of administrative review under § 385.15 or § 385.16, or any review of a request under § 385.18.

(d) Unless otherwise specifically provided in this part, a safety fitness determination based upon an investigation of a carrier's safety management controls in accordance with the standard set forth in § 385.5(a) will be issued as soon as practicable.

■ 13. Revise § 385.11 to read as follows:

§ 385.11 Notification of unfit safety fitness determination.

(a) FMCSA will provide a motor carrier with written notice of a proposed unfit safety fitness determination as soon as practicable. The notice will take the form of a letter issued from FMCSA and will include a list of FMCSR and HMR safety and compliance deficiencies that resulted in the unfit safety fitness determination which the motor carrier must correct.

(1) The Agency may serve the written notice on the motor carrier by any of the means set forth in § 385.8 that are reasonably calculated to provide notice.

(2) The notice may be made upon:

(i) An individual officer, director, agent, or any representative identified by the motor carrier on filings submitted to the Agency;

(ii) A resident agent appointed in accordance with the laws of the State of formation; or

(iii) An agent designated for service of process as a condition of operating authority registration.

(b) When FMCSA issues a notice of proposed unfit safety fitness determination, that notice becomes the final safety fitness determination after the following time periods:

(1) For motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV—45 days after the date of the notice.

(2) For all other motor carriers operating CMVs—60 days after the date of the notice.

(c) A notice of a proposed unfit safety fitness determination advises the motor carrier that FMCSA has made a preliminary determination that the motor carrier is unfit to continue operating in commerce and that the prohibitions in § 385.13 will be imposed after 45 or 60 days, as provided in § 385.13(a), if necessary safety improvements are not made.

(d) A motor carrier may request FMCSA to perform an administrative review of a proposed unfit safety fitness determination. The process and the time limits are described in § 385.15.

(e) A motor carrier may request FMCSA to perform a data sufficiency review of a proposed unfit safety fitness determination based upon a claim of unconsidered inspection data. The process and the time limits are described in § 385.16.

(f) A motor carrier may request a change to a proposed unfit safety fitness determination when it can demonstrate it has taken action to correct its safety deficiencies that resulted in the unfit safety fitness determination and has executed a compliance agreement with FMCSA. The process and the time limits are described in § 385.17.

(g) When a proposed unfit safety fitness determination becomes final, a motor carrier that has been issued a final unfit safety fitness determination may apply for safety registration and operating authority registration when it can demonstrate it has taken action to correct its deficiencies that resulted in the unfit safety fitness determination based on its corrective action plan. The process and the time limits are described in § 385.18.

■ 14. Add § 385.12 to read as follows:

§ 385.12 Revocation procedures for unfit safety fitness determination.

A proposed safety fitness determination of ''unfit'' under § 385.11 serves as notice to the motor carrier that its safety and, if applicable, operating authority registrations will be revoked within 45 or 60 days, as applicable, if it does not receive approval to operate under a compliance agreement under § 385.17 or the safety fitness determination is not changed as a result of an administrative review proceeding under § 385.15 or § 385.16. The revocation will be effective on or after the date the unfit determination becomes final, in accordance with a further order issued under the provisions of either § 385.13(e) or § 385.17(f).

■ 15. Revise § 385.13 to read as follows:

§ 385.13 Unfit motor carriers: prohibition on transportation; ineligibility for Federal contracts.

(a) Generally, a motor carrier operating in interstate commerce that has been determined to be unfit is prohibited from operating a CMV in interstate or intrastate commerce. Information about motor carriers, including their most current safety fitness determination, is available from FMCSA on the Internet at http://[FMCSA will provide the Web site in the final rule].

(1) Motor carriers transporting hazardous materials in quantities requiring placarding and motor carriers

transporting passengers in a CMV are prohibited from operating a CMV in motor carrier operations in interstate or intrastate commerce beginning on the 46th day after the date FMCSA serves the notice of proposed unfit safety fitness determination.

(2) All other motor carriers with an unfit safety fitness determination are prohibited from operating a CMV in motor carrier operations in interstate or intrastate commerce beginning on the 61st day after the date FMCSA serves the notice of proposed unfit safety fitness determination.

(b) A Federal agency must not use a motor carrier if that carrier holds an unfit safety fitness determination.

(c) [Reserved]

(d) *Consequences.* (1) If a proposed unfit safety fitness determination becomes final, the motor carrier is prohibited from operating in commerce without further order. The prohibition applies to both the motor carrier's operations in interstate commerce and its operations affecting interstate commerce.

(2) If a motor carrier's intrastate operations are declared out-of-service by a State, FMCSA must issue an order placing out-of-service the carrier's operations in interstate commerce. The following conditions apply:

(i) The State that issued the intrastate out-of-service order participates in the Motor Carrier Safety Assistance Program and uses the FMCSA safety fitness determination methodology set forth in appendix B of this part or an equivalent methodology approved by FMCSA; and

(ii) The motor carrier has its principal place of business in the State that issued the out-of-service order.

(iii) The order prohibiting the motor carrier from operating a CMV in interstate commerce shall remain in effect until the State determines that the carrier is not unfit.

(3) Any motor carrier that operates CMVs in violation of this section is subject to the penalty provisions of 49 U.S.C. 521(b) and appendix B to part 386 of the FMCSRs.

(e) Revocation of registration. FMCSA will issue an order revoking the safety and, if applicable, operating authority registrations of a motor carrier effective on the date a proposed unfit safety fitness determination becomes final.

■ 15. Revise § 385.15 to read as follows:

§ 385.15 Administrative review based on material error.

(a) *Request for review.* A motor carrier may ask the Assistant Administrator to review a proposed unfit safety fitness determination based on an allegation of material error by serving a written petition for administrative review under this section. A request for administrative review must demonstrate material error in the assignment of the motor carrier's proposed unfit safety fitness determination.

(b) *Contents of petition for administrative review.* The petition for administrative review must be in writing in English and include as attachments:

(1) A copy of the written notice of proposed safety fitness determination served on the motor carrier, and the investigation report or any other report that formed the basis of the safety fitness determination.

(2) An explanation of the material error(s) the motor carrier believes FMCSA committed in assigning the safety fitness determination;

(3) A list of all factual and procedural issues in dispute and any information or documents that support the motor carrier's argument;

(4) A copy of any pending request for unconsidered inspection data filed under § 385.16.

(c) *Service and time for filing petition for administrative review*—(1) *Service and filing required.* (i) Within 15 days after service of the notice or proposed unfit safety fitness determination, the motor carrier must serve the original petition for review on the Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination;

(ii) The motor carrier must also serve a copy of the petition on FMCSA's Adjudications Counsel, by mail, to 1200 New Jersey Ave. SE., Washington, DC 20590–0001; or by fax to 202–366–3602; or by electronic mail to *FMCSA.Adjudication@dot.gov.* Adjudications counsel consents to electronic service of documents in proceedings under this section;

(iii) Upon service, the motor carrier must also promptly file a copy of its petition for administrative review and any attachments, with the U.S. Department of Transportation Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(2) *Service of subsequent papers.* All papers served after the petition for administrative review, must be served on the Field Administrator, or if represented, his attorney; the motor carrier, or if represented, his attorney; and Adjudications Counsel, and filed with Docket Services in the same manner as the petition for review.

(3) *Certificate of service.* All documents served in a proceeding under this section must contain a certificate of service showing the date and manner of service and be signed by the person effecting service.

(d) *Field Administrator response to petition.* The Field Administrator may, but is not required to, respond to the petition for administrative review. The Field Administrator's response, if any, should be served within 10 days of the Field Administrator's receipt of the petition for administrative review to ensure that the Assistant Administrator has time to consider the Field Administrator's position before a decision.

(e) *Additional evidence.* The Assistant Administrator may ask the motor carrier and/or the Field Administrator to submit additional information. If the motor carrier does not provide the information requested, the Assistant Administrator may dismiss its request for review.

(f) *Written decision.* The Assistant Administrator will issue a written decision regarding the petition for administrative review within:

(1) Thirty (30) days after Adjudications Counsel receives a petition for review from a hazardous materials or passenger motor carrier that has received a proposed or final unfit safety fitness determination.

(2) Forty-five (45) days after Adjudications Counsel receives a petition for review from any other motor carrier that has received a proposed or final unfit safety fitness determination.

(g) *Standard of review.* In requesting administrative review of a proposed safety fitness determination, the burden of proof is on the motor carrier to demonstrate that FMCSA committed material error in assigning the safety fitness determination. For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety fitness determination or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(h) *Compliance and inspection data.* The Assistant Administrator's decision is final and conclusive as to the compliance and inspection data underlying the safety fitness determination. The determination, with respect to previously reviewed data, is conclusive in any subsequent petition for administrative review. If a motor carrier submits a request for administrative review of a subsequent proposed unfit safety fitness determination that is, in part, based on compliance and inspection data reviewed during a previous request for administrative review, the determination, with respect to the previously reviewed data, is conclusive in any subsequent review.

(i) *Final Agency action.* The Assistant Administrator's decision constitutes final Agency action, unless reconsideration is requested under paragraph (j) of this section, in which case the decision on reconsideration is the final Agency action.

(j) *Reconsideration.* (1) Within 25 days following service of the Assistant Administrator's decision on a petition for administrative review under this section, the motor carrier and/or the Field Administrator may petition the Assistant Administrator for reconsideration of the decision. A petition for reconsideration does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Assistant Administrator.

(2) A written petition for reconsideration, including any attachments, must be served and filed in the same manner as a petition for administrative review as specified in this section.

(3) Either the motor carrier or the FMCSA Field Administrator may serve an answer to a petition for reconsideration within 30 days after service of the petition for reconsideration on Adjudications Counsel.

(4) Following the close of the 30-day period, the Assistant Administrator will issue a written decision on the petition for reconsideration.

(5) The decision on the petition for reconsideration will constitute final Agency action.

(k) *Stay.* A petition for administrative review does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Assistant Administrator. A request for stay must be served and filed as indicated in this section.

■ 16. Add § 385.16 to read as follows:

§ 385.16 Request for review based on unconsidered inspection data.

(a) A motor carrier may ask an FMCSA Field Administrator to conduct an administrative review of a proposed unfit safety fitness determination because of unconsidered, valid data from inspections that occurred in the 24 month period before the proposed safety fitness determination. The motor carrier is required to prove that recalculating the safety fitness determination using the previously unconsidered data would remove the proposed unfit safety fitness determination. This section provides the exclusive remedy to request review of unconsidered inspection data.

(b) *Service of request.* The motor carrier must serve the original written request for administrative review seeking review of unconsidered inspection data on the FMCSA Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination. The request for administrative review and all subsequent filings in proceedings under this section must be served in accordance with § 385.8.

(c) *Contents of request.* A request for an administrative review of a proposed safety fitness determination because of unconsidered inspection data must include:

(1) A copy of the written notice of proposed safety fitness determination served by FMCSA;

(2) Copies of all additional inspection reports that, if included, would have resulted in FMCSA's determination that the carrier met the safety fitness standard in § 385.5;

(3) An explanation of why consideration of the additional inspection would remove the proposed unfit safety fitness determination; and

(4) A copy of any pending request for administrative review made under § 385.15.

(d) *Time for service.* A request for an administrative review because of unconsidered inspection data must be served on the FMCSA Field Administrator within 10 days after service of the notice of the proposed unfit safety fitness determination.

(e) *Written decision.* The Field Administrator will serve a decision:

(1) Within 10 days after service of a request from a hazardous materials or passenger motor carrier that has received a proposed unfit safety fitness determination;

(2) Within 20 days after service of a request from any other motor carrier that has received a proposed unfit safety fitness determination.

(f) *Standard of review.* In an administrative review of a proposed safety fitness determination under this section, the burden of proof is on the motor carrier to demonstrate that FMCSA did not include inspection report data from all inspections of the motor carrier's vehicles or drivers conducted during the assessment period and that, if included, such data would have resulted in FMCSA's determination that the carrier met the safety fitness standard in § 385.5.

(g) *Final Agency action.* The decision of the Field Administrator constitutes final Agency action, and no additional request for administrative review by FMCSA is available.

(h) *Stay.* A petition for administrative review under this section does not stay the imposition of a final safety fitness determination unless a stay is requested and granted by the Field Administrator.

■ 17. Revise § 385.17 to read as follows:

§ 385.17 Request to defer final unfit safety fitness determination and to operate under a compliance agreement.

(a) A motor carrier that has taken action to correct the deficiencies that resulted in a proposed unfit safety fitness determination may request a deferral of a final unfit safety fitness determination and that a Field Administrator permit it to continue to operate under a compliance agreement.

(b) *Service of request.* The motor carrier must serve the original written request seeking deferral of the final unfit safety fitness determination and asking to continue to operate under a compliance agreement on the FMCSA Field Administrator for the Service Center identified in the notice of proposed unfit safety fitness determination. The request for deferral and compliance agreement and all subsequent filings in proceedings under this section must be served in accordance with the provisions of § 385.8.

(c) *Contents of request.* The motor carrier's request must include evidence that it has taken necessary actions to correct its deficiencies that resulted in the proposed unfit safety fitness determination and that its operations, as set forth in a corrective action plan and evidenced by its corrective actions, will meet the safety standard and factors specified in §§ 385.5 and 385.7. The motor carrier's evidence must explain the safety management breakdowns that resulted in the violations, identify and describe clearly defined safety management policies and procedures to prevent ongoing or future violations, document organizational roles and responsibilities for safety compliance, describe written qualification and hiring standards, training and communication plans, and ongoing compliance monitoring and implementation procedures, and describe such other matters as necessary to assure FMCSA that the motor carrier is able to operate safely.

(d) *Time for service.* Requests for deferral and a compliance agreement must be served within:

(1) Fifteen (15) days after service of the notice of a proposed unfit safety fitness determination for motor carriers transporting hazardous materials in quantities requiring placarding or transporting passengers by CMV.

(2) Thirty (30) days after service of the notice of a proposed unfit safety fitness determination for all other motor carriers operating CMVs.

(3) Failure to timely request deferral and a compliance agreement waives the right to seek deferral and to continue to operate under a compliance agreement.

(e) *Evaluation of request.* FMCSA will make a decision on the request for deferral of a final safety fitness determination based on the documentation the motor carrier submits, together with evidence both that the motor carrier has corrected the deficiencies that resulted in its unfit determination, and that it will be able to meet the performance standards set forth in §§ 385.5 and 385.7. As a condition of deferral of a final safety fitness determination, the carrier will also be required to enter into a compliance agreement. A compliance agreement will include, at a minimum, strict safety performance standards that the carrier must meet and a specified period of time for monitoring of the carrier's safety performance before a deferred proposed determination of unfitness may be withdrawn.

(f) *Final Agency action.* Except as provided in paragraph (j) of this section, the Field Administrator's decision either deferring the final imposition of a proposed unfit safety fitness determination or denying the request for deferral constitutes final Agency action, and is not subject to further administrative review.

(g) *Withdrawal of proposed unfit safety fitness determination.* If, after a monitoring period, FMCSA determines that the motor carrier has taken the corrective actions required, has adhered to the compliance agreement for the complete monitoring period, has met the safety performance standards established in the compliance agreement, and is able to demonstrate through performance data or otherwise that it meets the safety standard and factors specified in §§ 385.5 and 385.7, FMCSA will serve a written notice on the motor carrier withdrawing the proposed unfit safety fitness determination.

(h) *Failure to comply with deferral requirements.* If, after a monitoring period, FMCSA determines that the motor carrier has not taken all the corrective actions required, has not adhered to the terms of the compliance agreement or has not met the safety performance standards established in the compliance agreement, FMCSA will serve a written notice on the motor carrier that its proposed unfit safety fitness determination has become final, order all its motor carrier operations out of out-of-service immediately, and revoke the motor carrier's safety and, if applicable, operating authority registrations.

(i) *Stays.* A request for deferral and compliance agreement does not stay the imposition of a final safety fitness determination during the consideration of the request unless a stay is requested from and granted by the Field Administrator.

(j) *Limited administrative review.* Any motor carrier whose request for a deferral of a final unfit safety fitness determination is denied in accordance with this section may request administrative review under § 385.15. The motor carrier must make the request within 30 days of the denial of the request for a deferral of a final safety fitness determination. Administrative review under this paragraph (j) will be limited to whether the denial of such a deferral was an abuse of the discretion of the Field Administrator to refuse to enter a compliance agreement with the motor carrier. If abuse of discretion is found, the Assistant Administrator may order deferral of the final unfit safety fitness determination pending execution of a compliance agreement within a reasonable period, as specified by order, but substantive elements of a compliance agreement are not subject to administrative review and shall not be imposed or stricken in such order. If the proposed safety fitness determination has become final, it shall remain in effect during the period of any administrative review.

■ 18. Add § 385.18 to read as follows:

§ 385.18 Resuming operations after a final unfit determination.

(a) *General.* A motor carrier that has been prohibited from operating, had its safety and, if applicable, operating authority registrations revoked, and had its USDOT number inactivated following a final unfit safety fitness determination under this subpart must not resume interstate or intrastate transportation until it obtains new registration(s) and its USDOT number is reactivated in accordance with this section.

(b) *Application for registration.* Following a final unfit safety fitness determination, a motor carrier must:

(1) Apply for registration under the provisions of part 390, subpart E, of this chapter and if applicable, part 365 of this chapter; and

(2) File an original corrective action plan covering the items outlined in § 385.17(c), including actions planned or completed to resolve the safety deficiencies that resulted in the unfit safety fitness determination, with the Office of Registration and Safety Information, 1200 New Jersey Ave. SE., Washington, DC 20590.

(c) *Grant of registration.* FMCSA will grant the application for registration and reactivate the motor carrier's USDOT Number after determining that:

(1) The motor carrier has satisfied the requirements of part 390, subpart E, of this chapter and if applicable part 365 of this chapter;

(2) The motor carrier's evidence of corrective action is acceptable; and

(3) The motor carrier agrees to operate under a compliance agreement that conforms to the requirements of § 385.17(c) and (e).

(d) *Resuming operations.* An applicant may not resume operations until it receives notice from FMCSA that it has been granted registration and that its USDOT number is active.

■ 19. Amend § 385.19 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 385.19 Availability of safety fitness determinations.

(a) Final unfit safety fitness determinations and information about carriers operating under a compliance agreement will be made available to other Federal and State agencies in writing, telephonically, or on the Internet available through computer access.

(b) The final unfit safety fitness determination assigned to a motor carrier and information about carriers operating under a compliance agreement will be made available to the public through the Agency's Web site and other information technology systems.

* * * * *

■ 20. Add § 385.21 to read as follows:

§ 385.21 Transition provisions.

(a) If a motor carrier receives a proposed safety rating of unsatisfactory and a final determination that it is unsatisfactory under the provisions of § 385.11 in effect before [EFFECTIVE DATE OF FINAL RULE], the motor carrier remains subject to the provisions of § 385.13 in effect before [EFFECTIVE DATE OF FINAL RULE].

(b) If a motor carrier receives a notice of a proposed safety rating and safety fitness determination dated before [EFFECTIVE DATE OF FINAL RULE], and issued under the provisions of § 385.11 in effect before [EFFECTIVE DATE OF FINAL RULE] that has not become final, the motor carrier may:

(1) Request an administrative review under the provisions of § 385.15 in effect before [EFFECTIVE DATE OF FINAL RULE]; and/or

(2) Request a change in safety rating under the provisions of § 385.17 in effect before [EFFECTIVE DATE OF

FINAL RULE]. If the notice of safety rating and safety fitness determination thereafter becomes final, the motor carrier is subject to the provisions of § 385.13 in effect before [EFFECTIVE DATE OF FINAL RULE].

■ 21. Amend § 385.101 as follows:

■ a. Add an undesignated introductory paragraph; and

■ b. Revise the definitions of ''Provisional operating authority'' and ''Safety audit.''

The addition and revisions read as follows:

§ 385.101 Definitions.

The following definitions apply to this subpart:

* * * * *

Provisional operating authority means the registration under § 365.507 of this chapter that FMCSA grants to a Mexico-domiciled motor carrier to provide interstate transportation within the United States beyond the municipalities along the United States-Mexico border and the commercial zones of such municipalities. It is provisional because the carrier will be subject to the safety monitoring program under this subpart until it satisfies the requirements of § 385.117, and it may be suspended or revoked in accordance with subpart A of this part.

Safety audit means an examination of a motor carrier's operations to gather critical safety data needed to make an evaluation of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety fitness determinations.

■ 22. Amend § 385.103 by revising paragraph (e) to read as follows:

§ 385.103 Safety monitoring system.

* * * * *

(e) *Comprehensive investigation.* The FMCSA will conduct a comprehensive investigation on a long-haul Mexico-domiciled carrier within 18 months after the FMCSA issues the carrier provisional operating authority under part 365 of this chapter.

■ 23. Amend § 385.105 by revising paragraphs (a) introductory text and (c) to read as follows:

§ 385.105 Expedited action.

(a) A long-haul Mexico-domiciled motor carrier committing any of the following violations identified through inspections, or by any other means, may be subjected to an expedited safety audit or comprehensive investigation, or may be required to submit a written response demonstrating corrective action:

* * * * *

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a safety audit or comprehensive investigation, as appropriate, during the provisional operating authority period.

■ 24. Revise § 385.109 to read as follows:

§ 385.109 The safety fitness determination.

(a) The criteria used in an investigation or as a result of on road safety data will be used to determine whether a Mexico-domiciled carrier granted provisional operating authority under § 365.507 of this chapter exercises the necessary basic safety management controls are specified in this subpart and appendix B to this part.

(b) If FMCSA does not assign a Mexico-domiciled carrier a proposed unfit safety fitness determination following a comprehensive investigation conducted under this subpart and consideration of on-road safety data, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the comprehensive investigation. The carrier's operating authority will remain in provisional status and its on-road safety performance will continue to be monitored for the remainder of the 18-month provisional registration period.

(c) *Unfit safety fitness determination.* If FMCSA assigns a Mexico-domiciled carrier a proposed unfit safety fitness determination under this subpart FMCSA will initiate a suspension and revocation proceeding in accordance with subpart A of this part.

§ 385.111, 385.113, and 385.115 [Removed and Reserved]

■ 25. Remove and reserve §§ 385.111, 385.113, and 385.115.

■ 26. Amend § 385.117 by revising paragraphs (b) and (c) to read as follows:

§ 385.117 Duration of safety monitoring system for Mexico-domiciled carriers.

* * * * *

(b) If, at the end of this 18-month period, the carrier has passed its most recent safety audit, submitted evidence of acceptable corrective action if applicable, neither an investigation nor on road safety data have resulted in a deferred, proposed or final unfit safety fitness determination, the carrier is neither suspended nor revoked, and no additional enforcement or safety improvement actions are pending, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become standard.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a safety audit or comprehensive investigation, the carrier will remain in the safety monitoring system until a safety audit or comprehensive investigation is conducted. If the carrier passes the safety audit or the investigation does not result in a final unfit safety fitness determination, the carrier is neither suspended nor revoked, and the carrier has no additional enforcement or safety improvement actions pending, the carrier's provisional operating authority or provisional Certificate of Registration will become standard.

* * * * *

§ 385.201 [Amended]

■ 27. Amend § 385.201 in paragraphs (a) and (b) by removing the phrase ''a compliance review,'' and adding, in its place, the phrase ''an investigation, compliance review,''.

§ 385.203 [Amended]

■ 28. Amend § 385.203 in paragraphs (a) and (b) by removing the phrase ''a compliance review,'' and adding, in its place, the phrase ''an investigation, compliance review,''.

■ 29. Amend § 385.307 by redesignating paragraphs (a) through (c) as paragraphs (b) through (d) and adding paragraph (a) to read as follows:

§ 385.307 What happens after a motor carrier begins operations as a new entrant?

* * * * *

(a) The new entrant is subject to the safety monitoring system in this subpart, the general safety fitness procedures established in subpart A of this part, and the compliance and enforcement procedures applicable to all carriers regulated by FMCSA.

* * * * *

§ 385.308 [Amended]

■ 30. Amend § 385.308 as follows:

■ a. In paragraph (a), remove the phrase ''safety audit or a compliance review'' and add, in its place, the phrase ''safety audit or an investigation,''.

■ b. In paragraphs (b)(1) and (2), remove the phrase ''safety audit or compliance review,'' and add, in its place, the phrase ''safety audit or an investigation,''.

■ c. In paragraph (c), remove the phrase ''a compliance review,'' and add, in its place, the phrase ''an investigation''.

§ 385.317 [Amended]

■ 31. Amend § 385.317 by removing the phrase ''a compliance review'' and adding, in its place, the phrase ''an investigation or on road safety data''.

§ 385.333 [Amended]

■ 32. Amend § 385.333 as follows:

■ a. In paragraph (b), remove the phrase ''‘unfit’ after a compliance review'' and add, in its place, the word ''unfit,''.
■ b. In paragraph (d), remove the phrase ''safety audit or compliance review,'' in each place it appears and adding, in its place, the phrase ''safety audit or an investigation,''.
■ 33. Revise § 385.335 to read as follows:

§ 385.335 If the FMCSA completes an investigation on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA completes an investigation on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.
■ 34. Amend § 385.407 by revising paragraph (a)(1) to read as follows:

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Motor carrier safety performance.* (1) The motor carrier must have a comprehensive investigation and must not be issued a proposed or final unfit safety fitness determination by either FMCSA, pursuant to the Safety Fitness Procedures in subpart A of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and
* * * * *
■ 35. Amend § 385.409 by revising paragraph (c) to read as follows:

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

* * * * *

(c) A temporary safety permit is valid for 180 days after the date of issuance or until the motor carrier receives a comprehensive investigation or the Agency has otherwise made a safety fitness determination, whichever comes first.

(1) A motor carrier that receives a comprehensive investigation and has not been issued an unfit safety fitness determination will be issued a safety permit (see § 385.421).

(2) A motor carrier that receives a comprehensive investigation and has been issued a proposed or final unfit safety fitness determination is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.
* * * * *
■ 36. Amend § 385.413 by revising the section heading and paragraph (a) to read as follows:

§ 385.413 What happens if a motor carrier receives a proposed or final unfit safety fitness determination?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until the motor carrier has a comprehensive investigation. A proposed or final unfit safety fitness determination will prevent the issuance of a safety permit.
* * * * *
■ 37. Amend § 385.421 by revising paragraphs (a)(3) and (c)(1) to read as follows:

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?

(a) * * *

(3) A motor carrier is issued a final unfit safety fitness determination or receives a proposed unfit and is subsequently approved to operate under a compliance agreement;
* * * * *

(c) * * *

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final unfit safety fitness determination, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;
* * * * *
■ 38. Amend § 385.423 by revising paragraph (a) to read as follows:

§ 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

* * * * *

(a) *Unfit safety fitness determination.* (1) If a motor carrier is issued a proposed unfit safety fitness determination, it has the right to request the following:

(i) An administrative review of a proposed unfit safety fitness determination, as set forth in § 385.15; or

(ii) A review based on unconsidered inspection data as set forth in § 385.16.

(2) After a motor carrier has had an opportunity for administrative review of a proposed unfit safety fitness determination or review based on unconsidered inspection data, FMCSA's issuance of a final safety fitness determination constitutes final Agency action. A motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final unfit safety fitness determination.
* * * * *
■ 39. Amend § 385.503 by revising paragraph (a) to read as follows:

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety fitness determination to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.
* * * * *
■ 40. Amend § 385.607 by revising paragraph (g) to read as follows:

§ 385.607 FMCSA action on the application.

* * * * *

(g) FMCSA may not re-designate a non-North America-domiciled carrier's registration from new entrant to standard prior to 18 months after the date its USDOT number is issued and subject to successful completion of the safety monitoring system for non-North America-domiciled carriers set out in subpart I of this part. Successful completion includes not receiving a final unfit safety fitness determination as the result of a comprehensive investigation.
■ 41. Amend § 385.701 by adding in alphabetical order a definition for ''Comprehensive investigation'' and revising the definition for ''New entrant registration'' to read as follows:

§ 385.701 Definitions.

* * * * *

Comprehensive investigation. See *Compliance review.*

New entrant registration means the provisional registration under subpart H of this part that FMCSA grants to a non-North America-domiciled motor carrier to provide interstate transportation within the United States. The carrier will be subject to the enhanced monitoring program under this subpart until it satisfies the requirements of § 385.715.
* * * * *
■ 42. Amend § 385.703 by revising paragraphs (b) and (d) to read as follows:

§ 385.703 Safety monitoring system.

* * * * *

(b) *Safety monitoring.* Each non-North America-domiciled carrier new entrant

will be subject to monitoring through inspections.

* * * * *

(d) *Comprehensive investigation.* FMCSA will conduct a comprehensive investigation on a non-North America-domiciled carrier within 18 months after FMCSA issues the carrier a USDOT Number.

■ 43. Amend § 385.705 by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 385.705 Expedited action.

(a) A non-North America-domiciled motor carrier committing any of the following actions identified through inspections, or by any other means, may be subjected to an expedited comprehensive investigation, or may be required to submit a written response demonstrating corrective action:

* * * * *

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a comprehensive investigation during the new entrant registration period.

■ 44. Revise § 385.707 to read as follows:

§ 385.707 The comprehensive investigation.

(a) The criteria used in a comprehensive investigation to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety management controls are specified in appendix B to this part.

(b) *No unfit safety fitness determination.* If FMCSA does not assign a Non-North America-domiciled carrier an unfit safety fitness determination following a comprehensive investigation conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the comprehensive investigation. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) *Unfit safety fitness determination.* If FMCSA assigns a non-North America-domiciled carrier an unfit safety fitness determination following a comprehensive investigation conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with subpart A of this part.

§§ 385.709, 385.711, and 385.713 [Removed and Reserved]

■ 45. Remove and reserve §§ 385.709, 385.711, and 385.713.

■ 46. Amend § 385.715 by revising paragraphs (b) and (c) to read as follows:

§ 385.715 Duration of safety monitoring system.

* * * * *

(b) If, at the end of this 18-month period, the carrier's most recent safety fitness determination was not unfit, the carrier is not operating under a compliance agreement, and no additional enforcement or safety improvement actions are pending, the non-North America-domiciled carrier's new entrant registration will become standard.

(c) If, at the end of this 18-month period, FMCSA has not been able to conduct a comprehensive investigation, the carrier will remain in the safety monitoring system until a comprehensive investigation is conducted. If the results of the comprehensive investigation are not unfit the carrier's new entrant registration will become standard.

* * * * *

■ 47. Revise appendix B to part 385 to read as follows:

Appendix B to Part 385—Explanation of Safety Fitness Determination Methodology

1. Safety Fitness Determination (SFD) Background

1.1 Authority

The Secretary of Transportation is required to establish a methodology to determine the safety fitness of owners and operators of commercial motor vehicles (CMVs) operating in commerce. The Secretary delegated this responsibility to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA).

1.2 Safety Fitness Regulation

As directed, FMCSA promulgates regulations that determine the safety fitness of motor carriers. Motor carriers must meet the safety fitness standard through sustained safe performance and compliance with applicable regulations. If the carrier does not meet the standard, FMCSA will issue a proposed and/or final unfit SFD, as appropriate.

1.3 SFD Methodology

1.3.1 The methodology developed by FMCSA evaluates safety fitness and assigns an unfit SFD to motor carriers operating in interstate commerce or in commerce affecting interstate commerce that fail to meet the standard.

1.3.2 This process conforms to § 385.5, Safety fitness standard, and § 385.7, Factors to be considered in making a safety fitness determination, of this part. Under this methodology, a motor carrier's SFD is determined by either or both of the following:

1.3.2.1 *On-Road Safety Data*—Safety-based violation data from driver/vehicle inspections for all domestic and foreign operations may be calculated in the SFD process according to Behavior Analysis and Safety Improvement Categories (BASICs) (See Tables 1–5 Violation Severity Tables in section 5 of this appendix); or

1.3.2.2 *Investigation Results*—Violations of Critical and Acute regulations from investigations are also used in the SFD process. These are regulations that FMCSA has identified as linked to likelihood of future crashes or as otherwise significant indicators of CMV owner or operator safety. They are listed in Tables 3–1 and 3–2 of this appendix. Violations of these critical and acute regulations are used to assess the appropriate BASIC. In addition to violations of the critical and acute regulations, the recordable crash rate per million miles may be determined as part of investigations under section 2.1.7 of this appendix, Crash Indicator BASIC.

1.4 Roadmap to This Appendix

Sections 2 and 3 of this appendix describe the complete methodology used by the two components of the SFD process: (1) On-road safety data and (2) investigation results. Section 4 of this appendix describes in detail the SFD calculation and provides examples. Section 5 of this appendix is a set of five violation severity tables, which provide cross-references to the description of violations in the Code of Federal Regulations (CFR).

2. Role of BASICs in the SFD Process

2.1 Description of BASICs

FMCSA employs: (i) All on-road safety performance data from inspections; (ii) critical and acute regulation violations from investigations; and (iii) crash rates from investigations to evaluate motor carrier performance and compliance in seven BASICs. When a motor carrier exhibits consistent non-compliance during inspections, has violations of critical and/or acute regulations in the BASICs identified through an investigation, or has a preventable crash rate that meets or is greater than established standards, the carrier will fail the BASIC. Any two or more failed BASICs will result in a proposed unfit SFD as described in section 4 of this appendix.

The BASICs are:

2.1.1 *Unsafe Driving—Operation of CMVs by drivers in a dangerous or careless manner.* Examples of violations include: Speeding, reckless driving, improper lane change, inattention, failure to wear safety belt while operating a CMV, and texting or using a mobile telephone while operating a CMV. This BASIC corresponds to the requirement in § 385.5(e) of the safety fitness standard.

2.1.2 *Hours of Service (HOS) Compliance—Operation of CMVs by drivers who are not in compliance with the HOS regulations.* This BASIC includes violations of driving time limitations and violations of regulations regarding the complete and accurate recording of records of duty status (commonly known as log books) as they

relate to HOS requirements. Examples of violations include exceeding HOS limits, falsification of records of duty status, and incomplete records of duty status. This BASIC corresponds to the requirement in § 385.5(h) of the safety fitness standard.

2.1.3 *Driver Fitness—Operation of CMVs by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualifications.* Examples of violations include: Failure to have a valid and appropriate commercial driver's license (CDL) or being medically unqualified to operate a CMV. This BASIC corresponds to the requirement in § 385.5(b) and (d) of the safety fitness standard.

2.1.4 *Vehicle Maintenance—CMV failure due to improper or inadequate maintenance.* Examples of violations include: brakes, lights, cargo securement, and other mechanical defects or failure to make required repairs. This BASIC corresponds to the requirement in § 385.5(f) and (i) of the safety fitness standard.

2.1.5 *Hazardous Materials (HM) Compliance—CMV incident resulting from shifting HM, a release of HM, and unsafe handling of HM.* Examples of violations include: improper HM load securement and hazardous material handling. This BASIC corresponds to the requirement in § 385.5(j), (k), and (l) of the safety fitness standard.

2.1.6 *Controlled Substances and Alcohol—Operation of CMVs by drivers and motor carriers that fail to comply with requirements on alcohol or illegal controlled substances.* Examples of violations include: Use or possession of controlled substances or alcohol or using a driver before receiving a negative pre-employment result. This BASIC corresponds to the requirement in § 385.5(a) and (e) of the safety fitness standard. This BASIC can only fail based on investigation results.

2.1.7 *Crash Indicator—Preventable recordable crash rate per million vehicle miles traveled (VMT).* A recordable crash, consistent with the definition for ''accident'' in 49 CFR 390.5, means an occurrence involving a CMV on a highway in motor carrier operations in commerce that results in a fatality; in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the crash; or in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. This BASIC corresponds to the requirement in § 385.5(l) of the safety fitness standard. This BASIC can only fail from the preventable crash rate recorded during an investigation.

2.2 Data Sources for Assessing On-Road Safety Performance

The data used to assess on-road safety performance in the BASICs are recorded in FMCSA's Motor Carrier Management Information System (MCMIS). The specific data elements are described below.

2.2.1 *Driver/Vehicle Inspections* are examinations of individual CMVs and drivers by certified Federal, State, or local inspectors or officers to determine if the CMVs and drivers are in compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs).

2.2.2 *Violations* are instances of non-compliance recorded and documented during driver/vehicle inspections. The methodology incorporates both out-of-service violations and non-out-of-service violations.

2.2.3 *Motor Carrier Census Data* are first collected when a carrier obtains a USDOT number. This information is recorded in MCMIS by FMCSA and is updated during investigations, during CMV registration in States participating in the Performance and Registration Information Systems Management (PRISM) Program, by the biennial update required by FMCSA regulation (49 CFR 390.19(b)), and at the request of the motor carrier. Census data are used to identify individual motor carriers and enable FMCSA to attribute safety events, *e.g.,* driver/vehicle inspections, crashes, and investigations, to the appropriate motor carrier. Census data are also used in the methodology to normalize on-road safety data to calculate BASIC failure standards. Examples of census data include: Number and types of power units operated, physical location of the carrier's principal place of business, annual Vehicle Miles Traveled, and type of commodities hauled.

2.3 Determining Failed BASICs From Driver/Vehicle Inspection Results

Driver/vehicle inspection and violation data are used to assess SFD in five of the seven BASICs—Unsafe Driving, HOS Compliance, Driver Fitness, Vehicle Maintenance, and Hazardous Materials (HM) Compliance. All safety-based violations of the FMCSRs and HMRs, specified in Tables 1–5 Violation Severity Tables in section 5 of this appendix, are included in calculating the BASICs from Driver/Vehicle Inspections.

2.3.1 *Types of Inspections:* Inspections may include reviews of the driver, vehicle, HM, shipment, and combinations of inspections, as well as special targeted inspections. However, the inspections must include reviews of the appropriate regulations as noted below.

2.3.2 *Driver Inspections:* To qualify for inclusion in the SFD assessment, a driver inspection must include reviews of the driver's compliance with the regulations associated with:

2.3.2.1 Proper licensing
2.3.2.2 Medical qualification
2.3.2.3 Controlled substances and alcohol
2.3.2.4 Hours of service, and
2.3.2.5 Operating authority

2.3.3 *Vehicle Inspections:* To qualify for inclusion in the SFD assessment, a vehicle inspection must include reviews of the vehicles' compliance with the regulations associated with:

2.3.3.1 Brake systems
2.3.3.2 Coupling devices
2.3.3.3 Exhaust systems
2.3.3.4 Frames
2.3.3.5 Fuel systems
2.3.3.6 Lighting devices
2.3.3.7 Cargo securement
2.3.3.8 Steering mechanisms
2.3.3.9 Suspensions
2.3.3.10 Tires
2.3.3.11 Trailer bodies
2.3.3.12 Wheels, rims and hubs
2.3.3.13 Windshield wipers
2.3.3.14 Emergency exits (buses), and
2.3.3.15 Engine and battery electrical cables and systems (buses)

2.3.4 *HM Inspections:* To qualify for inclusion in the SFD assessment, an inspection of HM must include reviews of the shipment's compliance with the applicable regulations associated with:

2.3.4.1 Shipping papers
2.3.4.2 Placarding
2.3.4.3 Bulk packages
2.3.4.4 Transport vehicle markings
2.3.4.5 Poison inhalation hazard markings
2.3.4.6 Non-bulk packaging
2.3.4.7 Loading and securement
2.3.4.8 Forbidden items
2.3.4.9 Radioactive materials and radiation levels, and
2.3.4.10 Emergency response assistance plans

2.3.5 *Walk-Around Driver/Vehicle Inspection:* At a minimum, these inspections must include examination of:

2.3.5.1 Driver's license
2.3.5.2 Medical examiner's certificate
2.3.5.3 Skill Performance Evaluation (SPE) Certificate (if applicable)
2.3.5.4 Alcohol and drugs
2.3.5.5 Driver's record of duty status as required
2.3.5.6 Hours of service
2.3.5.7 Seat belt
2.3.5.8 Vehicle inspection report(s) (if applicable)
2.3.5.9 Brake systems
2.3.5.10 Coupling devices
2.3.5.11 Exhaust systems
2.3.5.12 Frames
2.3.5.13 Fuel systems
2.3.5.14 Lighting devices (headlamps, tail lamps, stop lamps, turn signals and lamps/flags on projecting loads)
2.3.5.15 Securement of cargo
2.3.5.16 Steering mechanisms
2.3.5.17 Suspensions
2.3.5.18 Tires
2.3.5.19 Van and open-top trailer bodies
2.3.5.20 Wheels, rims and hubs
2.3.5.21 Windshield wipers
2.3.5.22 Emergency exits
2.3.5.23 Electrical cables and systems in engine and battery compartments (buses), and
2.3.5.24 HM requirements as applicable. HM required inspection items will be inspected by certified HM inspectors.

It is contemplated that the walk-around driver/vehicle inspection will include only those items that can be inspected without physically getting under the vehicle.

2.3.6 *Quantifying the Violations:* Each carrier's driver/vehicle violations from inspections are classified into the appropriate BASIC and are then time weighted, severity weighted, and normalized by exposure to form a quantifiable absolute measure in each BASIC as calculated in section 2.4 of this appendix.

Inspections and any violations recorded during the previous 24 months in any relevant level driver/vehicle inspection that matches the FMCSR and HMR violations

listed for the appropriate BASIC are used in the calculation. Driver inspections are relevant to the Unsafe Driving, Hours of Service Compliance, and Driver Fitness BASICs. Vehicle inspections are relevant to the Vehicle BASIC and vehicle inspections with placardable hazardous materials are relevant to the Hazardous Materials BASIC. The applicable violations are shown in Tables 1–5, in section 5 of this appendix, Violation Severity Tables. Where multiple counts of the same violation are recorded, the methodology uses each violation recorded only once per inspection.

2.3.7 *Violation Severity:* Applicable safety-based violations of the FMCSRs and HMRs that are associated with each BASIC and documented during an inspection are assigned severity weights that reflect their association with crash risk in terms of crash occurrence and crash consequences. The stronger the relationship between a violation and crash risk, the higher its assigned weight. A separate weighting parameter identifies violations that result in an out-of-service order as defined in 49 CFR 390.5, and additional weight is applied to these violations.

The violation severity weights of 1 to 10 can be found in Tables 1 to 5 in section 5 of this appendix. The Agency uses severity weights to differentiate crash risks relative to particular violations within a particular BASIC only. The level of crash risk is assigned to each applicable violation ranging from 1 (less severe) to 10 (most severe); see the HOS Compliance Table (Table 2 in section 5 of this appendix, Violation Severity Tables) for the violations' corresponding severity weights.

An out-of-service weight of 2 is then added to the severity weight of out-of-service violations, except for violations in the Unsafe Driving BASIC because unsafe driving violations rarely result in an out-of-service condition.

In cases of multiple counts of the same violation, the out-of-service weight of 2 applies only to the most severe count, if any of the counts of the violations are out-of-service.

2.3.8 *Time Weights:* Each inspection and associated violation is assigned a time weight. The time weight of inspections and violations decreases as time elapses, resulting in more recent inspections having a greater impact on a motor carrier's measure within a BASIC than results of older inspections. Events beyond 24 months are not used for SFD. The 24-month time frame was chosen based on FMCSA analysis indicating that using 24 months of inspection data provided an adequate time frame to identify motor carriers with performance deficiencies and to assess improvements or degradation in performance. The inspections and violations are grouped into three time periods and assigned a time weight. Inspections conducted and violations recorded in the most recent time period (recorded in the past 6 months) receive a time weight of 3. Inspections conducted and violations recorded in the next most recent time period (older than 6 months and within the past 12 months) receive a time weight of 2. Inspections conducted and violations recorded in the oldest time period (older than 12 months but within the past 24 months) receive a time weight of 1.

2.3.9 *Time and Severity Weight.* This weight is a violation's severity weight multiplied by its time weight. The sum of all violation severity weights for any one inspection is capped at a maximum of 30, prior to applying time weights.

2.3.10 *Normalization:* When appropriate, the motor carrier's BASICs measures are normalized to reflect differences in inspection and other safety oversight exposure among motor carriers. The normalization approach varies depending on the BASIC being measured.

HOS Compliance and Driver Fitness measures are normalized by adding the number of time-weighted driver inspections, while Vehicle Maintenance BASIC measures are normalized by adding the number of time-weighted vehicle inspections. The HM Compliance BASIC is normalized by adding the number of time-weighted vehicle inspections where placardable quantities of HM were present. The inspections used to normalize a BASIC measure are considered relevant inspections.

The Unsafe Driving BASIC is calculated by reference to carrier size (*i.e.,* a hybrid calculation using power units and VMT) instead of by the number of inspections. Carriers with known above-average truck utilization, in terms of VMT per power unit, have their size adjusted upwards to account for their additional exposure to being found with Unsafe Driving BASIC violations such as speeding. Section 2.4.1.2 of this appendix contains a further explanation of this adjustment.

2.3.11 *Data Sufficiency:* To ensure that a BASIC measure is a viable metric of systemic safety problems, data sufficiency criteria are applied. The data sufficiency criteria require that a motor carrier has had at least 11 inspections with one or more violations in each inspection. These criteria ensure adequate performance data that demonstrate a pattern of violations across multiple inspections are obtained before an unfit SFD is proposed.

2.3.12 *Safety-Event Groups:* The SFD BASIC failure standards are based on the number of safety events (*i.e.,* violations or inspections). Carriers with similar numbers of safety events are grouped together and compared against the failure standard associated with that safety event group. This tiered approach accounts for variability in levels of exposure and enables carriers with similar levels of exposure to be held to the same standards.

2.4 SFD BASIC Failure Standards

The measures for each of a motor carrier's BASICs are calculated and compared to SFD BASIC failure standards. Higher measures indicate a lower level of safety performance; and, therefore, any carrier's measure that equals or is greater than the SFD BASIC failure standard constitutes a failure in that BASIC. These failed BASICs measures are then applied to the SFD calculation described in section 4 of this appendix.

Table 2–1 through Table 2–8 of this appendix show the SFD BASIC failure standards. The failure standards were established at levels equivalent to the measures that would have placed a motor carrier at the 96th percentile for the Unsafe Driving and HOS Compliance BASICs and the 99th percentile for the Driver Fitness, Vehicle Maintenance, and HM Compliance BASICs for each safety-event group as of March 22, 2013.

A carrier's absolute BASIC performance measure, *not the carrier's percentile within a given month,* is used to determine if the carrier failed the BASIC. A carrier with a BASIC measure that equals or is greater than the failure standard for the carrier's safety-event group fails that BASIC.

2.4.1 *Unsafe Driving BASIC:* A motor carrier's measure is calculated through driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time and severity weighted applicable violations}}{\text{Average power units times utilization factor}}$$

The Unsafe Driving BASIC accounts for further carrier differences by dividing the carrier population into two segments based on the current mix of the types of vehicles the carrier operates. This differentiates the levels of exposure associated with carriers that have fundamentally different types of operations.

The two segments are ''combination'' or ''straight truck.'' The combination segment includes those carriers that operate either truck tractors or motor coaches. Carriers are placed in the combination category if 70 percent or more of the carrier's total power units meet that definition. The straight truck segment includes all other carriers, including those that operate straight trucks, HM cargo tank trucks, or school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers. These different types of power units are defined on the Application for USDOT Registration/Operating Authority (Form MCSA–1) instructions.

The BASIC failure standards are shown in Table 2–1 and 2–2 of this appendix. Any carrier with an Unsafe Driving BASIC measure equal to or greater than the safety-event group failure standard fails this BASIC.

TABLE 2–1 TO APPENDIX B TO PART 385—UNSAFE DRIVING FAILURE STANDARDS: STRAIGHT TRUCK SEGMENT

Safety-event group (number of inspections with unsafe driving violations)	BASIC failure standard (equivalent to the 96th percentile)
11–18	9.64
19–49	5.12
50+	1.47

TABLE 2–2 TO APPENDIX B TO PART 385—UNSAFE DRIVING FAILURE STANDARDS: COMBINATION SEGMENT

Safety-event group (number of inspections with unsafe driving violations)	BASIC failure standard (96% threshold)
11–21	14.21
22–57	9.58
58–149	6.26
150+	2.80

2.4.1.1 *Unsafe Driving average power units.* The Unsafe Driving BASIC violations are normalized by the number of owned, term-leased, and trip-leased power units (truck tractors, straight trucks, HM cargo tank trucks, motorcoaches, and school buses/mini-buses/limousines/vans with a capacity of 9 or more passengers) based on FMCSA's census data and are further adjusted for VMT where available, as explained in the ''Utilization Factor'' section of this appendix. The average number of power units for each carrier is calculated using the carrier's current number of power units as recorded in the motor carrier census at 6 months and 18 months prior to the SFD. The average power unit calculation is shown below:

$$\text{Power unit (PU) (average)} = \frac{\text{PU(current)} + \text{PU(6 Months)} + \text{PU(18 Months)}}{3}$$

2.4.1.2 *Unsafe Driving Utilization Factor.* The Unsafe Driving Utilization Factor is a multiplier that adjusts the average power unit values based on utilization in terms of VMT per average power unit where VMT data from the past 24 months are available. In cases where the VMT data has been obtained multiple times over the past 24 months for the same carrier, the most current VMT figure is used. The Utilization Factor is calculated as follows:

(a) Determine carrier segment as ''combination'' or ''straight truck'' based on the types of vehicles the carrier operates, as previously defined in this section.

(b) Calculate the VMT per average power unit by taking the most recent positive VMT data and dividing it by the average power units, as previously defined in this section.

(c) Using the VMT per average power unit, based on paragraphs (a) and (b) of this section, find the Utilization Factor in the following tables:

Table 2–3 to Appendix B to Part 385: Utilization Factors, Based on VMT per Power Unit For Combination Segment

VMT per Average Power Unit	Utilization Factor
Less than 80,000	1
80,000 - 160,000	$1 + \frac{(\text{VMT per Average PU} - 80{,}000)}{133{,}333}$
160,000 - 200,000	1.6
Greater Than 200,000	1
No Recent VMT Information	1

TABLE 2–4 TO APPENDIX B TO PART 385—UTILIZATION FACTORS, BASED ON VMT PER AVERAGE POWER UNIT FOR STRAIGHT TRUCK SEGMENT

VMT per average power unit	Utilization factor
Less Than 20,000	1.
20,000–60,000	VMT per Power Unit/20,000.
60,000–200,000	3.
Greater Than 200,000	1.
No Recent VMT Information	1.

2.4.2 *HOS Compliance BASIC:* A motor carrier's measure is calculated using driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of driver inspections}}$$

The failure standards are shown in Table 2–5 of this appendix. Any carrier with an HOS Compliance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–5 TO APPENDIX B TO PART 385—HOS COMPLIANCE FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (96% threshold)
11–20	4.15
21–100	3.13
101–500	2.2
501+	1.54

2.4.3 *Driver Fitness BASIC:* A motor carrier's measure is calculated using driver inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of driver inspections}}$$

The failure standards are shown in Table 2–6 of this appendix. Any carrier with a Driver Fitness BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–6 TO APPENDIX B TO PART 385—DRIVER FITNESS FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–20	2.74
21–100	1.39
101–500	0.50
501+	0.24

2.4.4 *Controlled Substances and Alcohol BASIC:* A motor carrier cannot fail this BASIC through inspection data alone because of the limited amount of such data available through inspections. See sections 3.1, Critical Regulations, and 3.2, Acute Regulations, in this appendix for more information on how this BASIC is evaluated through an investigation of the motor carrier's compliance with controlled substances and alcohol regulations.

2.4.5 *Vehicle Maintenance BASIC:* A motor carrier's measure is calculated using vehicle inspections as follows:

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of vehicle inspections}}$$

The failure standards are shown in Table 2–7 of this appendix. Any carrier with a Vehicle Maintenance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–7 TO APPENDIX B TO PART 385—VEHICLE MAINTENANCE FAILURE STANDARD

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–20	18.79
21–100	16.12
101–500	11.82
501+	8.91

2.4.6 *HM Compliance BASIC:* A motor carrier's measure is calculated using vehicle inspections where placardable quantities of HM are being transported as follows.

$$\text{BASIC Measure} = \frac{\text{Sum of time- and severity-weighted applicable violations}}{\text{Total time weight of relevant inspection}}$$

The failure standards are shown in Table 2–8 of this appendix. Any carrier with a HM Compliance BASIC measure equal to or greater than the failure standard shown for its safety-event group fails this BASIC.

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
11–15	6.87
16–40	4.82

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS—Continued

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
41–100	2.56

TABLE 2–8 TO APPENDIX B TO PART 385—HM COMPLIANCE FAILURE STANDARDS—Continued

Safety-event group (number of inspections)	BASIC failure standard (99% threshold)
101+	1.95

2.4.7 *Crash Indicator BASIC:* See section 3.3 in this appendix for more information on how this BASIC is evaluated during an investigation.

3. Investigation Results in the SFD Process

3.1 Critical Regulations

Violations of critical regulations are identified through investigations. A critical regulation means an applicable safety regulation is related to management or operational systems controls. A pattern of noncompliance with a critical regulation must be found to affect a safety fitness determination. A BASIC is failed when these violations are discovered in at least 10 percent of the carrier's records examined, and more than one violation must be found. Table 3–1 of this appendix provides a list of cross-references of the critical regulations to the appropriate BASICs. These are existing regulations with actual legal prohibitions and requirements set forth in and controlled by the language of the substantive violations in each section of title 49 of the CFR cross-referenced.

TABLE 3–1 TO APPENDIX B TO PART 385—CRITICAL REGULATIONS

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.	HM Compliance.
173.24b(d)(2)	Loading bulk packaging with an HM which exceeds the maximum weight of lading marked on the specification plate.	HM Compliance.
173.33(a)(1)	Offering or accepting an HM for transportation in an unauthorized cargo tank	HM Compliance.
173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed result in an unsafe condition.	HM Compliance.
173.33(b)(1)	Loading HM in a cargo tank if during transportation any part of the tank in contact with the HM would have a dangerous reaction.	HM Compliance.
177.800(c)	Failing to instruct a category of employees in HM regulations	Driver Fitness.
177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.	HM Compliance.
177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance	HM Compliance.
177.848(d)	Failing to store, load, or transport HM in accordance with the segregation table	HM Compliance.
180.407(a)	Transporting a shipment of HM in a cargo tank that has not been inspected or retested in accordance with § 180.407.	HM Compliance.
382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.	Controlled Substances.
382.303(a)	Failing to conduct post-accident testing on driver for alcohol	Controlled Substances
382.303(b)	Failing to conduct post-accident testing on driver for controlled substances	Controlled Substances.
382.305(b)(1)	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	Controlled Substances.
382.305(b)(2)	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.	Controlled Substances.
382.309	Using a driver without a return to duty test	Controlled Substances.
382.503	Allowing a driver to perform a safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by a substance abuse professional, as required by § 382.605.	Controlled Substances.
383.3(a)/383.23(a)	Using a driver who does not possess a valid CDL	Driver Fitness.
391.45(a)	Using a driver not medically examined and certified	Driver Fitness.
391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.	Driver Fitness.
391.51(a)	Failing to maintain a driver qualification file on each driver employed	Driver Fitness.
392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.	Unsafe Driving.
392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.	Unsafe Driving.
392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.	Vehicle Maintenance.
395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).	HOS Compliance.
395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).	HOS Compliance.

TABLE 3–1 TO APPENDIX B TO PART 385—CRITICAL REGULATIONS—Continued

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.	HOS Compliance.
395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 11 consecutive hours prior to driving.	HOS Compliance.
395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.	HOS Compliance.
395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours..	HOS Compliance.
395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.	HOS Compliance.
395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.	HOS Compliance.
395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.	HOS Compliance.
395.8(a)	Failing to require driver to make a record of duty status	HOS Compliance.
395.8(e)	False reports of records of duty status	HOS Compliance
395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.	HOS Compliance.
395.8(k)(1)	Failing to preserve driver's record of duty status for 6 months	HOS Compliance.
395.8(k)(1)	Failing to preserve driver's records of duty status supporting documents for 6 months.	HOS Compliance.
396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance	Vehicle Maintenance.

3.2 Acute Regulations

Another component in the SFD process is the set of 16 Acute regulations. A BASIC can be failed based on documentation of violation of a single instance of one of the acute regulations discovered during any investigation. Table 3–2 of this appendix contains cross references to acute regulations that are existing legal prohibitions and requirements set forth in and controlled by the language of the substantive violations in each section of title 49 of the CFR cross-referenced herein.

TABLE 3–2 TO APPENDIX B TO PART 385—ACUTE REGULATIONS

49 CFR Section	Description of violation	Behavior analysis and safety improvement category (BASIC)
177.801	Accepting for transportation or transporting a forbidden material	HM Compliance.
382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).	Controlled Substances.
382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).	Controlled Substances.
382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.	Controlled Substances.
382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.	Controlled Substances.
382.215	Using a driver known to have tested positive for a controlled substance, or to have otherwise violated § 382.215.	Controlled Substances.
382.305	Failing to implement a random controlled substances and/or an alcohol testing program.	Controlled Substances.
383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.	Driver Fitness.
383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.	Driver Fitness.
391.11(b)(4)	Using a physically unqualified driver	Driver Fitness.
391.15(a)	Using a disqualified driver	Driver Fitness.
396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs were made.	Vehicle Maintenance.
396.11(c)	Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.	Vehicle Maintenance.

3.3 Crash Indicator BASIC

A recordable crash, consistent with the definition for ''crash'' in 49 CFR 390.5, means an occurrence involving a CMV on a highway in motor carrier operations in commerce, including within Canada or Mexico, that results in (i) a fatality; (ii) in bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the crash; or (iii) in one or more motor vehicles incurring disabling damage that requires the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A motor carrier can only fail the Crash Indicator BASIC if the motor carrier incurs two or more recordable crashes within the 12 months before the investigation. FMCSA will then determine if the reportable crashes were preventable.

For motor carriers with two or more recordable crashes within the 12 months before the investigation, the investigator will:

(1) Determine the carrier's recordable crash rate. The recordable crash rate is the number of recordable crashes per million miles traveled by the carriers CMVs over the previous 12 months.

(2) If the recordable crash rate would cause the carrier to fail the Crash Indicator BASIC, calculate the preventable crash rate for the carrier by evaluating the preventability of the recordable crashes that have occurred in the 12 months before the investigation. Preventability will be determined according to the following standard: ''If a driver, who exercises normal judgment and foresight could have foreseen the possibility of the crash that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the crash was preventable.''

Preventability will be determined according to the standard set forth above. It is important to note that preventability is a different, higher standard than fault. The standard of preventability for a professional driver includes the expectation that he or she anticipated the possibility of the crash and adjusted his or her driving or behavior to avoid the crash.

In determining preventability, FMCSA may also follow the preventability guidance found on FMCSA's Web site at *http://www.fmcsa.dot.gov/safety-security/eta/index.htm*. This guidance was developed to assist in determining the preventability of a crash. This guidance, however, does not supplant the analytical judgment of FMCSA professionals making preventability determinations. Each crash must be judged individually, taking into account available evidence.

If the motor carrier's preventable crash rate exceeds the failure standard for the Crash Indicator BASIC, the motor carrier will fail that BASIC. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a preventable crash rate greater than 1.7 will fail the Crash Indicator BASIC. All other carriers with a preventable crash rate greater than 1.5 will fail the Crash Indicator BASIC.

4. SFD Methodology

As shown in Figure 4–1 of this appendix, under this methodology there are two major sources that could impact a motor carrier's SFD: (1) Driver/vehicle inspections; and (2) violations of the critical and acute regulations or preventable crashes documented during an investigation. As shown in Figure 4–1, data obtained under sources (1) and (2) align with the seven BASICs and are used to determine whether a carrier has failed any of the BASICs.

4.1 SFD Calculation

4.1.1 *Standards for Failed BASICs:* The BASICs were analyzed for their relationship with carrier crash risk. The BASICs with the strongest associations with crash risk have a stricter failure standard (*i.e.,* equivalent percentile) than those with less crash relationship. As a result, the failure standards for these two BASICs related to driver safety, Unsafe Driving and HOS Compliance, are distinguished from the others to place more emphasis on these types of violations consistent with current FMCSA research, which suggests that the majority of CMV crashes in which the motor carrier can be held accountable involve CMV driver error.

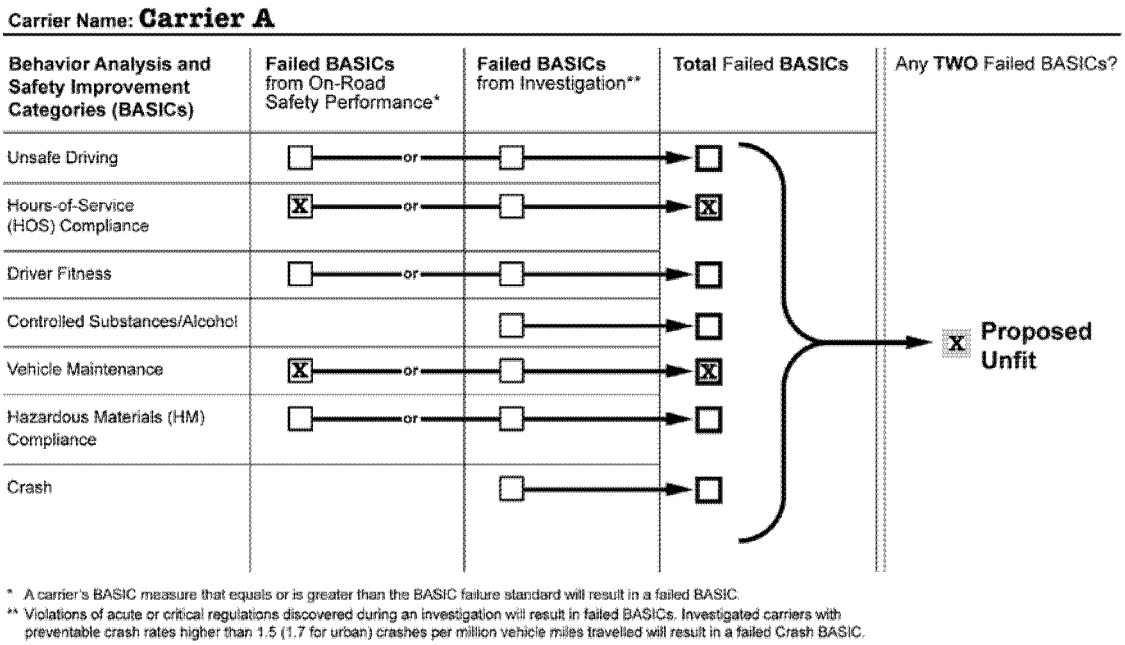
4.1.2 *Unfit.* If the carrier fails two BASICs through (1) inspection data, (2) an investigation, or (3) a combination of inspection and investigation data, then the carrier receives a proposed unfit SFD. For the purposes of the determination, there is no difference between a failed BASIC based on driver/vehicle inspection safety results and a failed BASIC based on violations of the critical and acute regulations found through investigation; either or both circumstances will produce a failed BASIC, and a combination of two or more failed BASICs results in a proposed unfit SFD for the carrier. If the carrier has not failed two BASICs, then the carrier would be permitted to continue operating.

4.2 Calculation Examples

To further demonstrate the methodology, three examples of how a proposed SFD of unfit is calculated are provided below.

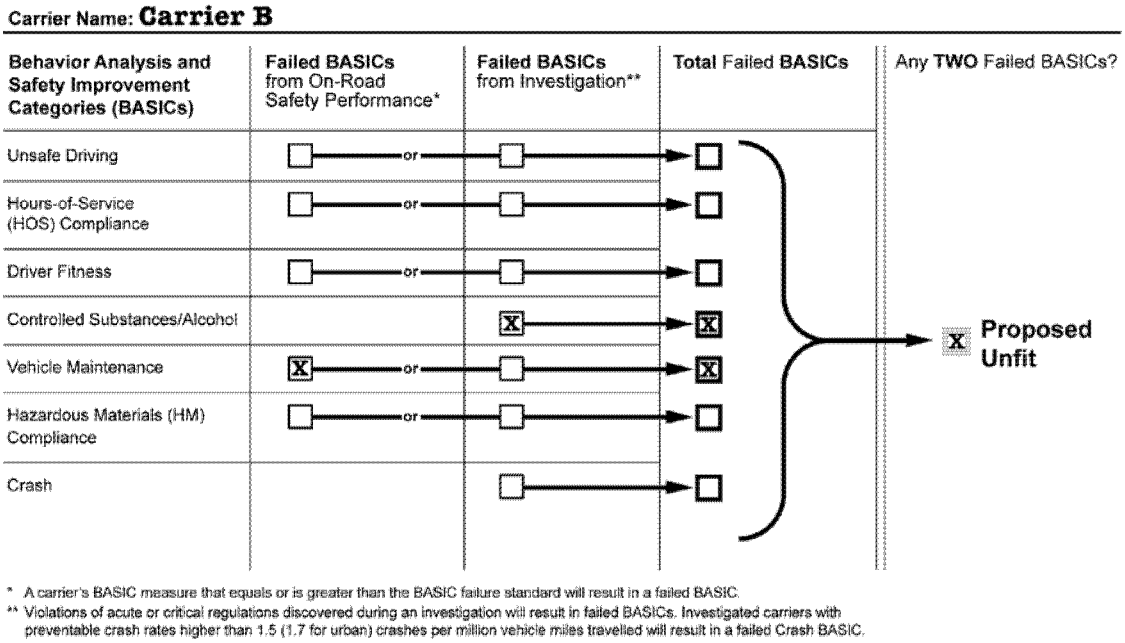
4.2.1 *Example 1—Proposed Unfit SFD Based on Inspection Data:* In the first example (see Figure 4–1 of this appendix), Carrier A had inspections that resulted in the discovery of several HOS Compliance BASIC-related violations. Based on the methodology described in section 2.4.2 of this appendix, the carrier's HOS Compliance BASIC measure exceeded the BASIC failure standard in Table 2–5 of this appendix, which caused the carrier to fail this BASIC. In addition, the motor carrier had violations that caused it to exceed the failure standards in the Vehicle Maintenance BASIC. Because there are two failed BASICs, this carrier would receive a proposed SFD of unfit.

Figure 4-1: Example 1 SFD Worksheet



4.2.2 *Example 2—Proposed Unfit SFD Based on Inspection Data and an Investigation:* In the second example (see Figure 4–2 of this appendix), Carrier B had inspections that resulted in the discovery of several Vehicle Maintenance BASIC-related violations. Based on the methodology described in section 2.4.5 of this appendix, the carrier's Vehicle Maintenance BASIC measure met or exceeded the BASIC failure standard in Table 2–7 of this appendix, which caused the carrier to fail this BASIC. This carrier also received an investigation where at least one critical regulation violation in the Controlled Substances and Alcohol BASIC, listed in section 3.1 of this appendix, was discovered, resulting in a failed Controlled Substances/Alcohol BASIC. Because the motor carrier has two failed BASICs, this carrier would receive an SFD of proposed unfit.

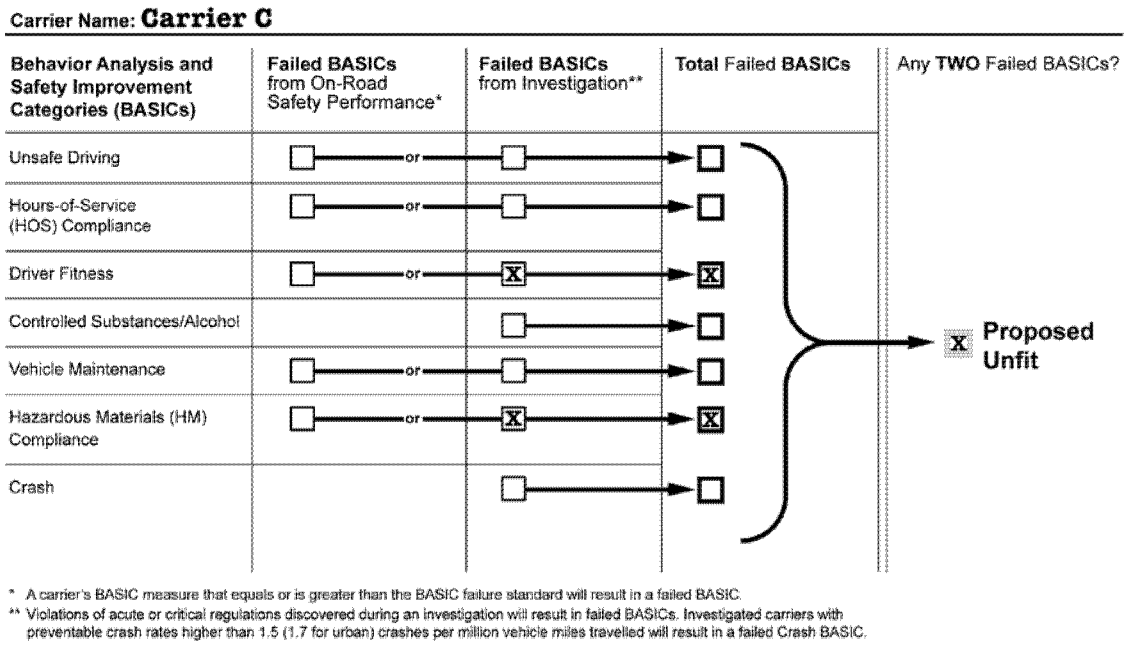
Figure 4-2: Example 2 SFD Worksheet



4.2.3 *Example 3—Proposed Unfit SFD Based on Investigation Findings:* In the third example (see Figure 4–3 of this appendix), Carrier C did not have any BASIC over the unfit threshold based on on-road safety performance, but during an investigation a

sufficient number of violations of either Critical or Acute regulations in two different BASICs were documented. Because two BASICs exceeded the failure standard for this carrier, this carrier would receive an SFD of proposed unfit.

Figure 4-3: Example 3 SFD Worksheet



5. Appendix B Violation Severity Tables

These tables provide cross-references to the violations used in the BASICs. The descriptions of the violations here are for convenience only and have no legal effect. The actual legal prohibitions and requirements are set forth in and controlled by the language of the violations in each section of title 49 of the CFR cross-referenced herein.

The Commercial Vehicle Safety Alliance (CVSA) North American Standard Inspection Levels I, II, IV, V, and VI would be considered compatible with these requirements.

TABLE 1—UNSAFE DRIVING BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.800(d)	Unnecessary delay in HM transportation to destination	HM Related	1
177.804(b)	Failure to comply with 49 CFR 392.80—Texting while Operating a CMV—Placardable HM.	Texting	10
177.804(c)	Fail to comply with 392.82—Using Mobile Phone while Operating a CMV—HM.	Phone Call	10
392.2	Failure to obey traffic control device (392.2C)	Dangerous Driving	5
392.2	Headlamps—Failing to dim when required (392.2DH)	Misc Violations	3
392.2	Following too close (392.2FC)	Dangerous Driving	5
392.2	Improper lane change (392.2LC)	Dangerous Driving	5
392.2	Lane Restriction violation (392.2LV)	Misc Violations	3
392.2	Improper passing (392.2P)	Dangerous Driving	5
392.2	Unlawfully parking and/or leaving vehicle in the roadway (392.2PK)	Other Driver Violations	1
392.2	Reckless driving (392.2R)	Reckless Driving	10
392.2	Railroad Grade Crossing violation (392.2RR)	Dangerous Driving	5
392.2	Speeding (392.2S)	Speeding Related	1
392.2	State/Local Laws—Speeding 6–10 miles per hour over the speed limit (392.2–SLLS2).	Speeding 2	4
392.2	State/Local Laws—Speeding 11–14 miles per hour over the speed limit (392.2–SLLS3).	Speeding 3	7
392.2	State/Local Laws—Speeding 15 or more miles per hour over the speed limit (392.2–SLLS4).	Speeding 4	10
392.2	State/Local Laws—Speeding work/construction zone (392.2–SLLSWZ)	Speeding 4	10
392.2	State/Local Laws—Operating a CMV while texting (392.2–SLLT)	Texting	10
392.2	Improper turns (392.2T)	Dangerous Driving	5
392.2	Failure to yield right of way (392.2Y)	Dangerous Driving	5
392.6	Scheduling run to necessitate speeding	Speeding Related	5
392.10(a)(1)	Failing to stop at railroad crossing—bus	Dangerous Driving	5

TABLE 1—UNSAFE DRIVING BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
392.10(a)(2)	Failing to stop at railroad crossing—chlorine	Dangerous Driving	5
392.10(a)(3)	Failing to stop at railroad crossing—placard	Dangerous Driving	5
392.10(a)(4)	Failing to stop at railroad crossing—Cargo Tank	Dangerous Driving	5
392.14	Failed to use caution for hazardous condition	Dangerous Driving	5
392.16	Failing to use seat belt while operating CMV	Seat Belt	7
392.22(a)	Failing to use hazard warning flashers	Other Driver Violations	1
392.60(a)	Unauthorized passenger on board CMV	Other Driver Violations	1
392.62	Unsafe bus operations	Other Driver Violations	1
392.62(a)	Bus—Standees forward of the standee line	Other Driver Violations	1
392.71(a)	Using or equipping a CMV with radar detector	Speeding Related	5
392.80(a)	Driving a CMV while Texting	Texting	10
392.80(a)	Driving a CMV while Texting (390.17DT)	Texting	10
392.82(a)(1)	Using a hand-held mobile telephone while operating a CMV	Phone Call	10
392.82(a)(2)	Allowing or requiring driver to use a hand-held mobile telephone while operating a CMV.	Phone Call	10
397.3	State/local laws ordinances regulations	HM Related	1
397.13	Smoking within 25 feet of HM vehicle	HM Related	1
398.4	Driving a vehicle to transport migrant workers in noncompliance with part 398.	Other Driver Violations	1

TABLE 2—HOS COMPLIANCE BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
392.2	State/Local Hours-of-Service (392.2H)	Hours	7
392.3	Operating a CMV while ill/fatigued	Jumping OOS/Driving Fatigued	10
392.3	Fatigue—Operate a passenger-carrying CMV while impaired by fatigue. (392.3–FPASS).	Jumping OOS/Driving Fatigued	10
392.3	Fatigue—Operate a property-carrying CMV while impaired by fatigue. (392.3–FPROP).	Jumping OOS/Driving Fatigued	10
392.3	Illness—Operate a CMV while impaired by illness or other cause. (392.3–I).	Jumping OOS/Driving Fatigued	10
395.1(h)(1)	15, 20, 70/80 HOS violations (Alaska-Property)	Hours	7
395.1(h)(2)	15, 20, 70/80 HOS violations (Alaska-Passenger)	Hours	7
395.1(h)(3)	Adverse driving conditions violations (Alaska)	Hours	7
395.1(o)	16 hour rule violation (Property)	Hours	7
395.3(a)(1)	Requiring or permitting driver to drive more than 11 hours	Hours	7
395.3	11 hour rule violation (Property) (395.3A1R)	Hours	7
395.3(a)(2)	Requiring or permitting driver to drive after 14 hours on duty	Hours	7
395.3	14 hour rule violation (Property) (395.3A2R)	Hours	7
395.3	Driving beyond 14 hour duty period (Property carrying vehicle) (395.3A2–PROP).	Hours	7
395.3	Driving beyond 11 hour driving limit in a 14 hour period. (Property Carrying Vehicle) (395.3A3–PROP).	Hours	7
395.3(a)(3)(ii)	Driving beyond 8 hour limit since the end of the last off duty or sleeper period of at least 30 minutes.	Hours	7
395.3(b)	60/70—hour rule violation	Hours	7
395.3(b)(1)	Driving after 60 hours on duty in a 7 day period. (Property carrying vehicle) (395.3B1–PROP).	Hours	7
395.3(b)(2)	Driving after 70 hours on duty in a 8 day period. (Property carrying vehicle)(395.3B2).	Hours	7
395.3(b)	60/70—hour rule violation (Property) (395.3BR)	Hours	7
395.3(c)	34-hour restart violation (Property)	Hours	7
395.5(a)(1)	10-hour rule violation (Passenger)	Hours	7
395.5(a)(1)	Driving after 10 hour driving limit (Passenger carrying vehicle) (395.5A1–PASS).	Hours	7
395.5(a)(2)	15—hour rule violation (Passenger)	Hours	7
395.5(a)(2)	Driving after 15 hours on duty (Passenger carrying vehicle) (395.5A2–PASS).	Hours	7
395.5(b)	60/70—hour rule violation (Passenger)	Hours	7
395.5(b)(1)	Driving after 60 hours on duty in a 7 day period. (Passenger carrying vehicle) (395.5B1–PASS).	Hours	7
395.5(b)(2)	Driving after 70 hours on duty in a 8 day period. (Passenger carrying vehicle) (395.5B2–PASS).	Hours	7
395.8	Driver's record of Duty Status (general/form and manner)	Other Log/Form & Manner	1
395.8(a)	No driver's record of duty status	Incomplete/Wrong Log	5
395.8(e)	False report of driver's record of duty status	False Log	7
395.8(f)(1)	Driver's record of duty status not current	Incomplete/Wrong Log	5

TABLE 2—HOS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
395.8(k)(2)	Driver failing to retain previous 7 days' logs	Incomplete/Wrong Log	5
395.13(d)	Driving after being declared out-of-service	Jumping OOS/Driving Fatigued	10
395.15(b)	Onboard recording device information requirements not met	Incomplete/Wrong Log	5
395.15(c)	Onboard recording device improper form and manner	Other Log/Form & Manner	1
395.15(f)	Onboard recording device failure and driver failure to reconstruct duty status.	Incomplete/Wrong Log	5
395.15(g)	On-board recording device information not available	EOBR Related	1
395.15(i)(5)	Onboard recording device does not display required information	Other Log/Form & Manner	1
398.6	Violation of HOS regulations—migrant workers	Hours	7

TABLE 3—DRIVER FITNESS BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.816	Driver training requirements	General Driver Qualification	4
383.21	Operating a CMV with more than one driver's license	License-related: High	8
383.21(a)	Operating a CMV with more than one driver's license	License-related: High	8
383.23(a)(2)	Operating a CMV without a CDL	License-related: High	8
383.25(a)	Operating on learner's permit without CDL holder (383.23(c))	License-related: High	8
383.25(a)(1)	Operating on learner's permit without CDL holder (383.23(c)(1))	License-related: High	8
383.25(a)(2)	Operating on learner's permit without valid driver's license (383.23(c)(2)).	License-related: High	8
383.51(a)	Driving a CMV (CDL) while disqualified	License-related: High	8
383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and in the state of driver's license issuance. (383.51A–NSIN).	License-related: Medium	5
383.51(a)	Driving a CMV while CDL is suspended for a non-safety-related reason and outside the state of driver's license issuance (383.51A–NSOUT).	License-related: Low	1
383.51(a)A	Driving a CMV while CDL is suspended for a safety-related or unknown reason and in the state of driver's license issuance. (383.51A–SIN).	License-related: High	8
383.51(a)	Driving a CMV while CDL is suspended for safety-related or unknown reason and outside the driver's license state of issuance. (383.51A–SOUT).	License-related: Medium	5
383.91(a)	Operating a CMV with improper CDL group	License-related: High	8
383.93(b)(1)	No double/triple trailer endorsement on CDL	License-related: High	8
383.93(b)(2)	No passenger vehicle endorsement on CDL	License-related: High	8
383.93(b)(3)	No tank vehicle endorsement on CDL	License-related: High	8
383.93(b)(4)	No HM endorsement on CDL	License-related: High	8
383.93(b)(5)	No school bus endorsement on CDL	License-related: High	8
383.93(b)(5)	License (CDL)—Operating a school bus without a school bus endorsement as described in 383.93(b)(5) (383.93B5LCDL).	License-related: High	8
383.95(a)	Violating airbrake restriction	License-related: High	8
386.72(b)	Failing to comply with Imminent Hazard OOS Order	Fitness/Jumping OOS	10
391.11	Unqualified driver	License-related: High	8
391.11(b)(1)	Interstate driver under 21 years of age	General Driver Qualification	4
391.11(b)(4)	Driver lacking physical qualification(s)	Physical	2
391.11(b)(5)	Driver lacking valid license for type vehicle being operated	License-related: High	8
391.11(b)(5)	Driver operating a CMV without proper endorsements or in violation of restrictions. (391.11B5–DEN).	License-related: High	8
391.11(b)(5)	Driver does not have a valid operator's license for the CMV being operated. (391.11B5–DNL).	License-related: High	8
391.11(b)(7)	Driver disqualified from operating CMV	License-related: High	8
391.15(a)	Driving a CMV while disqualified	License-related: High	8
391.15(a)	Driving a CMV while disqualified. Suspended for non-safety-related reason and in the state of driver's license issuance. (391.15A–NSIN).	License-related: Medium	5
391.15(a)	Driving a CMV while disqualified. Suspended for a non-safety-related reason and outside the state of driver's license issuance (391.15A–NSOUT)..	License-related: Low	1
391.15(a)	Driving a CMV while disqualified. Suspended for safety-related or unknown reason and in the state of driver's license issuance. (391.15A–SIN).	License-related: High	8
391.15(a)	Driving a CMV while disqualified. Suspended for a safety-related or unknown reason and outside the driver's license state of issuance. (391.15A–SOUT).	License-related: Medium	5
391.41(a)	Driver not in possession of medical certificate	Medical Certificate	1
391.41(a)	Operating a property-carrying vehicle without possessing a valid medical certificate (391.41A–F)..	Medical Certificate	1

TABLE 3—DRIVER FITNESS BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
391.41(a)	Operating a property-carrying vehicle without possessing a valid medical certificate. Previously Cited (391.41A–FPC).	Medical Certificate	1
391.41(a)	Operating a passenger-carrying vehicle without possessing a valid medical certificate. (391.41A–P).	Medical Certificate	1
391.43(h)	Improper medical examiner's certificate form	Medical Certificate	1
391.45(b)	Expired medical examiner's certificate	Medical Certificate	1
391.49(j)	No valid medical waiver in driver's possession	Medical Certificate	1
398.3(b)	Driver not physically qualified	Physical	2
398.3(b)(8)	No doctor's certificate in possession	Medical Certificate	1

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
385.103(c)	Fail to display current CVSA decal—Provisional Authority	Inspection Reports	4
392.2	Wheel (Mud) Flaps missing or defective (392.2WC)	Windshield/Glass/Markings	1
392.7	No pre-trip inspection	Inspection Reports	4
392.7(a)	Driver failing to conduct pre-trip inspection	Inspection Reports	4
392.7(b)	Driver failing to conduct a pre-trip inspection of intermodal equipment	Inspection Reports	4
392.8	Failing to inspect/use emergency equipment	Emergency Equipment	2
392.9	Failing to secure load	General Securement	1
392.9(a)	Failing to secure load	General Securement	1
392.9(a)(1)	Failing to secure cargo	General Securement	1
392.9(a)(2)	Failing to secure vehicle equipment	General Securement	1
392.9(a)(3)	Driver's view/movement is obstructed	General Securement	1
392.22(b)	Failing/improper placement of warning devices	Cab, Body, Frame	2
392.33	Operating CMV with lamps/reflectors obscured	Lighting	6
392.62(c)(1)	Bus—baggage/freight restricts driver operation	General Securement	1
392.62(c)(2)	Bus—Exit(s) obstructed by baggage/freight	General Securement	1
392.62(c)(3)	Passengers not protected from falling baggage	General Securement	1
392.63	Pushing/towing a loaded bus	Towing Loaded Bus	10
393.9	Inoperative required lamps	Clearance Identification Lamps/ Other.	2
393.9	Inoperative head lamps (393.9H)	Lighting	6
393.9	Inoperative tail lamp (393.9T)	Lighting	6
393.9	Inoperative turn signal (393.9TS)	Lighting	6
393.9(a)	Inoperative required lamps	Clearance Identification Lamps/ Other.	2
393.11	No/defective lighting devices/reflective devices/projected	Reflective Sheeting	3
393.11	Lower retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11LR).	Reflective Sheeting	3
393.11	No retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11N).	Reflective Sheeting	3
393.11	Retroreflective sheeting not affixed as required—Trailer manufactured on or after 12/1/1993 (393.11RT).	Reflective Sheeting	3
393.11	No side retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11S).	Reflective Sheeting	3
393.11	No retro reflective sheeting or reflex reflectors on mud flaps—Truck Tractor manufactured on or after 7/1/1997 (393.11TL).	Reflective Sheeting	3
393.11	No retroreflective sheeting/reflex reflectors—Truck Tractor manufactured on or after 7/1/1997 (393.11TT).	Reflective Sheeting	3
393.11	No upper body corners retroreflective sheeting/reflex reflectors—Truck Tractor manufactured on or after 7/1/1997 (393.11TU).	Reflective Sheeting	3
393.11	No upper reflex reflectors retroreflective sheeting/reflex reflectors—Trailer manufactured on or after 12/1/1993 (393.11UR).	Reflective Sheeting	3
393.13(a)	Retroreflective tape not affixed as required for Trailers manufactured after 12/1/1993.	Reflective Sheeting	3
393.13(b)	No retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3
393.13(c)(1)	No side retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(c)(2)	No lower rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(c)(3)	No upper rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(d)(1)	Improper side placement of retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.13(d)(2)	Improper lower rear placement of retroreflective sheeting or reflex reflective material requirements for vehicles manufactured before 12/1/1993.	Reflective Sheeting	3
393.13(d)(3)	Upper rear retroreflective sheeting or reflex reflective material as required for vehicles manufactured on or after 12/1/1993.	Reflective Sheeting	3
393.17	No/defective lamp/reflector-tow-away operation	Lighting	6
393.17(a)	No/defective lamps-towing unit-tow-away operation	Lighting	6
393.17(b)	No/defective tow-away lamps on rear unit	Lighting	6
393.19	Inoperative/defective hazard warning lamp	Lighting	6
393.23	Required lamp not powered by vehicle electricity	Clearance Identification Lamps/Other.	2
393.24(a)	Noncompliance with headlamp requirements	Lighting	6
393.24(b)	Noncompliant fog/driving lamps	Lighting	6
393.24(b)	Noncompliant fog or driving lamps (393.24BR)	Lighting	6
393.24(c)	Improper headlamp mounting	Lighting	6
393.24(d)	Improper head/auxiliary/fog lamp aiming	Lighting	6
393.25(a)	Improper lamp mounting	Lighting	6
393.25(b)	Lamps are not visible as required	Lighting	6
393.25(e)	Lamp not steady burning	Lighting	6
393.25(f)	Stop lamp violations	Lighting	6
393.26	Requirements for reflectors	Reflective Sheeting	3
393.28	Improper or no wiring protection as required	Other Vehicle Defect	3
393.30	Improper battery installation	Other Vehicle Defect	3
393.40	Inadequate brake system on a CMV	Brakes, All Others	4
393.41	No or defective parking brake system on CMV	Brakes, All Others	4
393.42	No brakes as required	Brakes, All Others	4
393.42(a)	Brake—Missing required brake. (393.42A–BM)	Brakes, All Others	4
393.42(a)	Brake—All wheels not equipped with brakes as required. (393.42A–BMAW).	Brakes, All Others	4
393.42(a)	Brake—Missing on a trailer steering axle. (393.42A–BM–TSA)	Brakes, All Others	4
393.43	No/improper breakaway or emergency braking	Brakes, All Others	4
393.43(a)	No/improper tractor protection valve	Brakes, All Others	4
393.43(d)	No or defective automatic trailer brake	Brakes, All Others	4
393.44	No/defective bus front brake line protection	Brakes, All Others	4
393.45	Brake tubing and hose adequacy	Brakes, All Others	4
393.45	Brake Tubing and Hose Adequacy—Connections to Power Unit (393.45PC).	Brakes, All Others	4
393.45	Brake Tubing and Hose Adequacy Under Vehicle (393.45UV)	Brakes, All Others	4
393.45(b)(2)	Failing to secure brake hose/tubing against mechanical damage (393.45(a)(4)).	Brakes, All Others	4
393.45(b)(2)	Failing to secure brake hose/tubing against mechanical damage	Brakes, All Others	4
393.45(b)(2)	Brake Hose or Tubing Chafing and/or Kinking—Connection to Power Unit (393.45B2PC).	Brakes, All Others	4
393.45(b)(2)	Brake Hose or Tubing Chafing and/or Kinking Under Vehicle (393.45B2UV).	Brakes, All Others	4
393.45(b)(3)	Failing to secure brake hose/tubing against high temperatures	Brakes, All Others	4
393.45(d)	Brake connections with leaks/constrictions	Brakes, All Others	4
393.45(d)	Brake Connections with Constrictions—Connection to Power Unit (393.45DCPC).	Brakes, All Others	4
393.45(d)	Brake Connections with Constrictions Under Vehicle (393.45DCUV)	Brakes, All Others	4
393.45(d)	Brake Connections with Leaks—Connection to Power Unit (393.45DLPC).	Brakes, All Others	4
393.45(d)	Brake Connections with Leaks Under Vehicle (393.45DLUV)	Brakes, All Others	4
393.47	Inadequate/contaminated brake linings	Brakes, All Others	4
393.47(a)	Inadequate brakes for safe stopping	Brakes, All Others	4
393.47(b)	Mismatched brake chambers on same axle	Brakes, All Others	4
393.47(c)	Mismatched slack adjuster effective length	Brakes, All Others	4
393.47(d)	Insufficient brake linings	Brakes, All Others	4
393.47(e)	Clamp/Roto-Chamber type brake(s) out of adjustment	Brakes Out of Adjustment	4
393.47(f)	Wedge type brake(s) out of adjustment	Brakes Out of Adjustment	4
393.47(g)	Insufficient drum/rotor thickness	Brakes, All Others	4
393.48(a)	Inoperative/defective brakes	Brakes, All Others	4
393.48(a)	Brakes—Hydraulic Brake Caliper movement exceeds 1/8″ (0.125″) (3.175 mm) (393.48A–BCM).	Brakes, All Others	4
393.48(a)	Brakes—Missing or Broken Components (393.48A–BMBC)	Brakes, All Others	4
393.48(a)	Brakes—Rotor (disc) metal-to-metal contact (393.48A–BRMMC)	Brakes, All Others	4
393.48(a)	Brakes—Severe rusting of brake rotor (disc) (393.48A–BSRFS)	Brakes, All Others	4
393.48(b)(1)	Defective brake limiting device	Brakes, All Others	4
393.50	Inadequate reservoir for air/vacuum brakes	Brakes, All Others	4
393.50(a)	Failing to have sufficient air/vacuum reserve	Brakes, All Others	4

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.50(b)	Failing to equip vehicle—prevent reservoir air/vacuum leak	Brakes, All Others	4
393.50(c)	No means to ensure operable check valve	Brakes, All Others	4
393.50(d)	No or defective air reservoir drain valve	Brakes, All Others	4
393.51	No or defective brake warning device	Brakes, All Others	4
393.52(a)(1)	Insufficient braking force as percent of GVW or GCW	Brakes, All Others	4
393.53(a)	Automatic brake adjuster CMV manufactured on or after 10/20/1993—hydraulic brake.	Brakes, All Others	4
393.53(b)	Automatic brake adjuster CMV manufactured on or after 10/20/1994—air brake.	Brakes, All Others	4
393.53(c)	Brake adjustment indicator CMV manufactured on or after 10/20/1994—external automatic adjustment.	Brakes, All Others	4
393.55(a)	ABS—all CMVs manufactured on or after 3/1/1999 with hydraulic brakes.	Brakes, All Others	4
393.55(b)	ABS—malfunction indicators for hydraulic brake system	Brakes, All Others	4
393.55(c)(1)	ABS—all tractors manufactured on or after 3/1/1997 air brake system	Brakes, All Others	4
393.55(c)(2)	ABS—all other CMVs manufactured on or after 3/1/1998 air brake system.	Brakes, All Others	4
393.55(d)(1)	ABS—malfunctioning circuit/signal—truck tractor manufactured on or after 3/1/1997, single-unit CMV manufactured on or after 3/1/1998.	Brakes, All Others	4
393.55(d)(2)	ABS—malfunctioning indicator to cab of towing CMV manufactured on or after 3/1/2001.	Brakes, All Others	4
393.55(d)(3)	No or Defective ABS Malfunction Indicator for towed vehicles on vehicles manufactured after February 2001.	Brakes, All Others	4
393.55(e)	ABS—malfunctioning lamps towed CMV manufactured on or after 3/1/1998.	Brakes, All Others	4
393.60	Windshield—Obstructed (393.60EWS)	Windshield/Glass/Markings	1
393.60(b)	Windshields required	Windshield/Glass/Markings	1
393.60(c)	Damaged or discolored windshield	Windshield/Glass/Markings	1
393.60(d)	Glazing permits less than 70 percent of light	Windshield/Glass/Markings	1
393.61	Inadequate or missing truck side windows	Windshield/Glass/Markings	1
393.61	Inadequate or missing truck side windows (393.61(a))	Windshield/Glass/Markings	1
393.62(a)	No or defective bus emergency exits—Bus manufactured on or after 9/1/1994.	Windshield/Glass/Markings	1
393.62(b)	No or defective bus emergency exits—Bus manufactured on or after 9/1/1973 but before 9/1/1994.	Windshield/Glass/Markings	1
393.62(c)	No or defective bus emergency exit windows—Bus manufactured before 9/1/1973.	Windshield/Glass/Markings	1
393.62(d)	No/defective Safety glass/push-out window—Bus manufactured before 9/1/1973.	Windshield/Glass/Markings	1
393.62(e)	No or inadequate bus emergency exit marking—Bus manufactured on or after 9/1/1973.	Windshield/Glass/Markings	1
393.65	Fuel system requirements	Fuel Systems	1
393.65(b)	Improper location of fuel system	Fuel Systems	1
393.65(c)	Improper securement of fuel tank	Fuel Systems	1
393.65(f)	Improper fuel line protection	Fuel Systems	1
393.67	Fuel tank requirement violations	Fuel Systems	1
393.67(c)(7)	Fuel tank fill pipe cap missing	Fuel Systems	1
393.67(c)(8)	Improper fuel tank safety vent	Fuel Systems	1
393.68	Compressed natural gas (CNG) fuel container does not conform to regulations.	Other Vehicle Defect	3
393.70	Fifth wheel	Coupling Devices	3
393.70(a)	Defective coupling device—improper tracking	Coupling Devices	3
393.70(b)	Defective/improper fifth wheel assemblies	Coupling Devices	3
393.70(b)	Defective/improper fifth wheel assembly upper half (393.70B1II)	Coupling Devices	3
393.70(b)(2)	Defective fifth wheel locking mechanism	Coupling Devices	3
393.70(c)	Defective coupling devices for full trailer	Coupling Devices	3
393.70(d)	No/improper safety chains/cables for full trailer	Coupling Devices	3
393.70(d)(8)	Improper safety chain attachment	Coupling Devices	3
393.71	Improper coupling driveaway/tow-away operation	Coupling Devices	3
393.71(g)	Prohibited towing connection/device	Coupling Devices	3
393.71(h)	Towbar requirement violations	Coupling Devices	3
393.71(h)(10)	No/improper safety chains/cables for towbar	Coupling Devices	3
393.75	Tires/tubes (general)	Tires	8
393.75(a)	Flat tire or fabric exposed	Tires	8
393.75(a)(1)	Tire—ply or belt material exposed	Tires	8
393.75(a)(2)	Tire—tread and/or sidewall separation	Tires	8
393.75(a)(3)	Tire—flat and/or audible air leak	Tires	8
393.75(a)(4)	Tire—cut exposing ply and/or belt material	Tires	8
393.75(b)	Tire—front tread depth less than 4/32 of inch	Tires	8
393.75(c)	Tire—other tread depth less than 2/32 of inch	Tires	8

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.75(d)	Tire—bus regrooved/recap on front wheel	Tires	8
393.75(e)	Tire—regrooved on front wheel of truck/truck-tractor	Tire vs. Load	3
393.75(f)	Tire—exceeding weight rating of tire	Tire vs. Load	3
393.75(f)	Weight carried exceeds tire load limit (393.75(f)(1))	Tire vs. Load	3
393.75(h)(1)	Tire underinflated (393.75(f)(2))	Tire vs. Load	3
393.75(h)	Tire underinflated	Tire vs. Load	3
393.76	Sleeper berth requirement violations	Other Vehicle Defect	3
393.77	Defective and/or prohibited heaters	Other Vehicle Defect	3
393.77(b)(11)	Bus heater fuel tank location	Other Vehicle Defect	3
393.77(b)(5)	Protection of operating controls from tampering	Other Vehicle Defect	3
393.78	Windshield wipers inoperative/defective	Windshield/Glass/Markings	1
393.79	Defroster/Defogger inoperative	Windshield/Glass/Markings	1
393.80	Failing to equip vehicle with two rear vision mirrors	Other Vehicle Defect	3
393.81	Horn inoperative	Other Vehicle Defect	3
393.82	Speedometer inoperative/inadequate	Other Vehicle Defect	3
393.83(a)	Exhaust system location	Exhaust Discharge	1
393.83(b)	Exhaust discharge fuel tank/filler tube	Exhaust Discharge	1
393.83(c)	Improper exhaust—bus (gasoline)	Exhaust Discharge	1
393.83(d)	Improper exhaust—bus (diesel)	Exhaust Discharge	1
393.83(e)	Improper exhaust discharge (not rear of cab)	Exhaust Discharge	1
393.83(f)	Improper exhaust system repair (patch/wrap)	Exhaust Discharge	1
393.83(g)	Exhaust leak under truck cab and/or sleeper	Exhaust Discharge	1
393.83(h)	Exhaust system not securely fastened	Exhaust Discharge	1
393.84	Inadequate floor condition	Cab, Body, Frame	2
393.86	No or improper rearend protection	Cab, Body, Frame	2
393.86(a)(1)	Rear impact guards—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(2)	Impact guard width—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(3)	Impact guard height—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(4)	Impact guard rear—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(a)(5)	Cross-sectional vertical height—all trailers/semitrailers manufactured on or after 1/26/98.	Cab, Body, Frame	2
393.86(b)(1)	Rear Impact Guards—motor vehicles manufactured after 12/31/52, see exceptions.	Cab, Body, Frame	2
393.87	Warning flag required on projecting load	Warning Flags	1
393.87(a)	Warning flag required on projecting load	Warning Flags	1
393.87(b)	Improper warning flag placement	Warning Flags	1
393.88	Improperly located television receiver	Cab, Body, Frame	2
393.89	Bus driveshaft not properly protected	Cab, Body, Frame	2
393.90	Bus—no or obscure standee line	Cab, Body, Frame	2
393.91	Bus—improper aisle seats	Cab, Body, Frame	2
393.93(a)	Bus—not equipped with seatbelt	Cab, Body, Frame	2
393.93(a)(3)	Seats not secured in conformance with FMVSS	Cab, Body, Frame	2
393.93(b)	Truck not equipped with seatbelt	Cab, Body, Frame	2
393.95(a)	No/discharged/unsecured fire extinguisher	Emergency Equipment	2
393.95(a)(1)(i)	No/discharged/unsecured fire extinguisher	Emergency Equipment	2
393.95(b)	No spare fuses as required	Emergency Equipment	2
393.95(b)	No spare fuses as required (393.95(c))	Emergency Equipment	2
393.95(f)	No/insufficient warning devices	Emergency Equipment	2
393.95(g)	HM—restricted emergency warning device	Emergency Equipment	2
393.100	Failure to prevent cargo shifting	General Securement	1
393.100(a)	Failure to prevent cargo shifting	General Securement	1
393.100(b)	Leaking/spilling/blowing/falling cargo	Improper Load Securement	7
393.100(c)	Failure to prevent cargo shifting	General Securement	1
393.102(a)	Improper securement system (tiedown assemblies)	Tiedown	3
393.102(a)(1)	Insufficient means to prevent movement	Failure to Prevent Movement	3
393.102(a)(1)(i)	Insufficient means to prevent forward movement	Failure to Prevent Movement	3
393.102(a)(1)(ii)	Insufficient means to prevent rearward movement	Failure to Prevent Movement	3
393.102(a)(1)(iii)	Insufficient means to prevent lateral movement	Failure to Prevent Movement	3
393.102(a)(2)	Tiedown assembly with inadequate working load limit	Tiedown	3
393.102(b)	Insufficient means to prevent vertical movement	Failure to Prevent Movement	3
393.102(c)	No equivalent means of securement	Improper Load Securement	7
393.104(a)	Inadequate/damaged securement device/system	Securement Device	1
393.104(b)	Damaged securement system/tiedowns	Securement Device	1
393.104(c)	Damaged vehicle structures/anchor points	Securement Device	1
393.104(d)	Damaged dunnage/bars/blocking-bracing	Securement Device	1
393.104(f)(1)	Knotted tiedown	Tiedown	3

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.104(f)(2)	Use of tiedown with improper repair.	Tiedown	3
393.104(f)(3)	Loose/unfastened tiedown.	Tiedown	3
393.104(f)(4)	No edge protection for tiedowns (393.104F4R)	Tiedown	3
393.106(a)	No/improper front end structure/headerboard	Securement Device	1
393.106(b)	Cargo not immobilized or secured	Failure to Prevent Movement	3
393.106(c)(1)	No means to prevent cargo from rolling	Failure to Prevent Movement	3
393.106(c)(2)	Cargo without direct contact/prevention from shifting	Failure to Prevent Movement	3
393.106(d)	Insufficient aggregate working load limit	Tiedown	3
393.110	Failing to meet minimum tiedown requirements	General Securement	1
393.110(b)	Insufficient tiedowns; without headerboard/blocking	Tiedown	3
393.110(c)	Insufficient tiedowns; with headerboard/blocking	Tiedown	3
393.110(d)	Large/odd-shaped cargo not adequately secured	Failure to Prevent Movement	3
393.112	Tiedown not adjustable by driver	Securement Device	1
393.114	No/improper front end structure	General Securement	1
393.114(b)(1)	Insufficient height for front-end structure	Securement Device	1
393.114(b)(2)	Insufficient width for front-end structure	Securement Device	1
393.114(d)	Front-end structure with large opening(s)	Securement Device	1
393.116	No/improper securement of logs	General Securement	1
393.116(d)(1)	Short, over ⅓ length past structure	Improper Load Securement	7
393.116(d)(2)	Short, insufficient/no tiedowns	Improper Load Securement	7
393.116(d)(3)	Short, tiedowns improperly positioned	Improper Load Securement	7
393.116(d)(4)	Short, no center stakes/high log not secured	Improper Load Securement	7
393.116(e)	Short, length; improper securement	Improper Load Securement	7
393.118	No/improper lumber/building materials. securement	General Securement	1
393.118(b)	Improper placement of bundles	Improper Load Securement	7
393.118(d)	Insufficient protection against lateral movement	Failure to Prevent Movement	3
393.118(d)(3)	Insufficient/improper arrangement of tiedowns	Tiedown	3
393.120	No/improper securement of metal coils	General Securement	1
393.120(b)(1)	Coil/vertical improper securement	Improper Load Securement	7
393.120(b)(2)	Coils, rows, eyes vertical—improper securement	Improper Load Securement	7
393.120(c)(1)	Coil/eye crosswise improper securement	Improper Load Securement	7
393.120(c)(2)	X-pattern on coil(s) with eyes crosswise	Improper Load Securement	7
393.120(d)(1)	Coil with eye lengthwise-improper securement	Improper Load Securement	7
393.120(d)(4)	Coils, rows, eyes length—improper securement.	Improper Load Securement	7
393.120(e)	No protection against shifting/tipping	Failure to Prevent Movement	3
393.122	No/improper securement of paper rolls	General Securement	1
393.122(b)	Rolls vertical—improper securement	Improper Load Securement	7
393.122(c)	Rolls vertical/split—improper securement	Improper Load Securement	7
393.122(d)	Rolls vertical/stacked—improper securement	Improper Load Securement	7
393.122(e)	Rolls crosswise—improper securement	Improper Load Securement	7
393.122(f)	Rolls crosswise/stacked load—improperly secured	Improper Load Securement	7
393.122(g)	Rolls length—improper securement	Improper Load Securement	7
393.122(h)	Rolls lengthwise/stacked—improper securement	Improper Load Securement	7
393.122(i)	Improper securement—rolls on flatbed/curtain-sided vehicle	Improper Load Securement	7
393.124	No/improper securement of concrete pipe	General Securement	1
393.124(b)	Insufficient working load limit—concrete pipes	Tiedown	3
393.124(c)	Improper blocking of concrete pipe	Improper Load Securement	7
393.124(d)	Improper arrangement of concrete pipe	Improper Load Securement	7
393.124(e)	Improper securement, up to 45 in. diameter	Improper Load Securement	7
393.124(f)	Improper securement, greater than 45 inch diameter	Improper Load Securement	7
393.126	Fail to ensure intermodal container secured	General Securement	1
393.126(b)	Damaged/missing tiedown/securement device	Securement Device	1
393.126(c)(1)	Lower corners of container not on vehicle/structure	Securement Device	1
393.126(c)(2)	All corners of chassis not secured	Improper Load Securement	7
393.126(c)(3)	Front and rear of container not secured independently	Improper Load Securement	7
393.126(d)(1)	Empty container not properly positioned	Improper Load Securement	7
393.126(d)(2)	Empty container, more than 5 foot overhang	Improper Load Securement	7
393.126(d)(4)	Empty container—not properly secured	Improper Load Securement	7
393.128	No/improper securement of vehicles	General Securement	1
393.128(b)(1)	Vehicle not secured—front and rear	Improper Load Securement	7
393.128(b)(2)	Tiedown(s) not affixed to mounting points	Improper Load Securement	7
393.128(b)(3)	Tiedown(s) not over/around wheels	Improper Load Securement	7
393.130	No/improper heavy vehicle/machinery securement	General Securement	1
393.130(b)	Item not properly prepared for transport	Improper Load Securement	7
393.130(c)	Improper restraint/securement of item	Improper Load Securement	7
393.132	No/improper securement of crushed vehicles	General Securement	1
393.132(b)	Prohibited use of synthetic webbing	Securement Device	1
393.132(c)	Insufficient tiedowns per stack cars	Tiedown	3
393.132(c)(5)	Insufficient means to retain loose parts	Improper Load Securement	7

TABLE 4—VEHICLE MAINTENANCE BASIC VIOLATIONS—Continued

49 CFR Section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
393.134	No/improper securement of roll/hook container	General Securement	1
393.134(b)(1)	No blocking against forward movement	Failure to Prevent Movement	3
393.134(b)(2)	Container not secured to front of vehicle	Improper Load Securement	7
393.134(b)(3)	Rear of container not properly secured	Improper Load Securement	7
393.136	No/improper securement of large boulders	General Securement	1
393.136(b)	Improper placement/positioning of boulder	Improper Load Securement	7
393.136(c)(1)	Boulder not secured with chain	Improper Load Securement	7
393.136(d)	Improper securement—cubic boulder	Improper Load Securement	7
393.136(e)	Improper securement—non-cubic boulder with stable base	Improper Load Securement	7
393.136(f)	Improper securement—non-cubic boulder with unstable base	Improper Load Securement	7
393.201(a)	Frame cracked/loose/sagging/broken	Cab, Body, Frame	2
393.201(b)	Bolts securing cab broken/loose/missing	Cab, Body, Frame	2
393.201(c)	Frame rail flange improperly bent/cut/notched	Cab, Body, Frame	2
393.201(d)	Frame accessories improperly attached	Cab, Body, Frame	2
393.201(e)	Prohibited holes drilled in frame rail flange	Cab, Body, Frame	2
393.203	Cab/body parts requirements violations	Cab, Body, Frame	2
393.203(a)	Cab door missing/broken	Cab, Body, Frame	2
393.203(b)	Cab/body improperly secured to frame	Cab, Body, Frame	2
393.203(c)	Hood not securely fastened	Cab, Body, Frame	2
393.203(d)	Cab seats not securely mounted	Cab, Body, Frame	2
393.203(e)	Cab front bumper missing/unsecured/protruding	Cab, Body, Frame	2
393.205(a)	Wheel/rim cracked or broken	Wheels, Studs, Clamps, Etc	2
393.205(b)	Stud/bolt holes elongated on wheels	Wheels, Studs, Clamps, Etc	2
393.205(c)	Wheel fasteners loose and/or missing	Wheels, Studs, Clamps, Etc	2
393.207(a)	Axle positioning parts defective/missing	Suspension	7
393.207(b)	Adjustable axle locking pin missing/disengaged	Suspension	7
393.207(c)	Leaf spring assembly defective/missing	Suspension	7
393.207(d)	Coil spring cracked and/or broken	Suspension	7
393.207(e)	Torsion bar cracked and/or broken	Suspension	7
393.207(f)	Air suspension pressure loss	Suspension	7
393.207(g)	No/defective air suspension exhaust control	Suspension	7
393.209(a)	Steering wheel not secured/broken	Steering Mechanism	6
393.209(b)	Excessive steering wheel lash	Steering Mechanism	6
393.209(c)	Loose steering column	Steering Mechanism	6
393.209(d)	Steering system components worn/welded/missing	Steering Mechanism	6
393.209(e)	Power steering violations	Steering Mechanism	6
396.1	Must have knowledge of and comply with regulations	Inspection Reports	4
396.3(a)(1)	Inspection/repair and maintenance parts and accessories	Wheels, Studs, Clamps, Etc	2
396.3(a)(1)	Brakes (general) (396.3A1B)	Brakes, All Others	4
396.3(a)(1)	Brake out of adjustment (396.3A1BA)	Brakes Out of Adjustment	4
396.3(a)(1)	Brake-air compressor violation (396.3A1BC)	Brakes, All Others	4
396.3(a)(1)	Brake-defective brake drum (396.3A1BD)	Brakes, All Others	4
396.3(a)(1)	Brake-reserve system pressure loss (396.3A1BL)	Brakes, All Others	4
396.3(a)(1)	Tires (general) (396.3A1T)	Tires	8
396.5	Excessive oil leaks	Other Vehicle Defect	3
396.5(a)	Failing to ensure that vehicle is properly lubricated	Other Vehicle Defect	3
396.5(a)	Hubs—No visible or measurable lubricant showing in the hub—inner wheel (396.5A–HNLIW).	Wheels, Studs, Clamps, Etc	2
396.5(a)	Hubs—No visible or measurable lubricant showing in the hub—outer wheel (396.5A–HNLOW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Oil and/or grease leak	Other Vehicle Defect	3
396.5(b)	Hubs—Oil and/or Grease Leaking from hub—inner wheel (396.5B–HLIW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—oil and/or Grease Leaking from hub—outer wheel (396.5B–HLOW).	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—Wheel seal leaking—inner wheel (396.5B–HWSLIW)	Wheels, Studs, Clamps, Etc	2
396.5(b)	Hubs—Wheel seal leaking—outer wheel (396.5B–HWSLOW)	Wheels, Studs, Clamps, Etc	2
396.7	Unsafe operations forbidden	Other Vehicle Defect	3
396.9(c)(2)	Operating an OOS vehicle	Vehicle Jumping OOS	10
396.9(d)(2)	Failure to correct defects noted on inspection report	Inspection Reports	4
396.11	No or inadequate driver vehicle inspection report	Inspection Reports	4
396.13(c)	No reviewing driver's signature on Driver Vehicle Inspection Report (DVIR).	Inspection Reports	4
396.17(c)	Operating a CMV without periodic inspection	Inspection Reports	4
398.5(a)	Operating a motor vehicle not in compliance with parts and accessories regulations—migrant workers (398.5).	Other Vehicle Defect	3
398.7	Failure to inspect or maintain motor vehicle to ensure safe and proper operating condition—migrant workers.	Inspection Reports	4
399.207	Vehicle access requirements violations	Cab, Body, Frame	2
399.211	Inadequate maintenance of driver access	Cab, Body, Frame	2

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
171.2(a)	Failure to comply with HM regulations	HM Other	2
171.2(b)	Failure to comply with the requirements for HM transportation (including labeling and handling).	HM Other	2
171.2(c)	Representing a package./container for HM not meeting specs	Markings—HM	5
171.2(f)	Transporting HM not in accordance with this part	Package Integrity—HM	8
171.2(g)	Cargo tank does not comply with HM Regulations	Package Integrity—HM	8
171.2(k)	Representing vehicle with HM, none present	Markings—HM	5
172.200(a)	No shipping paper provided by offeror	Documentation—HM	3
172.201(a)(1)	HM not distinguished from non-HM	Documentation—HM	3
172.201(a)(2)	HM description not printed legibly in English	Documentation—HM	3
172.201(a)(3)	HM description contains abbreviation or code	Documentation—HM	3
172.201(a)(4)	Additional information not after HM basic description	Documentation—HM	3
172.201(c)	Failure to list page number of pages	Documentation—HM	3
172.201(d)	Emergency Response phone number not listed	Documentation—HM	3
172.202(a)(2)	Improper shipping name (172.202(a)(1))	Documentation—HM	3
172.202(a)(3)	Improper hazard class (172.202(a)(2))	Documentation—HM	3
172.202(a)(1)	Wrong or no ID number (172.202(a)(3)	Documentation—HM	3
172.202(a)(4)	No packing group listed	Documentation—HM	3
172.202(a)(5)	Total quantity not listed	Documentation—HM	3
172.202(b)	Basic description not in proper sequence	Documentation—HM	3
172.202(c)	Total quantity improper location	Documentation—HM	3
172.202(e)	Non Hazardous Material entered with class or ID#	Documentation—HM	3
172.203(a)	Exemption number not listed	Documentation—HM	3
172.203(b)	Limited quantity not shown	Documentation—HM	3
172.203(c)(1)	Hazardous substance entry missing	Documentation—HM	3
172.203(c)(2)	RQ not on shipping paper	Documentation—HM	3
172.203(d)(1)	Radionuclide name not on shipping paper	Documentation—HM	3
172.203(d)(10)	No indication for Highway Route Controlled Quantity of Class 7 "HRCQ" on shipping paper.	Documentation—HM	3
172.203(d)(2)	No RAM physical or chemical form	Documentation—HM	3
172.203(d)(3)	No RAM activity	Documentation—HM	3
172.203(d)(4)	No RAM label category	Documentation—HM	3
172.203(d)(5)	No RAM transport index	Documentation—HM	3
172.203(d)(6)	No fissile radioactive entry	Documentation—HM	3
172.203(d)(7)	No DOE/NRC package approval notation	Documentation—HM	3
172.203(d)(8)	Export package or foreign made package not marked with IAEA Certificate.	Documentation—HM	3
172.203(d)(9)	No Exclusive Use notation	Documentation—HM	3
172.203(e)	No empty packaging noted	Documentation—HM	3
172.203(h)(1)	No qt/nqt for anhydrous ammonia	Documentation—HM	3
172.203(h)(2)	No notation for QT/NQT for Liquified Petroleum Gas	Documentation—HM	3
172.203(k)	No technical name for nos entry	Documentation—HM	3
172.203(m)	No Poison Inhalation Hazard and/or Hazard Zone	Documentation—HM	3
172.203(n)	No "hot" on shipping paper	Documentation—HM	3
172.203(o)	No temperature controls noted for Class 4.1 or Class 5.2	Documentation—HM	3
172.205	Hazardous waste manifest not as required	Documentation—HM	3
172.300	Failing to comply with marking requirements	Markings—HM	5
172.301	Non-bulk package marking—general	Markings—HM	5
172.301(a)	No ID number on side/ends of non-bulk package—large quantity of single HM.	Markings—HM	5
172.301(a)(1)	No proper shipping name and/or ID# marking on non-bulk	Markings—HM	5
172.301(b)	No technical name on non-bulk	Documentation—HM	3
172.301(c)	No special permit number on non-bulk package	Documentation—HM	3
172.301(d)	No consignee/consignor on non-bulk	Documentation—HM	3
172.302	Marking requirements bulk packagings	Markings—HM	5
172.302(a)	No ID number (portable and cargo tank)	Markings—HM	5
172.302(b)	Bulk package marking incorrect size	Markings—HM	5
172.302(c)	No special permit number on bulk package	Documentation—HM	3
172.303(a)	Prohibited HM marking on package	Markings—HM	5
172.304(a)(1)	Package marking not durable, English, or print	Markings—HM	5
172.304(a)(2)	Marking not on sharply contrasting color	Markings—HM	5
172.304(a)(3)	Marking obscured by label or attachments	Markings—HM	5
172.304(a)(4)	Marking not away from other marking	Markings—HM	5
172.308(a)	Package marked with unauthorized abbreviation	Markings—HM	5
172.310(a)	No gross weight on radioactive materials package greater than 50 KG	Markings—HM	5
172.310(b)	Radioactive materials package not marked "Type A or B"	Markings—HM	5
172.312(a)(2)	No package orientation arrows	Cargo Protection—HM	4
172.312(b)	Prohibited use of orientation arrows	Cargo Protection—HM	4
172.313(a)	No "inhalation hazard" on package	Markings—HM	5
172.313(b)	No "poison" on non-bulk plastic package	Markings—HM	5

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
172.316(a)	Other regulated material non-bulk package not marked	Markings—HM	5
172.320(a)	Class 1 package not marked with ex-number	Markings—HM	5
172.322(b)	No marine pollutant marking on bulk packaging	Markings—HM	5
172.324	Non-bulk hazardous substance not marked	Markings—HM	5
172.325(a)	No ''hot'' marking for bulk elevated temperature (172.325)	Markings—HM	5
172.325(a)	Elevated temperature not marked ''Hot''	Markings—HM	5
172.325(b)	Improperly marked molten aluminum/sulphur	Markings—HM	5
172.326(a)	Portable tank not marked with proper shipping name or ID#	Markings—HM	5
172.326(b)	No portable tank owner or lessee marking	Markings—HM	5
172.326(c)(1)	No ID number marking on vehicle carrying portable tank	Markings—HM	5
172.326(c)(2)	Shipper failed to provide ID number to carrier	Markings—HM	5
172.328	No ID number displayed on a cargo tank	Markings—HM	5
172.328(a)	Shipper failed to provide or affix ID number for cargo tank	Markings—HM	5
172.328(b)	Cargo tank not marked for class 2	Markings—HM	5
172.328(c)	No quenched and tempered steel (QT)/other than quenched and tempered steel (NQT) marked on cargo tank (MC 330/331).	Markings—HM	5
172.328(d)	Fail to mark manual remote shutoff device	Markings—HM	5
172.330(a)(2)	Tank car tank (non cylinder) not marked as required	Markings—HM	5
172.330(b)	Motor vehicle with tank not marked	Markings—HM	5
172.331	Markings for other bulk packages	Markings—HM	5
172.332	Required ID markings displayed	Markings—HM	5
172.334	Prohibited ID number marking	Markings—HM	5
172.334(a)	ID # displayed on Class 7/Class 1/Dangerous or Subsidiary placard	Markings—HM	5
172.336(b)	ID numbers not properly displayed	Markings—HM	5
172.336(c)(1)	Failing to display ID numbers on compartment cargo tank in sequence	Markings—HM	5
172.338	Carrier failed to replace missing ID number	Markings—HM	5
172.400	Labeling requirements	Markings—HM	5
172.400(a)	Package/containment not labeled as required	Markings—HM	5
172.401	Prohibited labeling	Markings—HM	5
172.402	Failing to affix additional labels when required	Markings—HM	5
172.402(a)	No label for subsidiary hazard	Markings—HM	5
172.402(b)	Display of class number on label	Markings—HM	5
172.402(d)	Subsidiary labeling for radioactive materials	Markings—HM	5
172.402(e)	Subsidiary labeling for class 1 (explosive) materials	Markings—HM	5
172.403(a)	Radioactive material label requirement	Markings—HM	5
172.403(f)	Radioactive material package-2 labels on opposite sides	Markings—HM	5
172.403(g)	Failed to label radioactive material properly	Markings—HM	5
172.403(g)(2)	Class 7 label—no activity/activity not in SI units	Markings—HM	5
172.404(a)	Mixed package not properly labeled	Markings—HM	5
172.404(b)	Failed to properly label consolidated package	Markings—HM	5
172.406(a)(1)	Label placement not as required	Markings—HM	5
172.406(c)	Multiple label placement not as required	Markings—HM	5
172.406(d)	Label not on contrasting background or no border	Markings—HM	5
172.406(e)	Failed to display duplicate label as required	Markings—HM	5
172.406(f)	Label obscured by marking or attachment	Markings—HM	5
172.502(a)(1)	Prohibited placarding	Markings—HM	5
172.502(a)(2)	Sign or device could be confused with HM placard	Markings—HM	5
172.504	Placards not in table 1 or 2	Markings—HM	5
172.504(a)	Vehicle not placarded as required	Markings—HM	5
172.504(b)	Dangerous placard violation	Markings—HM	5
172.505(a)	No placard for poison inhalation hazard	Markings—HM	5
172.505(b)	Not placarded for RAM and Corrosive when required	Markings—HM	5
172.505(c)	Placard for subsidiary dangerous when wet	Markings—HM	5
172.506(a)	Failed to provide placards shipper	Markings—HM	5
172.506(a)(1)	Placards not affixed to vehicle	Markings—HM	5
172.507	Not placardarded for RAM highway route controlled quantity	Markings—HM	5
172.512(a)	Freight container not placarded	Markings—HM	5
172.514(a)	Bulk package offered without placard	Markings—HM	5
172.514(b)	Bulk package with residue of HM not properly placarded	Markings—HM	5
172.516(a)	Placard not visible from direction it faces	Markings—HM	5
172.516(c)(1)	Placard not securely affixed or attached	Markings—HM	5
172.516(c)(2)	Placard not clear of appurtenance	Markings—HM	5
172.516(c)(4)	Placard improper location	Markings—HM	5
172.516(c)(5)	Placard not reading horizontally	Markings—HM	5
172.516(c)(6)	Placard damaged, deteriorated, or obscured	Markings—HM	5
172.516(c)(7)	Placard not on contrasting background or border	Markings—HM	5
172.519	Placard does not meet specifications	Markings—HM	5
172.600(c)	Emergency Response (ER) information not available	Documentation—HM	3
172.602(a)	Emergency response information missing	Documentation—HM	3
172.602(b)	Form and manner of emergency response information	Documentation—HM	3

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
172.602(c)(1)	Maintenance/accessibility of emergency response information	Documentation—HM	3
172.604(a)	Failing to provide an emergency response phone number	Documentation—HM	3
173.24(a)	Non-bulk package mixed contents requirements	Cargo Protection—HM	4
173.24(b)	Failed to meet general package requirements	Load Securement—HM	10
173.24(b)(1)	Release of HM from package	Load Securement—HM	10
173.24(b)	Bulk package outage or filling limit requirements	Load Securement—HM	10
173.24b(d)(2)	Exceed max weight of rating on spec plate	Load Securement—HM	10
173.24(c)	Unauthorized packaging	Load Securement—HM	10
173.24(f)(1)	Closures for packagings must not be open or leaking	Load Securement—HM	10
173.25(a)	Failed to meet overpack conditions	Markings—HM	5
173.25(c)	Failure to label and package poison properly, when transported with edible material.	Markings—HM	5
173.29(a)	Empty package improper transportation	Cargo Protection—HM	4
173.30	Loading/unloading transport vehicles	Cargo Protection—HM	4
173.32(h)(3)	IM101/102 bottom outlets prohibited	Fire Hazard—HM	6
173.32(h)(3)(i)	IM101/102 bottom outlets authorized	Fire Hazard—HM	6
173.33(a)	Cargo tank general requirements	Cargo Protection—HM	4
173.33(b)	HM in cargo tank which had dangerous reaction with cargo tank	Cargo Protection—HM	4
173.33(c)(2)	Cargo tank not marked with design or maximum allowable working pressure (MAWP).	Cargo Protection—HM	4
173.35(a)	Intermediate bulk container requirements	Package Integrity—HM	8
173.35(d)	Liquid filled IBC with Ullage over 98%	Load Securement—HM	10
173.35(f)(2)	Intermediate bulk container (IBC) not secured to or within vehicle	Load Securement—HM	10
173.40	General packages requirements for poisons in cylinders	HM Other	2
173.54	Forbidden explosives, offering or transporting	Fire Hazard—HM	6
173.60	General packaging requirements for explosives	HM Other	2
173.315(a)	Cargo or portable tank class 2 exceeds maximum filling density	Load Securement—HM	10
173.315(j)(3)	Residential gas tank not secure in transport	Fire Hazard—HM	6
173.318(b)(10)	Fail to mark inlet, outlet, pressure relief device, or pressure control valve of cryogenic tanks.	Package Integrity—HM	8
173.318(g)	No or Improper One Way Travel Time (OWTT) marking on cryogenic cargo tank.	Markings—HM	5
173.412	General Type A package failing to meet additional design requirements	Package Integrity—HM	8
173.421(a)	Transporting limited quantity-radioactive material exceeds 0.5 millirem/hour.	Cargo Protection—HM	4
173.427(a)(6)(iv)	No instructions for exclusive use packaging-low specific activity	Cargo Protection—HM	4
173.427(a)(6)(vi)	Exclusive use low specific activity (LSA) radioactive material not marked ''Radioactive-LSA''.	Markings—HM	5
173.427(a)(6)(iv)	No instructions for exclusive use packaging-low specific activity	Cargo Protection—HM	4
173.427(a)(vi)	Exclusive use low specific activity (LSA) radioactive material not marked ''Radioactive-LSA''.	Markings—HM	5
173.431	Exceeded activity limits Type A or Type B package	Load Securement—HM	10
173.441(a)	Exceeding radiation level limitations allowed for transport	Cargo Protection—HM	4
173.441(b)	Exceeding radiation level allowed for transport of RAM under exclusive use provisions.	Load Securement—HM	10
173.442(b)(1)	External temperature of package exceeds 50 degrees Celsius (122 degrees F).	Cargo Protection—HM	4
173.442(b)(2)	External temperature of package exceeds 85 degrees Celsius (185 degrees F).	Cargo Protection—HM	4
173.443(a)	Radioactive contamination exceeds limits	Load Securement—HM	10
173.447	RAM transport storage violation	Cargo Protection—HM	4
173.448	General RAM transport requirements	Cargo Protection—HM	4
177.801	Accepting/transporting HM not prepared properly	HM Other	2
177.804	Failure to comply with FMCSR 49 CFR part 383 and 49 CFR parts 390 through 397.	HM Other	2
177.817	Shipping papers required	Documentation—HM	3
177.817(a)	No shipping papers (carrier)	Documentation—HM	3
177.817(b)	Shipper certification missing (when required)	Documentation—HM	3
177.817(e)	Shipping paper accessibility	Documentation—HM	3
177.823(a)	No placards/markings when required	Markings—HM	5
177.834	Load securement of different HM packages	Fire Hazard—HM	6
177.834(a)	Package not secure in vehicle	Load Securement—HM	10
177.834(b)	Package not loaded according to orientation marks	Cargo Protection—HM	4
177.834(c)	Smoking while loading or unloading	Fire Hazard—HM	6
177.834(f)	Using a tool likely to cause damage to the closure of any package or container.	Load Securement—HM	10
177.834(i)	Attendance of cargo tank—(load or unload)	Cargo Protection—HM	4
177.834(j)	Manholes and valves not closed or leak free	Cargo Protection—HM	4
177.834(m)(1)	Securing specification 106a or 110a tanks	Cargo Protection—HM	4
177.834(n)	Improper loading-specification 56, 57, IM101, and IM102	Fire Hazard—HM	6

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
177.835	Improper transportation of explosives (Class 1)	Fire Hazard—HM	6
177.835(a)	Loading/Unloading Class 1 with engine running	Fire Hazard—HM	6
177.835(c)	Transporting Class 1 in combination vehicles	Fire Hazard—HM	6
177.835(j)	Transfer of Class 1 materials en route	Fire Hazard—HM	6
177.837	Improper transporting of Class 3 HM	Fire Hazard—HM	6
177.837(c)	Cargo tanks not properly bonded/grounded	Cargo Protection—HM	4
177.837(d)	Improper unloading of combustible liquids	Cargo Protection—HM	4
177.838	Improper transport of class 4, 5 or division 4.2	Fire Hazard—HM	6
177.839	Improper transportation of Class 8 HM	Cargo Protection—HM	4
177.840	Improper transportation of Class 2 HM	Fire Hazard—HM	6
177.840(g)	Discharge valve not closed in transit class 2	Cargo Protection—HM	4
177.840(o)	Fail to test off-truck remote shutoff device	Cargo Protection—HM	4
177.840(s)	Fail to possess remote shutoff when unloading	Cargo Protection—HM	4
177.841	Improper transportation of Division 6.1 or Division 2.3 HM	Fire Hazard—HM	6
177.841(e)	Poison label loaded with foodstuffs	HM Other	2
177.842(a)	Total transport index exceeds 50- non-exclusive use	HM Other	2
177.842(b)	Distance from package to person-radioactive material	HM Other	2
177.842(d)	Blocking and bracing of radioactive material packages	HM Other	2
177.848(d)	Prohibited load/transport/storage combination	Fire Hazard—HM	6
177.848(f)	Class 1 load separation or segregation	HM Other	2
177.870(b)	Transporting unauthorized HM in a passenger-carrying vehicle	Load Securement—HM	10
177.870(c)	Prohibited HM on passenger carrying vehicle	Load Securement—HM	10
178.245–4[1]	DOT51 integrity and securement	Package Integrity—HM	8
178.245–5[1]	DOT51 valve protection	Package Integrity—HM	8
178.245–6(a)[1]	DOT51 name plate Markings—HM	Package Integrity—HM	8
178.245–6(b)[1]	Tank outlets not marked	Package Integrity—HM	8
178.251–4[1]	DOT 56/57 integrity and securement	Package Integrity—HM	8
178.251–7(b)[1]	DOT 56/57 spec Markings—HM	Package Integrity—HM	8
178.255–14	DOT 60 ID plate	Package Integrity—HM	8
178.255–4	DOT 60 manhole	Package Integrity—HM	8
178.255–7[1]	DOT 60 valve protection	Package Integrity—HM	8
178.270–1[1]	IM101/102 general design	Package Integrity—HM	8
178.270–11(d)(1)[1]	IM101/102 pressure relief	Package Integrity—HM	8
178.270–14[1]	IM101/102 spec plate	Package Integrity—HM	8
178.270–4[1]	Structural integrity	Package Integrity—HM	8
178.270–6[1]	IM101/102 frames	Package Integrity—HM	8
178.270–8[1]	IM101/102 valve protection	Package Integrity—HM	8
178.270–9[1]	IM101/102 manholes	Package Integrity—HM	8
178.336–1	Protecting of fittings MC330	Package Integrity—HM	8
178.336–13	Anchoring of tank MC330	Package Integrity—HM	8
178.336–17	Metal ID plate marking MC330	Package Integrity—HM	8
178.336–17(a)	Certification plate MC330	Package Integrity—HM	8
178.336–9(a)	Safety relief devices MC330	Package Integrity—HM	8
178.336–9(c)	Marking of inlets/outlets MC330	Package Integrity—HM	8
178.337–10(a)	Protection of fittings MC331	Package Integrity—HM	8
178.337–11(a)	Internal valve MC331 (178.337–11(a)(2))	Package Integrity—HM	8
178.337–13	MC331 supports and anchoring	Package Integrity—HM	8
178.337–17(a)	Metal ID plate missing MC331	Package Integrity—HM	8
178.337–8(a)	Outlets general requirements MC331	Package Integrity—HM	8
178.337–8(a)(2)	Outlets MC331	Package Integrity—HM	8
178.337–8(a)(3)	Internal or back flow valve MC331	Package Integrity—HM	8
178.337–8(a)(4)(i)	Remote closure device greater than 3500 gallons MC331	Package Integrity—HM	8
178.337–8(a)(4)(ii)	Remote closure device less than 3500 gallons MC331	Package Integrity—HM	8
178.337–9	Pressure relief devices MC331	Package Integrity—HM	8
178.337–9(c)	Marking inlets/outlets MC331	Package Integrity—HM	8
178.338–10(a)	Protection of fittings MC338	Package Integrity—HM	8
178.338–10(c)	Rear end protection MC338	Package Integrity—HM	8
178.338–11(b)	Manual shutoff valve MC338	Package Integrity—HM	8
178.338–12	Shear section MC338	Package Integrity—HM	8
178.338–13	Supports and anchoring MC338	Package Integrity—HM	8
178.338–18(a)	Name plate/Specification plate missing MC338	Package Integrity—HM	8
178.338–18(b)	Specification plate missing MC338	Package Integrity—HM	8
178.338–6	Manhole MC338	Package Integrity—HM	8
178.338–8	Pressure relief devices MC338	Package Integrity—HM	8
178.340–10(b)[2].	MC306/307/312 metal certification plate missing	Package Integrity—HM	8
178.340–6[2]	MC306/307/312 supports and anchoring	Package Integrity—HM	8
178.340–7(a)[2]	MC306/307/312 ring stiffeners	Package Integrity—HM	8
178.340–7(c)[2]	MC306/307/312 double bulkhead drain	Package Integrity—HM	8
178.340–7(d)(2)[2]	MC306/307/312 ring stiffener drain hole	Package Integrity—HM	8

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
178.340–8(a)[2]	MC306/307/312 appurtenances attachment	Package Integrity—HM	8
178.340–8(b)[2]	MC306/307/312 rearend protection	Package Integrity—HM	8
178.340–8(c)[2]	MC306/307/312 overturn protection	Package Integrity—HM	8
178.340–8(d)[2]	MC306/307/312 piping protection	Package Integrity—HM	8
178.340–8(d)(1)[2]	MC306/307/312 piping protection	Package Integrity—HM	8
178.340–8(d)(2)[2]	MC306/307/312 minimum road clearance	Package Integrity—HM	8
178.341–3(a)[2]	MC306 no manhole closure	Package Integrity—HM	8
178.341–4[2]	MC306 venting	Package Integrity—HM	8
178.341–4(d)(1)[2]	MC306 inadequate emergency venting	Package Integrity—HM	8
178.341–4(d)(2)[2]	MC306 pressure activated vents	Package Integrity—HM	8
178.341–4(d)(3)[2]	MC306 no fusible venting	Package Integrity—HM	8
178.341–5(a)[2]	MC306 internal valves	Package Integrity—HM	8
178.341–5(a)(1)[2]	MC306 heat actuated safety	Package Integrity—HM	8
178.341–5(a)(2)[2]	MC306 remote control shutoff	Package Integrity—HM	8
178.342–3[2]	MC307 manhole closure	Package Integrity—HM	8
178.342–4[2]	MC307 venting	Package Integrity—HM	8
178.342–4(b)[2]	Inadequate venting capacity	Package Integrity—HM	8
178.342–5(a)[2]	MC307 internal valve	Package Integrity—HM	8
178.342–5(a)(1)[2]	MC307 heat actuated safety	Package Integrity—HM	8
178.342–5(a)(2)[2]	MC307 remote control shutoff	Package Integrity—HM	8
178.343–3[2]	Manhole closure MC312	Package Integrity—HM	8
178.343–4[2]	Venting MC312 (show calculations)	Package Integrity—HM	8
178.343–5(a)[2]	MC312 top outlet and valve	Package Integrity—HM	8
178.343–5(b)(1)[2]	MC312 bottom valve/piping protection	Package Integrity—HM	8
178.345–1	DOT406/407/412 pressure relief	Package Integrity—HM	8
178.345–11(b)	DOT406/407/412 tank valves	Package Integrity—HM	8
178.345–11(b)(1)	DOT406/407/412 remote control	Package Integrity—HM	8
178.345–11(b)(1)(i).	DOT406/407/412 remote control	Package Integrity—HM	8
178.345–14(b)	DOT406/407/412 name plate	Package Integrity—HM	8
178.345–14(c)	DOT406/407/412 specification plate	Package Integrity—HM	8
178.345–1(i)(2)	DOT 406, 407, 412 Obstructed double bulkhead drain/vent	Package Integrity—HM	8
178.345–5(d)	DOT406/407/412 manhole securement	Package Integrity—HM	8
178.345–5(e)	DOT406/407/412 manhole marking	Package Integrity—HM	8
178.345–6	DOT406/407/412 supports and anchoring	Package Integrity—HM	8
178.345–7(d)(4)	DOT406/407/412 ring stiffener drain	Package Integrity—HM	8
178.345–8(a)	DOT406/407/412 accident protection	Package Integrity—HM	8
178.345–8(a)(5)	DOT406/407/412 minimum road clearance	Package Integrity—HM	8
178.345–8(b)	DOT406/407/412 bottom damage protection	Package Integrity—HM	8
178.345–8(c)	DOT406/407/412 rollover damage protection	Package Integrity—HM	8
178.345–8(d)	DOT406/407/412 rear end protection	Package Integrity—HM	8
178.703(a)	Intermediate bulk container (IBC) manufacturer Markings—HM	Package Integrity—HM	8
178.703(b)	Intermediate bulk container additional Markings—HM	Package Integrity—HM	8
178.704(e)	Intermediate bulk container bottom discharge valve protection	Package Integrity—HM	8
179.300–12	DOT106/110aw protection of fittings	Package Integrity—HM	8
179.300–13	DOT106/110aw venting and valves	Package Integrity—HM	8
179.300–15	DOT106/110aw safety relief devices	Package Integrity—HM	8
179.300–18	DOT106/110aw stamping of tanks	Package Integrity—HM	8
180.205(c)	Periodic re-qualification of cylinders	Package Testing—HM	7
180.213(d)	Re-qualification Markings—HM	Package Testing—HM	7
180.352(b)	Intermediate bulk container retest or inspection	Package Testing—HM	7
180.352(d)	IBC retest date marking	Package Testing—HM	7
180.352(f)	IBC retest date marking (180.352(e))	Package Testing—HM	7
180.405(b)	Cargo tank specifications	Package Testing—HM	7
180.405(j)	Certification withdrawal (failed to remove/cover/obliterate spec plate)	Package Testing—HM	7
180.407(a)(1)	Cargo tank periodic test and inspection	Package Testing—HM	7
180.407(c)	Failing to periodically test and inspect cargo tank	Package Testing—HM	7
180.415(b)	Cargo tank test or inspection Markings—HM	Package Testing—HM	7
180.605	Periodic testing of portable tanks	Package Testing—HM	7
180.605(k)	Test date marking	Package Testing—HM	7
385.403	No HM Safety Permit	Documentation—HM	3
397.1(a)	Driver/carrier must obey part 397	HM Other	2
397.1(b)	Failing to require employees to know/obey part 397	HM Other	2
397.2	Must comply with rules in parts 390–397-transporting HM	HM Other	2
397.5(a)	Unattended explosives 1.1/1.2/1.3	Fire Hazard—HM	6
397.5(c)	Unattended hazmat vehicle	Cargo Protection—HM	4
397.7(a)	Improperly parked explosives vehicle	Fire Hazard—HM	6
397.7(b)	Improperly parked HM vehicle	Fire Hazard—HM	6
397.11(a)	HM vehicle operated near open fire	Fire Hazard—HM	6
397.11(b)	HM vehicle parked within 300 feet of fire	Fire Hazard—HM	6

TABLE 5—HAZARDOUS MATERIALS COMPLIANCE BASIC VIOLATIONS—Continued

49 CFR section	Violation description shown on driver/vehicle examination report given to CMV driver after inspection	Violation group description	Violation severity weight
397.15	HM vehicle fueling violation	Fire Hazard—HM	6
397.17	No tire examination on HM vehicle	HM Other	2
397.19	No instructions/documents when transporting Division 1.1/1.2/1.3 (explosive) materials.	Documentation—HM	3
397.19(c)	Required documents not in possession-explosive materials	Documentation—HM	3
397.67	HM vehicle routing violation (non-radioactive materials)	HM Route	1
397.101(b)	Radioactive materials vehicle not on preferred route	HM Route	1
397.101(d)	No or incomplete route plan-radioactive materials	HM Route	1
397.101(e)(2)	Driver not in possession of training certificate	HM Route	1
397.101(e)(3)	Driver not in possession of written route plan	HM Route	1

Citations marked with a ([1]) in this table 5 may be found at 49 CFR part 178 (revised as of October 1, 1965) and citations marked with a ([2]) may be found at 49 CFR part 178 (revised as of October 1, 1967).

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 50. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; 49 U.S.C. 5123; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.81 and 1.87.

■ 51. Amend appendix B to part 386 by revising paragraph (f) and adding paragraph (j) to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Monetary Penalties

* * * * *

(f) *Operating after being declared unfit by assignment of a final unfit safety fitness determination.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce or intrastate commerce that affects interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being ordered out-of-service because of receiving a final unfit safety fitness determination, to a civil penalty of not more than $25,000 (49 CFR 385.13). Each day the transportation continues in violation of a final unfit safety fitness determination constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being ordered out-of-service because of receiving a final unfit safety fitness determination, to a civil penalty of not more than $75,000 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than $175,000 for each offense. Each day the transportation continues in violation of a final unfit safety fitness determination constitutes a separate offense.

* * * * *

(j) *Violations considered for penalty assessment.* The violations listed in the table in this paragraph (j) are violations that the Agency may take into account for purposes of section 222 of the Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 49 U.S.C. 521 note (''Minimum and Maximum Assessments'').

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS

49 CFR 171.15	Carrier failing to give immediate telephone notice of an incident involving HM.
49 CFR 171.16	Carrier failing to make a written report of an incident involving HM.
49 CFR 172.313(a)	Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words ''Inhalation Hazard.''
49 CFR 172.704(a)(4)	Failing to provide security awareness training.
49 CFR 172.704(a)(5)	Failing to provide in-depth security awareness training.
49 CFR 172.800(b)	Transporting HM without a security plan.
49 CFR 172.800(b)	Transporting HM without a security plan that conforms to Subpart I requirements.
49 CFR 172.800(b)	Failure to adhere to a required security plan.
49 CFR 172.802(b)	Failure to make copies of security plan available to HM employees.
49 CFR 173.24(b)(1)	Accepting for transportation or transporting a package that has an identifiable release of a HM to the environment.
49 CFR 173.24b(d)(2)	Loading bulk packaging (cargo tank) with an HM which exceeds the maximum weight of lading marked on the specification plate.
49 CFR 173.33(a)(1)	Offering or accepting a HM for transportation in an unauthorized cargo tank.
49 CFR 173.33(a)(2)	Loading or accepting for transportation two or more materials in a cargo tank motor vehicle which if mixed results in an unsafe condition.
49 CFR 173.33(b)(1)	Loading HM in a cargo tank motor would have a dangerous reaction when in contact with the tank.
49 CFR 173.421(a)	Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour).
49 CFR 173.431(a)	Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized.
49 CFR 173.431(b)	Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized.
49 CFR 173.441(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 173.442(b)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 degrees C (122 degrees F) in other than an exclusive use shipment, or 85 degrees C (185 degrees F) in an exclusive use shipment.
49 CFR 173.443(a)	Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits.
49 CFR 177.800(c)	Failing to instruct a category of employees in HM regulations.
49 CFR 177.817(a)	Transporting a shipment of HM not accompanied by a properly prepared shipping paper.
49 CFR 177.817(e)	Failing to maintain proper accessibility of shipping papers.
49 CFR 177.823(a)	Moving a transport vehicle containing HM that is not properly marked or placarded.
49 CFR 177.834(i)	Loading or unloading a cargo tank without a qualified person in attendance.
49 CFR 177.835(a)	Loading or unloading a Class 1 (explosive) material with the engine running.
49 CFR 177.835(j)	Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted.
49 CFR 177.835(c)	Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted.
49 CFR 177.841(e)	Transporting a package bearing a poison label in the same transport vehicle with material marked or known to be foodstuff, feed, or any edible material intended for consumption by humans or animals unless an exception in § 177.841(e)(1)(i) or (ii) is met.
49 CFR 177.848(d)	Failing to store, Load, or transport HM in accordance with the segregation table.
49 CFR 180.407(a)	Transporting a shipment of HM in cargo tank that has not been inspected or retested in accordance with § 180.407.
49 CFR 180.415	Failing to mark a cargo tank which passed an inspection or test required by § 180.407.
49 CFR 180.417(a)(1)	Failing to retain cargo tank manufacturer's data report certificate and related papers, as required.
49 CFR 180.417(a)(2))	Failing to retain copies of cargo tank manufacturer's certificate and related papers (or alternative report) as required.
49 CFR 382.115(a)	Failing to implement an alcohol and/or controlled substances testing program (domestic motor carrier).
49 CFR 382.115(b)	Failing to implement an alcohol and/or controlled substances testing program (foreign motor carrier).
49 CFR 382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.
49 CFR 382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.
49 CFR 382.213(b)	Using a driver known to have used a controlled substance.
49 CFR 382.215	Using a driver known to have tested positive for a controlled substance.
49 CFR 382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
49 CFR 382.303(a)	Failing to conduct post-accident testing on driver for alcohol.
49 CFR 382.303(b)	Failing to conduct post-accident testing on driver for controlled substances.
49 CFR 382.305	Failing to implement a random controlled substances and/or an alcohol testing program.
49 CFR 382.305(b)(1)	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
49 CFR 382.305(b)(2)	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
49 CFR 382.309	Using a driver without a return to duty test.
49 CFR 382.503	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B of part 382, without being evaluated by substance abuse professional, as required by § 382.605.
49 CFR 382.505(a)	Using a driver within 24 hours after the driver was found to have an alcohol concentration of 0.02 or greater but less than 0.04.
49 CFR 382.605	Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty.
49 CFR 383.23(a)	Operating a CMV without a valid CDL.
49 CFR 383.3(a)	Using a driver who does not possess a valid CDL (removed knowingly).
49 CFR 383.37(a)	Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV.
49 CFR 383.37(b)	Knowingly allowing, requiring, permitting, or authorizing an employee with a CDL that is suspended, revoked, or canceled by a State or who is disqualified to operate a CMV.
49 CFR 383.51(a)	Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a CMV.
49 CFR 387.31(d)	Failing to maintain at the principal place of business required proof of financial responsibility for passenger carrying vehicles.
49 CFR 387.7(d)	Failing to maintain at the principal place of business required proof of financial responsibility.
49 CFR 390.15(b)(2)	Failing to maintain copies of all accident reports required by State or other governmental entities or insurers.
49 CFR 390.35	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records.
49 CFR 391.11(b)(4)	Using a physically unqualified driver.
49 CFR 391.11(b)(5)	Using a driver without a currently valid motor vehicle operator's license or permit.
49 CFR 391.15(a)	Using a disqualified driver.
49 CFR 391.23(a)	Failing to investigate a driver's background.
49 CFR 391.45(a)	Using a driver not medically examined and certified.
49 CFR 391.45(b)(1)	Using a driver not medically examined and certified during the preceding 24 months.
49 CFR 391.51(a)	Failing to maintain driver qualification file on each driver employed.
49 CFR 391.51(b)(2)	Failing to maintain inquiries into driver's driving record in driver's qualification file.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 391.51(b)(7)	Failing to maintain medical examiner's certificate in driver's qualification file.
49 CFR 392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.
49 CFR 392.4(b)	Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle.
49 CFR 392.5(b)(1)	Requiring or permitting a driver to drive a motor vehicle while under the influence of, or in possession of, an intoxicating beverage.
49 CFR 392.5(b)(2)	Requiring or permitting a driver who shows evidence of having consumed an intoxicating beverage within 4 hours to operate a motor vehicle.
49 CFR 392.6	Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed.
49 CFR 392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.
49 CFR 395.1(h)(1)(i)	Requiring or permitting a property-carrying CMV driver to drive more than 15 hours (Driving in Alaska).
49 CFR 395.1(h)(1)(ii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).
49 CFR 395.1(h)(1)(iii)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(1)(iv)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(2)(i)	Requiring or permitting a passenger-carrying CMV driver to drive more than 15 hours (Driving in Alaska).
49 CFR 395.1(h)(2)(ii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 20 hours (Driving in Alaska).
49 CFR 395.1(h)(2)(iii)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 7 consecutive days (Driving in Alaska).
49 CFR 395.1(h)(2)(iv)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 80 hours in 8 consecutive days (Driving in Alaska).
49 CFR 395.1(o)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty 16 consecutive hours.
49 CFR 395.3(a)(1)	Requiring or permitting a property-carrying CMV driver to drive without taking an off-duty period of at least 11 consecutive hours prior to driving.
49 CFR 395.3(a)(2)	Requiring or permitting a property-carrying CMV driver to drive after the end of the 14th hour after coming on duty.
49 CFR 395.3(b)(1)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.
49 CFR 395.3(b)(2)	Requiring or permitting a property-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.
49 CFR 395.3(c)(1)	Requiring or permitting a property-carrying CMV driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours.
49 CFR 395.3(c)(2)	Requiring or permitting a property-carrying CMV driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours.
49 CFR 395.5(a)(1)	Requiring or permitting a passenger-carrying CMV driver to drive more than 10 hours.
49 CFR 395.5(a)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty 15 hours.
49 CFR 395.5(b)(1)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 60 hours in 7 consecutive days.
49 CFR 395.5(b)(2)	Requiring or permitting a passenger-carrying CMV driver to drive after having been on duty more than 70 hours in 8 consecutive days.
49 CFR 395.8(a)	No records of duty status.
49 CFR 395.8(a)	Failing to require driver to make a record of duty status.
49 CFR 395.8(e)	False reports of records of duty status.
49 CFR 395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.
49 CFR 395.8(k)(1)	Failing to preserve driver's record of duty status and/or supporting documents for 6 months.
49 CFR 395.13(c)(1)	Requiring or permitting a driver declared out of out-of-service to operate a CMV before that driver may lawfully do so under the rules of part 395 (removed knowingly).
49 CFR 396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.
49 CFR 396.9(c)(2)	Requiring or permitting the operation of a motor vehicle declared ''out-of-service'' before repairs were made.
49 CFR 396.11(a)	Failing to require driver to prepare driver vehicle inspection report*(s)*.
49 CFR 396.11(c)	Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.
49 CFR 396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.
49 CFR 397.5(a)	Failing to ensure a motor vehicle containing Division 1.1, 1.2, or 1.3 (explosive) material is attended at all times by its driver or a qualified representative.
49 CFR 397.7(a)(1)	Parking a motor vehicle containing Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street.
49 CFR 397.7(b)	Parking a motor vehicle containing HM(s) other than Division 1.1, 1.2, or 1.3 materials within 5 feet of traveled portion of highway or street.
49 CFR 397.13(a)	Permitting a person to smoke or carry a lighted cigarette, cigar or pipe within 25 feet of a motor vehicle containing Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2.

TABLE TO PARAGRAPH (j) OF APPENDIX B TO PART 386—MINIMUM AND MAXIMUM PENALTY REGULATIONS—Continued

49 CFR 397.19(a)	Failing to furnish driver of motor vehicle transporting Division 1.1, 1.2, or 1.3 (explosive) materials with a copy of the rules of part 397 and/or emergency response instructions.
49 CFR 397.67(d)	Requiring or permitting the operation of a motor vehicle containing explosives in Class 1, Divisions 1.1, 1.2, or 1.3 that is not accompanied by a written route plan.
49 CFR 397.101(d)	Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in § 173.403, of radioactive materials that is not accompanied by a written route plan.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 52. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

■ 53. Amend § 387.7 by revising paragraph (d)(3) to read as follows.

§ 387.7 Financial responsibility required.

* * * * *

(d) * * *

(3) A written decision, order, or authorization of the Federal Motor Carrier Safety Administration authorizing a motor carrier to self-insure under § 387.309, provided the motor carrier has not been issued an unfit safety fitness determination as determined by the Federal Motor Carrier Safety Administration under part 385 of this chapter.

* * * * *

■ 54. Amend § 387.309 by revising paragraph (a)(3) to read as follows.

§ 387.309 Qualifications as a self-insurer and other securities or agreements.

(a) * * *

(3) *The existence of an adequate safety program.* Applicant must submit evidence that the carrier's operations meet the safety fitness standard in § 385.5 of this chapter. Carriers need only certify that they have not received an unfit safety fitness determination. Applications by carriers with an unfit safety fitness determination will be summarily denied. Any self-insurance authority granted by FMCSA will automatically expire 30 days after a carrier receives a final unfit safety fitness determination from FMCSA.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 55. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 56. Amend § 395.15 by revising paragraph (j)(2)(i) to read as follows:

§ 395.15 Automatic on-board recording devices.

* * * * *

(j) * * *

(2) * * *

(i) The motor carrier has been issued an unfit safety fitness determination by the FMCSA;

* * * * *

Issued under the authority delegated in 49 CFR 1.87 on: December 29, 2015.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2015–33153 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

Vol. 81 Thursday,

No. 13 January 21, 2016

Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.,
Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR); Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 174, 176, 177, 178, and 180

[Docket No. PHMSA–2013–0042 (HM–233F)]

RIN 2137–AF00

Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: As required by the Moving Ahead for Progress in the 21st Century Act

(MAP–21), the Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations to adopt provisions contained in certain widely-used or long-standing special permits that have an established safety record. The adopted amendments are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests. The adopted amendments will also reduce paperwork burdens and facilitate commerce while maintaining an appropriate level of safety. PHMSA conducted an extensive analysis of all active special permits and codified, as appropriate, those special permits deemed suitable in this rulemaking.

DATES: *Effective Date:* The final rule will become effective on February 22, 2016.

Voluntary compliance date: PHMSA is authorizing voluntary compliance beginning February 22, 2016.

Delayed compliance date: Unless otherwise specified, compliance with the amendments adopted in this final rule is required beginning January 23, 2017.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366–4535, or T. Glenn Foster, Office of Hazardous Materials Safety, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

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I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by adopting requirements contained in 96 existing special permits (SP). These amendments are based on our review of all active SPs as of January 1, 2013, in which we originally identified 98 SPs containing requirements that appear suitable for adoption into the HMR as regulations of general applicability. Other SPs (1,070) were not proposed for adoption into the HMR because we concluded they contain requirements which (1) would not have, or are being applied in a manner which would not have, broad applicability; or (2) have already been adopted into the HMR, are covered by authorizations in the HMR, are being addressed in other rulemakings, or were removed from consideration after receiving public comments submitted in response to the January 30, 2015, notice of proposed rulemaking (NPRM) in this proceeding.

In the NPRM published in the **Federal Register** on January 30, 2015 [80 FR 5339], we encouraged all interested parties, particularly the holders of currently active SPs, to submit comments regarding the SPs we proposed to adopt into the HMR, the SPs we did not propose to adopt into the HMR, and the impacts, including costs and benefits, of the special permits proposed for incorporation.

II. Background

PHMSA is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) by adopting certain requirements based on existing SPs issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127). SPs set forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations, or, when the regulations do not establish a safety level, that is consistent with the public interest. Congress expressly authorized the Secretary of Transportation to issue these variances in the Hazardous Materials Transportation Act of 1975 (49 U.S.C. 5109) as amended.

On July 6, 2013, President Obama signed legislation entitled ''Moving Ahead for Progress in the 21st Century Act (MAP–21).'' Section 33012 of this legislation required PHMSA to review and analyze SPs that have been in continuous effect for a 10-year period to determine which ones may be codified into the HMR.[1] The legislation also required PHMSA to issue regulations to adopt any SPs identified as appropriate for adoption in a final rule by October 1, 2015. The legislation provided the following factors to consider during review and analysis to determine suitability for adoption into the HMR:

(1) The safety record of the hazardous materials (hazmat) transported under the SP;

(2) The application of a SP;

(3) The suitability of the provisions in the SP for incorporation into the hazmat regulations; and

(4) Rulemaking activity in related areas.

Prior to the passing of the MAP–21 legislation, PHMSA completed numerous rulemaking actions, through a comprehensive and refined approach, to convert long-standing SPs with an established safety record into the HMR.

[1] Although MAP–21 only required PHMSA evaluate SPs that had been in continuous effect for a 10-year period, PHMSA reviewed all active SPs as of January 1, 2013.

Following the passage of the MAP–21 legislation, PHMSA modified its approach to align with the requirements of this legislation. Specifically, PHMSA established terms of reference and baseline criteria for the review of long-standing SPs, created tracking tools to monitor progress, and adopted a methodology and timeline to evaluate SPs.

The January 30, 2015 NPRM provided an overview of the SP Program to date, a detailed review of the requirements of MAP–21 with regard to this initiative, and a comprehensive explanation of the rationale used to evaluate these SPs both prior to and after the implementation of MAP–21. Furthermore, the NPRM described in detail the SPs that were deemed not suitable for adoption into the HMR along with the corresponding reasoning, and proposed the adoption into the HMR of SPs that were deemed suitable through this review. The amendments adopted from the SPs in this final rule have broad applicability, fit into the scope of the HMR, increase flexibility in transportation, and provide an equivalent level of safety to that of the current regulations.

III. Overview

Historically, PHMSA has reviewed widely used or long-standing special permits and adopted those that have an established safety record into the HMR. Since 2008, PHMSA has adopted 94 special permits under various rulemakings into the HMR, reducing the number of holders by 13,947. Rulemakings that stemmed from a special permit are noted in Table 1.

TABLE 1—PREVIOUS RULEMAKING ACTIONS [2]

Docket No.	Title	Purpose	Number of permits	Holders
PHMSA–2006–25910 (HM–218E).	Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking.	Amended the HMR to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and MC specification cargo tank motor vehicles, DOT specification cylinders and UN pressure receptacles.	2	15
PHMSA–2008–0005 (HM–215J).	Revision to Requirements for the Transportation of Batteries and Battery-Powered Devices; and Harmonization with the UN Recommendations, IMDG Code, and ICAO Technical Instructions.	Amended the HMR to maintain alignment with international standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.	3	6
PHMSA–2009–0151 (HM–218F).	Miscellaneous Amendments.	Amended the HMR to make miscellaneous revisions to update and clarify certain regulatory requirements.	1	1
PHMSA–2009–0289 (HM–233A).	Incorporation of SPs into Regulations.	Amended the HMR to adopt provisions contained in certain widely-used or long-standing SPs that have an established safety record.	44	510
PHMSA–2010–0017 (HM–245).	Incorporation of Cargo Tank SPs.	Amended the HMR to adopt provisions contained in certain widely-used or long-standing cargo tank SPs that are granted to multiple parties and have established safety records.	6	Over 10,000
PHMSA–2010–0018 (HM–216B).	Incorporating Rail SPs	Amended the HMR to adopt SPs which authorized an alternative tank car qualification program, acceptance of shipping paper information by voice or electronic data interchange, provide alternative rail car segregation requirements for explosives, alternative tank car design requirements, and alternative unloading provisions for coupled tank cars.	7	250
PHMSA–2010–0201 HM–254.	Approval and Communication Requirements for the Safe Transportation of Airbag Inflators, Airbag Modules, and Seat-belt Pretensioners.	Amended the HMR applicable to airbag inflators, airbag modules and seat-belt pretensioners by authorizing an alternative review and verification process for these devices, and eliminating the current requirements to have hundreds of these devices approved by PHMSA prior to shipment.	2	2,131
PHMSA 2011–0138 (HM 218G).	Miscellaneous Amendments (RRR).	Amended the HMR by adopting SPs to authorize the transportation by motor vehicle of certain regulated medical wastes, designated as sharps, in non-DOT specification containers fitted into wheeled racks.	1	1

[2] This table represents only published rulemakings since January 1, 2008.

TABLE 1—PREVIOUS RULEMAKING ACTIONS [2]—Continued

Docket No.	Title	Purpose	Number of permits	Holders
PHMSA–2011–0142 (HM–219).	Miscellaneous Petitions for Rulemaking (RRR).	Amended the HMR to no longer require re-application for a SP to place the Dangerous Cargo Manifest in locations designated by the master of the vessel besides "on or near the bridge" while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned.	1	1
PHMSA–2011–0158 (HM–233C).	Incorporation of Certain SPs and Competent Authorities into Regulations.	Amended the HMR to adopt provisions contained in several SPs that provide greater regulatory flexibility. The SPs in this action addressed a variety of alternative provisions, including alternative packaging authorizations for specific hazardous materials (HM), and would eliminate approval requirements for variances in the manufacture of fiberboard packagings.	18	466
PHMSA–2011–0345 (HM–233D) (NPRM).	Requirements for the Safe Transportation of Bulk Explosives (RRR).	Proposes to amend the HMR by establishing standards for the safe transportation of bulk explosives. This rulemaking would also be responsive to two petitions (P–1557, P–1583).	9	566
Total			94	13,947

A. MAP–21 Legislation

Section 33012 of the MAP–21 legislation revised section 5117 (f) of the Federal Hazardous Materials Transportation Law. As a result of this legislation, PHMSA was required to review and analyze SPs that have been in effect for 10 years or more and determine which could be converted into regulations. Additionally, PHMSA was required to set parameters for the review and issue regulations to adopt any SPs identified as appropriate for adoption in a final rule by October 1, 2015. Following publication of this final rule, this process would be completed annually to ensure appropriate SPs are converted into the HMR on a consistent basis.

The legislation also required PHMSA to address other issues related to the SP and approvals regulations and program processes. Specifically, PHMSA is required to issue regulations on standard operating procedures to support administration of the SP and approval programs. This requirement is being addressed under Docket No. PHMSA 2012–0260 (HM–233E).

Table 2 summarizes the MAP–21 requirements related to the SP program, the corresponding rulemaking actions, and required completion dates:

TABLE 2—MAP–21 SUMMARY

MAP–21 citation	MAP–21 requirement	Docket No.	Required completion date
Sec. 33012			
(a)	Rulemaking mandate. PHMSA shall issue regulations that establish: (1) Standard operating procedures to support administration of the SP and approval programs; and (2) Objective criteria to support the evaluation of SP and approval applications.	PHMSA 2012–0260 (HM–233E).	Final rule due by 10/01/2014.
(b)	Initial review and analysis of SPs that have been in continuous effect for a 10-year period to determine which ones may be converted into the hazmat regulations. Factors to consider: (1) The safety record of hazmat transported under the SP; (2) The application of a SP; (3) The suitability of provisions in the SP for incorporation into the hazmat regulations; and (4) Rulemaking activity in related areas.	PHMSA–2013–0042 (HM–233F).	Review and analysis due by 10/01/2013.
(b)	Rulemaking mandate. Issue regulations to incorporate into the hazmat regulations any SPs identified in the initial review and analysis that PHMSA determines are appropriate for incorporation based on the review factors.	PHMSA–2013–0042 (HM–233F).	Final rule due by 10/01/2015.
(c)	Ongoing review and analysis of SPs. Not later than 1 year after the date on which a SP has been in continuous effect for a 10-year period, PHMSA shall conduct a review and analysis of that SP to determine whether it may be converted into the hazmat regulations. Factors to consider: (1) The safety record of hazmat transported under the SP;	Continuous future rulemaking actions on a yearly basis.	Review and analysis due by 10/01/2015 and to be completed on an annual basis.

TABLE 2—MAP–21 SUMMARY—Continued

MAP–21 citation	MAP–21 requirement	Docket No.	Required completion date
(d)	(2) The application of a SP; (3) The suitability of provisions in the SP for incorporation into the hazmat regulations; and (4) Rulemaking activity in related areas. Rulemaking mandate. After completing the review and analysis of SPs that have been in continuous effect for a 10-year period, PHMSA shall either institute a rulemaking to incorporate the SP into the hazmat regulations or publish in the **Federal Register** its justification for why the SP is not appropriate for incorporation into the regulations.	Continuous future rulemaking actions on a yearly basis.	Final rule or notice of no rulemaking decision due by 10/01/2016.

B. SP Conversion Project Methodology

As previously stated, PHMSA has routinely analyzed, evaluated, and adopted SPs into the HMR through established procedures for decades. However, the specific provisions contained in MAP–21 necessitated PHMSA to modify and formalize its approach.

The following table summarizes the different phases of the Special Permits Conversion Project (SPCP). Specifically, this table briefly discusses the efforts of each phase of the project and how the entire project was divided into the two primary stages of analysis and rulemaking. Each phase of the SPCP is described in Table 3.

TABLE 3—SPCP METHODOLOGY

Phase	Description of action
Analysis:	
Phase 1: Development of Methodology.	The SPCP Management team developed a methodology to consistently evaluate SPs, a system to track this analysis, sub-teams and sub-topic areas used to group similar SPs to be reviewed by the appropriate subject matter experts, and timelines and milestones.
Phase 2: Preliminary Analysis	An initial review of all SPs was conducted. SPs were divided by topics and sub-topics and each transportation regulations specialist was assigned a grouping. These specialists reviewed each permit and made a determination as to an SP's suitability for adoption into the HMR based on guidance provided by the SPCP Management team.
Phase 3: Mentor Review	The members of the SPCP Management were assigned topics and conducted a second review of the SPs deemed either not suitable or flagged for further review.
Phase 4: Team Analysis	PHMSA then established rulemaking teams for each topic composed of a team leader, mentor, and team members from each PHMSA Division and our modal partners. These teams then conducted a second review of those SPs deemed suitable and those flagged for follow-up.
Rulemaking:	
Phase 5: Drafting	For SPs deemed suitable, the team drafted regulatory text along with preamble language justifying inclusion into the HMR. The finalized draft of each topic was then submitted to the SPCP Management team for final review.
Phase 6: Consolidate Rulemaking.	Following review by the SPCP Management team, the topic rulemakings were then combined into a master draft along with additional preamble language, regulatory analysis, and information collection activities.
Phase 7: Rulemaking Coordination.	The master draft created was then vetted throughout the agency and with our modal partners. In addition, the rulemaking was coordinated with the Office of the Secretary of Transportation and the Office of Management and Budget.
Phase 8: Rulemaking Publication.	Following concurrence from all entities, PHMSA submitted the NPRM to the **Federal Register** for publication.
Phase 9: Final Analysis and Coordination.	The draft Final Rule was then vetted throughout the agency and with our modal partners. In addition, the rulemaking was coordinated with the Office of the Secretary of Transportation and the Office of Management and Budget.
Phase 10: Final Rulemaking Publication.	Following concurrence from all entities, PHMSA submitted this Final Rule to the **Federal Register** for publication.

PHMSA grouped each special permit into one of six topic areas, based on the utility of the special permit. These topic areas were established to reflect the main utility and purpose of the SP. These topic areas of the SPs, an overview of each topic area, and the affected number of SP holders are detailed in Table 4.

TABLE 4—TOPIC OVERVIEW

Topic	Overview	Holders (total # in grouping)
Cylinders—General	The SPs pertaining to cylinders that are adopted into the HMR in this final rule provide exceptions to existing general cylinder requirements.	721
Cylinders—NDT/Aerosols [3]	The SPs pertaining to acoustic emission (AE) and ultrasonic examination (UE) testing of cylinders and to aerosols that are adopted into the HMR in this final rule provide exceptions to existing cylinder requirements specific to cylinder non-destructive testing (NDT) and aerosols.	396
Cargo Tanks/Rail Cars/Portable Tanks	The SPs pertaining to cargo tanks, rail cars, and portable tanks that are adopted into the HMR in this final rule provide exceptions to existing cargo tanks, rail cars, and portable tanks requirements.	321
Operational Air/Vessel	The SPs pertaining to operational issues for aircraft or vessel transportation that are adopted into the HMR in this final rule provide exceptions to existing requirements for vessel and aircraft shipments.	207
Operational Highway/Rail/Shipper/Other	The SPs pertaining to operational issues for highway or rail transport, shipper requirements, and other general areas that are adopted into the HMR in this final rule provide exceptions to existing highway and rail operations, shipper, and other general requirements.	1,226
Non-Bulk Packaging Specifications/IBCs	The SPs pertaining to non-bulk packagings, IBCs, and packaging specifications that are adopted into the HMR in this final rule provide certain exceptions to the packaging specification requirements.	820
Total		3,691

C. Petitions for Rulemaking

PHMSA considered several petitions for rulemaking submitted in accordance with § 106.105. The petitions are discussed as follows:

P–1607

The Council on the Safe Transportation of Hazardous Articles (COSTHA) submitted a petition for rulemaking under P–1607 which PHMSA accepted and proposed in the January 30, 2015 NPRM. The purpose of this petition for rulemaking was to adopt the provisions of SP 11458 authorizing display packs of consumer commodities that exceed the 30 kg gross weight limitation prescribed for limited quantity packages. See the discussions in §§ 171.8 and 173.56 under the ''Operational Highway/Rail/Shipper/Other'' heading of this rulemaking.

P–1608

The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking under P–1608 to adopt the provisions of SP 11903 into the HMR. Under P–1608, TTMA petitioned that PHMSA adopt standards for the construction and use of fiber reinforced plastic (FRP) cargo tanks. Currently, these tanks are constructed under SP 11903 and used under party status to SP 9166. Other special permits also address these standards but PHMSA did not propose to adopt them in the NPRM because a uniform standard for FRP cargo tanks that is ready for adoption does not exist. However, PHMSA is working to develop a uniform standard for FRP cargo tanks, which we will address in a future rulemaking.

P–1610

COSTHA submitted a petition for rulemaking under P–1610 to adopt the provisions of SP 11110 into the HMR. This SP authorizes cargo aircraft operators to stow Division 1.4S and Class 8, PG III materials in inaccessible cargo locations in excess of the limitations specified in § 175.75(c). This petition has been accepted by PHMSA for consideration in a future rulemaking as more time is needed to research the potential impact of changes to § 175.75 and to coordinate this review with the appropriate parties, including our modal partners.

P–1611

COSTHA submitted a petition for rulemaking under P–1611 to adopt the provisions of SP 11470 into the HMR. This SP authorizes the transportation in commerce of shrink-wrapped pallets containing packages of waste ORM–D materials with the word ''WASTE'' marked on the outside of the pallet instead of each individual box. This petition was accepted by PHMSA and is being adopted as proposed in this final rule. See the discussion in § 173.12 under the ''Operational Highway/Rail/Shipper/Other'' heading of this preamble.

D. SP Evaluation Results

PHMSA is committed to the SP adoption process established by Congress in MAP–21. To ensure that changes made under this action are as efficient and effective as possible, PHMSA solicited input from its stakeholders. We used several tables throughout the NPRM to identify SPs suitable for adoption and those that were deemed not suitable. As required by MAP–21, the initial review and analysis of SPs considered the following factors:

- The safety record of hazardous materials transported under the SP;
- The application of a SP;
- The suitability of provisions in the SP for adoption into the HMR; and
- Rulemaking activity in related areas.

Based on these factors, PHMSA developed and assigned codes representing its reasoning for adopting or not adopting certain SPs into the regulations. Table 5 explains each code.

TABLE 5—SPCP CODE KEY

Code	Title	Explanation
Code 1	Suitable for Adoption	SPs suitable for adoption.

[3] For the purposes of this rulemaking Non-Destructive Testing (NDT) includes Ultrasonic Examination (UE) and Acoustic Emission (AE).

TABLE 5—SPCP CODE KEY—Continued

Code	Title	Explanation
Code 2	Not Suitable for Adoption: The application of the SP.	SPs not suitable because of the manner in which applied. Because the purpose of the MAP–21 directive was to reduce need for SPs where widely-used, many of these SPs were not considered suitable for adoption because of their application; *i.e.,* they were not widely-used, were too technical in nature, or were too specific to a SP holder. This Code was applied to both single and multiple holders of SPs.
Code 3	Not Suitable for Adoption: The suitability of the provision in the SP for adoption into the HMR.	SPs not suitable for adoption because of the lack of broad applicability. Similar to Code 2, many of these SPs were not considered suitable for adoption because of the specificity of the SP. The terms of these SPs often included an inability to provide the same exception in a broad manner applicable to certain geographical locations or safety controls. This Code was also applied to both single and multiple holders of SPs.
Code 4	Not Suitable for Adoption: Rulemaking activity in related areas.	SPs being addressed in other rulemakings.
Code 5	Already adopted or otherwise covered under current regulations.	SPs already adopted or authorizations already specified in the current HMR. For example, these SPs will be terminated as they are no longer necessary since the provisions contained within have already been adopted or have been covered under current regulations.

The SPCP evaluated 1,168 permits that represented 3,691 holders of SPs that were active on January 1, 2013. Once the evaluation segment of the SPCP was completed, PHMSA identified 98 active SPs that were suitable for adoption in this proceeding. Since that time, SP–14422 has become no longer active and its provisions are not adopted in this final rule. Additionally, SP 4850 is not adopted in this final rule based on concerns that certain elements in its codification no longer communicated the exceptions from the HMR provided by the SP. Thus, we believe any additional burden not proposed in the January 30, 2015 NPRM would require notice and comment

Adoption of the 96 SPs in this final rule will impact 832 SP holders as indicated in Table 6. The SPs adopted in this rulemaking represent an approximate 8% reduction in the number of active SPs and an approximate 23% reduction in the number of holders of those SPs as indicated in Table 6.

TABLE 6—SPCP IMPACT

	SPs	Holders
SPs Adopted in this Rulemaking Action	96	832
Total Number Evaluated	1,168	3,691
Percent Reduction	8.22%	22.54%

When combined with previous regulatory efforts to adopt SPs into the HMR, the impact is increased to 190 total SPs adopted since 2008, affecting 14,779 holders of SPs as indicated in Table 7.

TABLE 7—SPS ADOPTED AND AFFECTED HOLDERS

	SPs	Holders
SPs Eliminated in Previous Rulemaking actions since 2008	94	13,947
SPs Adopted in this Rulemaking Action	96	832
Total	190	14,779

It is PHMSA's intent to annually review all SPs that have been in effect for more than 10 years. Further, PHMSA's ongoing review and analysis of SPs will use the same methodology and tools as in this proceeding. PHMSA anticipates that future analysis and review will be more streamlined due to the reduction in the number of SPs to be evaluated and the experience gained through this evaluation.

E. SPs Suitable for Adoption

The original analysis phase of the SPCP NPRM identified 98 SPs (728 holders) that were deemed suitable for adoption. Further, the analysis phase identified 1,070 SPs that were deemed not suitable for adoption. Please see the January 30, 2015 NPRM for more information on the SPs deemed not suitable, their assigned topic area, a summary of the permit, the number of SP holders, and each corresponding denial code. In this final rule, Table 8 summarizes the SPs deemed suitable, their assigned topic area, a summary of the permit, and the number of holders of SPs. The difference in the number of holders in the NPRM (728) and this final rule (832) are due to seven SPs proposed for adoption in the NPRM that are not being adopted in this final rule and four SPs that were not proposed for adoption in the NPRM that are being adopted in this final rule. All suitable SPs (96) ultimately adopted were deemed to be Code 1 and are adopted in this final rule.

TABLE 8—SPS SUITABLE FOR PROPOSED ADOPTION

Permit No.	Category	Summary	Holders
		Cylinders General	
SP6530	Cylinders General	Authorizes transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon or nitrogen, in certain cylinders filled to 110% of their marked service pressures.	26
SP8074	Cylinders General	Authorizes transportation in commerce of certain flammable and non-flammable gases in DOT specification 3E cylinders measuring 2 inches in diameter by 12 inches long without a safety relief device.	5
SP12084	Cylinders General	Authorizes use of certain DOT specification 4B, 4BA, or 4BW cylinders, which are protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting), for transportation in commerce of certain gases when retested and marked in accordance with the requirements specified in § 180.209(e). In lieu of a 5 year periodic hydrostatic test, or testing in accordance with § 173.213(c)(2), the prescribed cylinders may be retested and marked in accordance with § 180.209(e).	1
SP12301	Cylinders General	Authorizes transportation in commerce of chloropicrin and methyl bromide mixtures in a DOT specification 4BW cylinder having a capacity greater than that specified in § 173.193(b).	8
SP12782	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders, containing Divisions 2.1, 2.2 or 2.3 materials, equipped with plastic valve protection caps.	5
SP13318	Cylinders General	Authorizes transportation in commerce of DOT specification 39 cylinders of 75 cubic inches or less volume, except as specified, for transportation in commerce of certain hazardous materials.	2
SP13544	Cylinders General	Authorizes transportation in commerce of DOT specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and/or residue of LPG without hazard warning labels when transported in a closed transport vehicle that is placarded.	1
SP13599	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 materials in certain DOT specification seamless steel cylinders.	1
SP14251	Cylinders General	Authorizes transportation in commerce of overpacked cylinders containing Class 2 materials with CGA C–7 neck ring labels in lieu of the standard label.	6
SP14419	Cylinders General	Authorizes transportation in commerce of pyrophoric liquid n.o.s. in DOT specification 3AL cylinders that are not authorized for that material.	3
SP14937	Cylinders General	Authorizes transportation in commerce of certain cylinders that have requalification markings on a label embedded in epoxy in lieu of stamping for the transportation of various refrigerant gases.	1
		Cylinders—NDT/Aerosols	
SP7951	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain aerosols containing Division 2.2 materials, with a charge pressure not exceeding 150 psig at 75 °F when shipped in a refrigerated state.	5
SP8786	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of limited quantities of compressed gases, Division 2.2, in accumulators which deviate from the required retest parameters.	6
SP11296	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain waste aerosol cans containing flammable gas propellants, including isobutane and propane, overpacked in a UN1A2 steel drum or a UN1H2 plastic drum for disposal.	128
SP12573	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming with regulations applicable to DOT specification 2Q, for transportation in commerce of certain hazardous materials.	1
SP12995	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT 2Q specification, non-refillable containers containing polyurethane foam or foam components that will be tested by other means in lieu of subjecting each container to a hot water bath.	1
SP13581	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of insecticide aerosol fogger in non-DOT specification non-refillable inside containers.	1
SP13601	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of non-DOT specification containers for transportation in commerce of certain non-flammable aerosols containing foodstuffs at pressures exceeding those authorized.	1
SP14429	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of a DOT specification 2P non-refillable aluminum in-side container which has been leakage tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP14440	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of Division 2.1 aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test.	1
SP14503	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosol foodstuffs in a non-refillable metal container similar to DOT specification 2P and 2Q.	1

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
SP14544	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of Division 2.1 and 2.2 hazardous materials in certain non-DOT specification and DOT specification non-refillable aerosol containers which have been tested by an alternative method in lieu of the hot water bath test.	1
SP14623	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale, and use of a bag-on-valve, non-refillable, aerosol container which has been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container must be subject to an automated pressure test on the line.	1
SP14625	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
SP14627	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container must be subject to an automated pressure test on the line.	1
SP14723	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test.	1
SP14724	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of an aerosol in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated in-line pressure test.	1
SP14786	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2P and 2Q aluminum non-refillable inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	1
SP14842	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of consumer commodity (pressurized by nitrogen, compressed) and aerosols, non-flammable, (each not exceeding 1 L capacity) in DOT specification 2P non-refillable aluminum inside containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
SP14887	Cylinders—NDT/Aerosols	Authorizes transportation of aerosols and consumer commodities in commerce of DOT specification 2P and 2Q metal non-refillable inside containers and non-DOT specification metal inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP14953	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2Q non-refillable aluminum inside containers which have been leakage tested by an 100% automated in-line pressure check in lieu of the hot water bath test.	1
SP15135	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT 2P non-refillable metal containers (containing a laminate bag on valve system) which are leak tested by an automated in-line pressure check in lieu of the required hot water bath test.	1
SP15265	Cylinders—NDT/Aerosols	Authorizes manufacture, mark, sale and use of non-DOT specification bag-on-valve spray packaging similar to an aerosol container without requiring the hot water bath test conforming with all regulations applicable to a DOT specification 2P or 2Q, except as specified herein, for the transportation in commerce of certain hazardous materials.	1
SP15427	Cylinders—NDT/Aerosols	Authorizes manufacture, mark, sale and use of non-refillable inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP15792	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2P non-refillable aluminum inside containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
		Cargo Tanks/Rail Cars/Portable Tanks	
SP12039	Cargo Tanks/Rail Cars/Portable Tanks.	Authorizes transportation in commerce of DOT 113C120W tank cars containing ethylene, refrigerated liquid, at an internal pressure of 20 psig instead of the maximum 10 psig.	3
SP12576	Cargo Tanks/Rail Cars/Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification tanks conforming with all regulations applicable to a DOT specification MC 331 cargo tank, except as specified, for transportation in commerce of certain hazardous materials.	1

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
		Operational Air/Vessel	
SP11150	Operational Air/Vessel	Authorizes transportation in commerce of liquefied petroleum gas in DOT specification cylinders, secured to transport vehicles on passenger ferry vessels.	1
SP11691	Operational Air/Vessel	Authorizes transportation in commerce of certain flammable and corrosive liquids, which are the ingredients of soft drinks (beverages), not subject to the segregation requirements for vessel stowage when shipped in the same transport unit.	10
SP13213	Operational Air/Vessel	Authorizes stowage aboard passenger ferry vessels of private motor vehicles such as recreational vehicles, with attached cylinders of liquefied petroleum gas in addition to extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas.	1
SP14458	Operational Air/Vessel	Authorizes private motor vehicles such as recreational vehicles, with attached cylinders of liquefied petroleum gas in addition to extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas to be stowed aboard passenger ferry vessels.	1
		Operational Highway/Rail/Shipper/Other	
SP7991	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of railroad flagging kits of specified construction, containing certain Class 1.4 and 4.1 materials, not subject to the HMR.	37
SP8006	Operational Highway/Rail/Shipper/Other.	Authorizes certain articles, explosive, n.o.s., Division 1.4S (toy caps) to be offered for transportation in commerce without labels.	3
SP9610	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain empty packagings containing residues of Class 1 smokeless powders without complete shipping papers and placarding.	11
SP9874	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment, to observe the loading and/or unloading operations of hazardous materials from production control centers in lieu of personnel remaining within 25 feet of the cargo tanks.	1
SP10597	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking and sale of temperature controlled equipment for use in motor vehicles engaged in transportation in commerce of Class 3 liquids or Division 2.1 gases.	1
SP10705	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of packages containing acrolein, stabilized, Division 6.1, to be exempted from the segregation requirements, when shipped by highway.	2
SP10803	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of temperature controlled equipment for use in motor vehicles engaged in transportation of Class 3 and Class 2.1 materials.	1
SP10882	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of temperature controlled equipment for use in motor vehicles engaged in transportation of Class 3 and Class 2.1 materials.	1
SP11043	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of Division 2.3 materials on the same transport vehicle with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8.	79
SP11055	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials that meet the criteria for Division 6.1, PG I, Hazard Zone A in combination packages and provides relief from the segregation requirements.	8
SP11078	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain nickel-cadmium batteries each containing no more than 10 ml of liquid potassium hydroxide, a Class 8 material, as not subject to the HMR.	2
SP11151	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of combination packages containing hazardous wastes that are poisonous by inhalation, Division 6.1, PG I, Hazard Zone A, in the same transport vehicle with packages containing hazardous materials assigned to Class 3, Class 8 or Divisions 4.1, 4.2, 4.3, 5.1, 5.2.	1
SP11197	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce by private carrier of restricted quantities of hazardous materials that are authorized for exception in column 8A of the HMT, excluding Class 1, Class 7 and Divisions 6.1 and 6.2.	3
SP11202	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials across a public road, from one part of a plant to another, as essentially not subject to parts 172 and 173.	1
SP11356	Operational Highway/Rail/Shipper/Other.	Authorizes reassignment of certain high viscosity flammable liquids from Packing Group II to III for packagings with a capacity greater than 30L.	3
SP11373	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of Division 4.2 (self-heating) materials in Packing Group II or III on the same transport vehicle with Class 8 liquids when the materials are appropriately separated.	29

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
SP11458	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of display packs of consumer commodity packages or limited quantities packages that exceed the 30 kg gross weight limit.	16
SP11470	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of shrink wrapped pallets containing boxes of waste ORM–D materials with the word ''WASTE'' marked on the outside of the pallet instead of on each individual box.	34
SP11666	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of green graphite products on open flat-bed truck trailers, rail flat cars, intermodal freight containers, and when unitized by banding to wooden runners or pallets.	13
SP11811	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of various household wastes without having the quantity and unit measurement shown on the shipping paper during local pick-up operations.	4
SP11984	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain unapproved chemical oxygen generators with only one positive means of preventing unintentional actuation of the generator and without the required approval number marked on the outside of the package.	17
SP12002	Operational Highway/Rail/Shipper/Other.	Authorizes unloading of tank cars containing Class 3 materials utilizing an alternate procedure to remove frozen liquid from bottom outlet valves.	1
SP13190	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading operations of anhydrous ammonia from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	1
SP13199	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of reconditioned (''used'') refrigeration units under the provisions of § 173.306(e).	1
SP13343	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain wetted Division 1.1D explosive substances in heated cargo vehicles when they would likely freeze during transport.	1
SP13424	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading and unloading operations of various hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	2
SP13484	Operational Highway/Rail/Shipper/Other.	Authorizes DOT specification MC 330, MC 331 and MC 338 cargo tank motor vehicles to be loaded with certain Division 2.2 liquefied gases using specially designed hoses in lieu of full time attendance by a qualified person during loading operations.	2
SP13959	Operational Highway/Rail/Shipper/Other.	Authorizes use of a video camera and monitor to observe the loading incidental to movement or unloading incidental to movement of anhydrous ammonia from a remote control room in place of personnel remaining within 25 feet of the cargo tank motor vehicle.	1
SP14141	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain Class 3, 8, and 9 materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
SP14150	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading and unloading operations of certain Class 3 and Class 8 hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	1
SP14335	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of Division 2.3 Zone A materials on the same motor vehicle with DOT specification packagings containing the residues of Divisions 2.1, 2.3, 4.3, 5.1, and Classes 3 and 8 materials.	3
SP14447	Operational Highway/Rail/Shipper/Other.	Authorizes DOT specification cargo tank motor vehicles containing certain Division 2.2; 5.1; and 6.1; Class 3 and 8 hazardous materials to be loaded/unloaded using specially designed hoses in lieu of being attended by a qualified person during loading and unloading operations.	1
SP14525	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain used diatomaceus earth filter material not subject to the HMR, except for shipping papers and certain marking requirements.	2
SP14618	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of temperature controlled equipment for use in motor vehicles engaged in the transportation in commerce of Class 3 liquids or Division 2.1 gases.	1
SP14680	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of spent sulfuric acid in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	2
SP14726	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of temperature controlled equipment for use in motor vehicle transportation of Class 3 and Division 2.1 materials.	1

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
SP14822	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment, to observe the loading and unloading operations of hazardous materials from production control centers in lieu of personnel remaining within 25 feet of the cargo tanks.	1
SP14827	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain corrosive materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
SP14840	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain Class 8 materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
		Non-Bulk Packaging Specifications/IBCs	
SP6614	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of polyethylene bottles placed in a polyethylene crate for transportation in commerce of certain Class 8 corrosive materials (NA1760, UN3266, UN3264, UN3265, UN1791, UN1789, and UN2796).	11
SP8230	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of Packing Group I and II nitric acids in certain combination packagings.	4
SP9722	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of UN1H1 plastic drums to be used for transportation in commerce of nitric acid with not more than 40% nitric acid.	2
SP11602	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 4.3 materials contained in sift-proof closed bulk packagings. Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides) 4.3, UN2813, PG II or III.	11
SP11624	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce by motor vehicle, rail freight and cargo vessel of certain waste paints and paint related materials, Class 3, in metal or plastic pails, packed in cubic yard boxes, dump trailers, and roll-off containers.	114
SP12030	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of battery fluid, acid, packaged with a dry storage battery in a UN4G fiberboard box with a maximum gross weight not over 37.0 kg which exceeds the weight limitation.	1
SP12335	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 1.1D and 1.4D detonating cords without the ends being sealed in alternative packaging.	8
SP12920	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain pyrophoric materials in a combination package consisting of UN1A2 outer package and a UN1A1 inner package.	19
SP13052	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of UN11G intermediate bulk containers (IBCs) for transportation in commerce of waste paint and related materials.	1
SP13217	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of gasoline in non-DOT specification packages known as gasoline dispensers.	1
SP13548	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of lead acid batteries and packages of battery acid (with two different UN numbers) on the same vehicle.	125
SP13796	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of phosphorus, yellow, under water in alternate packaging.	1
SP14137	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain hydrochloric acid solutions in UN31H1 or UN31HH1 intermediate bulk containers (IBCs).	1
SP14213	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of UN1H1 plastic drums to be used for transportation in commerce of nitric acid with not more than 40% nitric acid.	1
SP14712	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale, and use UN11G fiberboard and UN13H4 woven plastic, coated and with liner flexible intermediate bulk containers (IBCs) for use as the outer packaging for certain Class 3 waste paints.	1
SP15235	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of UN 11G fiberboard intermediate bulk containers (IBCs) for use as the outer packaging for certain Class 3 waste paints and waste paint related material.	1
SP15373	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of the specially designed combination packagings for transportation in commerce of certain Class 4.3 materials without hazard labels or placards, with quantity limits not exceeding 25 grams.	1

IV. Public Comments

In the NPRM, PHMSA welcomed comments concerning its proposed amendments. Specifically, PHMSA was interested in comments from SP holders (both those deemed suitable and those deemed not suitable for adoption) that are reviewed for this rulemaking.

For holders of SPs deemed suitable for adoption, PHMSA requested comment on our determination. We stated that we were particularly interested in comments that confirm or refute the suitability, safety, and general applicability of the SPs. PHMSA also solicited comments on the regulatory text proposed in this proceeding. Specifically, PHMSA was interested in comments that address whether the proposed regulatory text accurately encompasses the requirements of the SP.

For holders of SPs deemed not suitable for adoption, PHMSA also requested comment on our determination. We stated that we were particularly interested in comments that confirm or refute the suitability, safety, and general applicability of the SPs. We asked that if you are a holder of a SP that was not proposed to be adopted but believe it should be, you should submit material to support such an argument. Specifically, PHMSA requested:

- Information and arguments that support the proposed adoption including technical and scientific data;
- The impact of the proposed adoption including cost and benefits;
- The frequency of shipments made under the SP;
- The frequency of hazardous materials incidents (such as those described in §§ 171.15 and 171.16) occurring during shipments made under the SP; and
- Proposed regulatory text.

Lastly, PHMSA requested comment as it considers a future proposed requirement for a SP applicant to provide potential regulatory text as part of each SP application.

In response to the January 30, 2015 NPRM, PHMSA received 22 sets of public comments. All were supportive of PHMSA's actions to reduce the number of active SPs. Specifically, commenters to the NPRM were as follows in Table 9:

TABLE 9—NPRM COMMENTERS

Commenter	Docket reference (*http://www.regulations.gov*)
PCTI Puerto Rico Inc. (PCTI)	PHMSA–2013–0042–003
Pepsi Cola Sales and Distribution, Inc. (PCSD)	PHMSA–2013–0042–004
United Parcel Service (UPS)	PHMSA–2013–0042–006
DS Container (DSC)	PHMSA–2013–0042–007
Mauser USA (Mauser)	PHMSA–2013–0042–009
Gulf Coast Chemical LLC (Gulf Coast)	PHMSA–2013–0042–010
Estes-Cox Corporation (Estes-Cox)	PHMSA–2013–0042–011
Arkema Inc. (Arkema)	PHMSA–2013–0042–013
Veolia ES Technical Solutions, LLC (Veolia)	PHMSA–2013–0042–015
Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2013–0042–016
Rigid Intermediate Bulk Container Association of North America (RIBCA–NA)	PHMSA–2013–0042–017
Air Products and Chemicals, Inc. (Air Products)	PHMSA–2013–0042–018
Battery Council International (BCI)	PHMSA–2013–0042–019
Institute of Makers of Explosives (IME)	PHMSA–2013–0042–020
The Chlorine Institute (CI)	PHMSA–2013–0042–021
Dangerous Goods Advisory Council (DGAC)	PHMSA–2013–0042–022
Eli Lilly and Company (Eli)	PHMSA–2013–0042–023
Consumer Specialty Products Association (CSPA)	PHMSA–2013–0042–024
Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2013–0042–025
Dow Chemical Company (Dow)	PHMSA–2013–0042–026
American Coatings Association (ACA)	PHMSA–2013–0042–027
Barlen and Associates, Inc. (Barlen)	PHMSA–2013–0042–028

A. General/Administrative

DSC expresses its concern about the disposition of SPs adopted into the HMR. It asks what happens to SPs once they are adopted into the HMR, and if there will be a phase-in period. DSC also asks, if the adoption of a SP is unacceptable to a grantee or grantees, will the SP still be an available option? It also asks will this rulemaking affect the application of future SPs.

PHMSA notes that as the intention of this rulemaking is to adopt the provisions of certain SPs into the HMR, those affected SPs will be allowed to expire. However, PHMSA is providing a one-year effective date to allow current grantees sufficient time to transition from the provisions of their SPs to the new requirements being adopted into the HMR. In addition, if the adoption of a SP proves to be unacceptable to a grantee, a renewal or modification in accordance with 49 CFR 107.121 will still be allowed. This rulemaking will not affect the application for future SPs as the requirements to apply for a SP are not being revised, and the SP program will continue as permitted by law. Air Products asks if PHMSA will provide a timeline/updates for ''other'' rulemaking proceedings that may have SPs under consideration for adoption in the HMR. PHMSA will continue to provide updates pertaining to other rulemaking proceedings that may have SPs under consideration for adoption into the HMR through its existing channels which include the semi-annual agenda, rulemaking activities, and **Federal Register** notices.

In the NPRM, PHMSA solicited input regarding applicants being required to submit proposed regulatory text with SP applications. PHMSA acknowledges mixed support from affected entities on this issue. For example, Veolia and Dow support adoption of such policy while COSTHA and ACA do not. IME supports such policy as an option for an applicant.

IME is concerned that PHMSA will conduct SP reviews for potential adoption on a biennial basis rather than an annual basis as implied through MAP–21 legislation. As noted elsewhere in this preamble, PHMSA intends to perform SP evaluations on an annual basis; however, rulemaking actions as a result may take more time as necessary.

Lastly, PHMSA's final regulations issued in its final rule entitled ''Hazardous Materials: Special Permit and Approvals Standard Operating Procedures and Evaluation Process,'' under Docket No. PHMSA–2012–0260 (HM–233E; 9/10/15, 80 FR 54418, FR Doc. 2015–22617), contain minor

editorial errors in two definitions in adopted in § 107.1 concerning special permits and approvals. PHMSA is correcting those definitions in this final rule.

B. Cylinders—General

No comments were received regarding the SPs proposed for adoption under this category. PHMSA did, however, receive comments requesting reconsideration of certain SPs not proposed for adoption.

Comments Requesting Reconsideration

COSTHA requests that reconsideration be given to adopt portions of SPs 12726 and 15277 (aircraft fire extinguishers) to allow them to be described in transportation as UN1044, Fire extinguishers. PHMSA notes this issue is under consideration in another rulemaking action under docket PHMSA–2011–0140 (RIN 2137–AE80 (HM–234)). COSTHA also requests that reconsideration be given to adopt SP 10898 in § 173.306(f) related to accumulators. Because neither SP was proposed for adoption in the NPRM, neither SP is being adopted in this final rule.

C. Cylinders—NDT/Aerosols

CSPA is supportive of the adoption of SP 11296 and its expansion beyond flammable aerosols only (as proposed in the NPRM).

CSPA and DSC generally support adoption of SP 12573 (and the consolidation with SP 13581) as proposed. They are, however, concerned with the supposed arbitrary increase in reference temperature and pressure with the new DOT 2Q1 standard currently authorized for refrigerant gases in § 173.304. DSC suggests a single requirement of 210 psig at 55 °C (131 °F). It also suggests that such arbitrary actions if adopted could increase the number of SP applications submitted as a result. PHMSA recognizes the commenters' concerns; however, changing the reference temperature for the refrigerant gases to 54.4 °C (130 °F) would make section 173.304(d) inconsistent with the other sections for the filling of gases. As noted in the NPRM, PHMSA sought to have consistency where some sections referred to 54.4 °C (130 °F) and some to 55 °C (131 °F). PHMSA is therefore keeping the reference temperature used for maximum pressure in a container at 55 °C (131 °F) as proposed in the NPRM. In order to address the commenters' concerns, PHMSA is raising the proposed maximum pressure authorized in the new DOT 2Q1 container to 210 psig at 55 °C (131 °F) as authorized in §§ 173.304 and 173.306. The burst pressure of the DOT 2Q1 will have to be raised slightly accordingly to provide for the same safety factor. This will be discussed in a later section.

CSPA and DSC generally support adoption of the consolidated SPs 7951, 13601, and 14503 as proposed. They are again, however, concerned with the increase in reference temperature and pressure. CSPA is also concerned that the new relationship proposed between a pressure relief device (PRD) and an end expansion device, and the arbitrary upper boundaries adopted should instead be simply required to operate prior to burst. CSPA and DSC suggest as an alternative that ''the requirement could be defined differently for an end expansion device specifically versus the PRD using the language in SP 13601 that requires that the end buckle before burst and that the container not burst below 270 psig.''

CSPA and DSC correctly point out that the methodology used in the ''if/then'' table for the use of a DOT 2P or DOT 2Q aerosol on page 5439 [of the NPRM] is actually reversed and would lead to not allowing (by choice) a higher integrity container as a result. PHMSA agrees with the commenters and is revising the tables in § 173.306 accordingly.

CSPA generally supports adoption of the new DOT 2Q1 container as proposed.

DSC suggests that the new DOT 2P1 specification should be limited to refrigerated foodstuffs only as prescribed in SPs 13601, 14503, and 7951. Further, DSC recommends that the new DOT 2P1 specification not be expanded to authorize Division 2.1 flammable gases. However, in its comments, DSC does not provide support as to why the new DOT 2P1 specification should be limited to refrigerated foodstuffs and Division 2.2 (nonflammable) gases only.

DSC recommends that foodstuffs in refrigerated DOT 2P1 cans be excepted, as they currently are under the SPs, from the hot water bath test. PHMSA notes that refrigerated foodstuffs in aerosol cans under § 173.306(b) will continue to be excepted from hot water bath testing when the three SPs are adopted in the HMR.

CSPA supports consolidation of SPs 14429, 14623, 14625, 14627, 14723, 14724, 14786, 14842, 14887, 14953, 15135, 15265, 15427, and 15972 (hot water bath test alternative), SP 14440 (weight test), and SP 14544 (weight and leakage test) as proposed.

DSC is concerned as to what will happen to SPs once adopted into the HMR and whether there will be a phase-in period. It asks because of substantial costs and other impacts due to relabeling of product, etc. Dow and CSPA support adoption of SP 12995, with Dow asking that sufficient time be allotted to deplete existing inventory.

In response, PHMSA notes there is a one-year transition period provided to affected entities in this final rule. Further, as prescribed in § 173.23(h), a packaging that is permanently marked with a SP number, ''DOT–SP'' or ''DOT–E,'' for which the provisions of the SP have been incorporated into the HMR may continue to be used for the life of the packaging without obliterating or otherwise removing the SP number.

Comments Requesting Reconsideration

CSPA strongly asserts that reconsideration should be given to adopting SP 11516, which authorizes transportation in commerce of aerosols that do not meet the HMR definition of an aerosol (*e.g.,* expels propellant only). CSPA suggests that PHMSA should adopt the international United Nations (UN) and the Globally Harmonized System (GHS) definition of an aerosol. In its comments, CSPA claims that DOT committed to adopting the international aerosol definition while it was involved with developing the GHS flammability standard. CSPA also states ''it is vitally important that DOT maintain 11516 (and other related SPs) as is.''

Although PHMSA appreciates the comments pertaining to SP 11516, until such a time that PHMSA participates in an open and transparent debate on this issue (redefining the term ''aerosol''), SPs such as SP 11516 and the like will remain valid under current policy and definitions.

D. Cargo Tanks/Rail Cars/Portable Tanks

No comments were received regarding the SPs proposed for adoption under this category. PHMSA did, however, receive comments requesting reconsideration of certain SPs not proposed for adoption.

Comments Requesting Reconsideration

In its comments, The Chlorine Institute (CI) recommends that reconsideration be given to adopt SP 9694 and 10457. These SPs authorize the transportation in commerce of chlorine contained in MC 331 cargo tanks equipped with angle valves, excess flow valves and pressure relief valves not presently authorized in the HMR. Because neither SP was proposed for adoption in the NPRM, neither SP is being adopted in this final rule.

In its comments, The CI recommends that reconsideration should be given to

adopt SP 15647. This SP authorizes the retesting of certain DOT specification and non-DOT specification multi-unit tank car tanks without approval from the Association of American Railroads (AAR). PHMSA notes that SP 15647 is under consideration for adoption into the HMR in a separate advance notice of proposed rulemaking (ANPRM) under docket PHMSA–2012–0082 (HM–251).

Lastly, the CI recommends that reconsideration should be given to adopt SP 9166 and SP 11903 under Petition for Rulemaking (P–1608) and related SPs 10878, 12516, 14275, 14277, 14779, and 15552. These SPs authorize the manufacture, marking, sale, and use of a non-DOT specification glass fiber reinforced plastic (GFRP) cargo tank conforming with all regulations applicable to a DOT specification 407/412 for transportation in commerce of certain hazardous materials. PHMSA notes it is working to develop a uniform standard for FRP cargo tanks and will address this issue in a future rulemaking.

E. Operational Air/Vessel

COSTHA supports future consideration of SP 11110 under Petition for Rulemaking P–1610. As previously noted, COSTHA submitted a petition for rulemaking under P–1610 to adopt the provisions of SP 11110 into the HMR. This SP authorizes cargo aircraft operators to stow Division 1.4S and Class 8, PG III materials in inaccessible cargo locations in excess of the limitations specified in § 175.75(c). This petition has been accepted by PHMSA for consideration in a future rulemaking; however, more time is needed to research the potential impact of changes to § 175.75 and to coordinate this review with the appropriate parties, including our modal partners.

Based on comments from PCSD, proposed Special provision ''W11'' in § 172.102 is being replaced by revising § 176.800(a) to allow Class 8 (corrosive) materials that are also foodstuffs or foodstuff ingredients intended for human consumption to not be considered incompatible for segregation purposes in conformance with SP 11691.

Comments Requesting Reconsideration

Some commenters recommended that reconsideration be given to adopt SP 11502 (use of International Civil Aviation Organization Technical Instructions (ICAO TI) for highway shipments). In their comments, COSTHA and UPS firmly support adoption and provide justification as to why the SP should be adopted. However, PHMSA notes SP 11502 is under consideration for adoption into the HMR in a separate, broader, and yet unassigned air-specific rulemaking action.

Arkema recommends that reconsideration should be given to adopt SP 12879 into the HMR. This SP authorizes the transport of IBCs containing combustible liquids without placards or identification numbers in sealed freight containers consigned for export. Because SP 12879 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule; however, we may reconsider its codification in a future proceeding as appropriate.

F. Operational Highway/Rail/Shipper/Other

PHMSA acknowledges COSTHA's support for the adoption of petitions for rulemaking P–1607 (SP 11458) and P–1611 (SP 11470) into the HMR in this proceeding.

IME supports the adoption of SP 4850 as proposed. This SP authorizes the transportation in commerce by motor vehicle, rail freight, cargo vessel, and cargo aircraft of limited quantities of certain approved explosive articles (UN0237, charges, shaped, flexible, linear; and UN0104, cord, detonating, mild effect or fuse, detonating, mild effect metal clad) re-classed as Division 1.4D in prescribed packagings, subject to certain special provisions.

Veolia supports the adoption of SP 11055. Further, Veolia supports adoption of SP 11470 with one major modification—the HMR should not be limited to ''expired'' products but rather should include all consumer commodities shipped for disposal/recycling under manufacturer recalls, off-spec/unwanted/unneeded product, etc. PHMSA agrees with Veolia and is revising § 173.306(k) accordingly.

COSTHA and DGAC support the adoption of SPs 11352, 12207, 12306, 13165, and 14945. However, according to COSTHA, the proposed regulatory text in § 177.820 appears to be more restrictive than the exceptions currently in § 171.1(d)(4). After further consideration, we agree with COSTHA and are not adopting the five SPs in this final rule as proposed in the NPRM.

Dow supports the adoption of SP 9874, SP 14822, and the eight related SPs. In its comments, Dow supports codification of the SPs but has specific concerns: (1) SP 9874 and 14822 authorize instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment in addition to video monitoring; (2) SP 9874 and 14822 do not require a video camera with a ''motorized zoom lens capable of panning and zooming from the remote control station''; (3) SP 9874 and 14822 do not require that the view capability must include the entire containment area; and (4) Dow wants assurance that the attendance requirements in § 177.834 (i) apply to motor carriers only. We agree that Dow's comments have merit and, in this final rule, except for number (4), the regulatory text in § 177.834(i) is revised accordingly. Regarding issue number (4), long-standing interpretations preclude the need to revise the attendance applicability provisions of the HMR. As a result of Dow's concerns, § 177.834 (i) is revised accordingly in this final rule.

In its comments, Eli expresses it support for the adoption of SP 14150 in § 177.834(i)(3)(ii) as proposed. SP 14150 authorizes use of video cameras and monitors to observe the loading and unloading operations of certain Class 3 and Class 8 hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles. Lastly, PCTI supports adoption of SP 11352 as proposed in § 177.820.

Veolia supports the adoption of SP 11043. However, it notes that the regulatory text proposed in § 177.840(a)(3)(i) should be revised to require a 4-foot separation rather than a 5-foot separation for consistency with the segregation spacing requirements found in § 173.12(e). We agree with Veolia's comment and are revising § 177.840(a)(3)(i)(C) accordingly.

Veolia supports adoption of SP 11984 with one major modification—the HMR should require flame-proof outer packaging for chemical oxygen generators shipped with only one positive means of preventing unintentional activation as expressed in concern for equivalent level of safety in proposed SP modification in August 2011. After additional review, in this final rule, we are adopting the provisions of SP 11984 as proposed into § 173.168.

In the NPRM, PHMSA proposed to add Special Provision 383 to adopt SP 11356. This SP authorizes certain materials meeting the conditions for high viscosity flammable liquids specified in § 173.121(b)(1)(i), (b)(1)(ii), and (b)(1)(iv), to be reassigned to Packing Group (PG) III for transportation by motor vehicle. The SP prescribes packaging, capacity limitations, and load securement requirements. We proposed to adopt the provisions of the SP in its entirety in this new special provision for the following entries: Coating solution (UN1139, PG II) and paint (UN1263, PG II). In its comments,

ACA requests that PHMSA expand the materials authorized for reclassification to include: (1) UN1866, Resin solution, PG II; (2) UN1210, Printing ink, PG II; and (3) UN1133, Adhesives, PG II. We agree with ACA and are revising the HMT for the requested entries accordingly.

In the NPRM, we proposed to add a new paragraph (h) to § 173.12 to adopt the provisions of SP 11470 in its entirety. In its comments, ACA is concerned that ''stretch-wrapped'' pallets would not be able to take advantage of the exceptions provided for ''shrink-wrapped'' pallets. Further, ACA suggests that the proposed regulatory text limits the type of packages to ''boxes.'' We agree and are revising § 173.12(h) to explicitly allow ''stretch-wrapped'' pallets and any authorized type of packaging.

Section 174.67 establishes specific operational requirements for railroad tank car unloading. For combustible liquids or Class 3 liquid petroleum distillate fuels, SP 12002 authorizes clearing frozen liquid blockages from the outlet by attaching a fitting to the outlet line and applying nitrogen at a pressure of 50 to 100 psi. In the NPRM, we proposed to revise paragraph (g) to § 174.67 to adopt the provisions of SP 12002 in its entirety. In its comments, ACA recommends that the use of nitrogen should be permitted ''at a pressure of up to 100 psi'' for clarity. We agree with ACA and are revising § 174.67(g) accordingly.

In its comments, DGAC supports adoption of SP 11666 as § 172.102(c)(1), Special Provision 384. It does, however, comment on the use of the word ''sifting'' which should actually be ''shifting'' and, further, the SP permits stacking two or more levels high to achieve maximum allowable utilization of the designated vehicle, rail car weight, or intermodal freight container weight or vessel hold volume. We agree with DGAC's comments and the special provision is revised accordingly.

DGAC supports the adoption of SP 14525 and correctly points-out some discrepancies in preamble discussion of its adoption in new § 172.102(c)(3), Special Provision B130. We agree with DGAC's comments and revise the preamble discussion and regulatory text accordingly.

Comments Requesting Reconsideration

IME and COSTHA firmly support that reconsideration should be given to adopt SP 14282. This SP authorizes transportation in commerce of certain detonators, detonator assemblies, detonators for ammunition, detonating fuses and igniting fuses on the same motor vehicle with any other Class 1 explosives. Because SP 14282 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

Veolia comments that reconsideration should be given to adopt SP 12998. This SP authorizes the transportation in commerce of lab packs containing materials that are not waste materials by private or contract carrier from one laboratory to another within the same company. Because SP 12998 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

Veolia comments that reconsideration should be given to adopt SP 12102. This SP authorizes transportation in commerce of certain unapproved desensitized explosives. Because SP 12102 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

Veolia comments that reconsideration should be given to adopt SP 13179. This SP authorizes transportation in commerce of certain approved lighters which have been removed from their inner packaging and are being sent for disposal. Because the SP indicated Code 5 (already adopted or otherwise covered under current regulations as the reason it was considered not suitable for adoption), Veolia asserts PHMSA will terminate the SP and therefore, its provisions either need to be adopted into the HMR in this rulemaking or the SP should not be terminated. We sincerely apologize for any confusion this may have caused as we mistakenly miscoded SP 13179 in the NPRM. In hindsight, SP 13179 should have been a Code 2 or 3 as not suitable for adoption. Further, because SP 13179 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule nor do we intend to terminate it at this time.

For highway transportation by private carrier, SP 11197 provides relief from the requirement to display the limited quantity marking on packages containing materials assigned to PG II and III and prepared in accordance with the limited quantity requirements in Part 173. In its comments, ACA claims the regulatory text is not clear regarding its application but did not provide alternative language. Consequently, the language is adopted as proposed.

Gulf Coast, RIBCA–NA, and CI recommend that reconsideration should be given to adopt SP 12412 into the HMR as there are 322 companies as grantees. This SP authorizes discharge of liquid hazardous materials from certain UN intermediate bulk containers (IBCs) and DOT specification 57 portable tanks without removing them from the vehicle on which they are transported. Because SP 12412 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

Estes-Cox firmly supports the adoption of SP 7887 and comments that reconsideration should be given. This SP authorizes certain Class 1 articles in small amounts to be reclassed as Division 4.1 flammable solid, organic, n.o.s. It applies to small ''single-use expendable'' or ''reloadable'' rocket motors first classed as Division 1.4C or 1.4S (NA0323 or NA0276) shipped with or without their igniters classed as Division 1.4G or 1.4S under § 173.56. Because SP 7887 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

G. Non-Bulk Packaging Specifications/IBCs

IME supports the adoption of SP 12335, which authorizes transportation in commerce of certain Division 1.1D and 1.4D detonating cords without the ends being sealed in alternative packaging.

SP 8230 authorizes the transportation in commerce of PG I and II nitric acids in certain combination packagings by motor vehicle, rail freight, cargo vessel and cargo-only aircraft. Specifically, ''Nitric acid, other than red fuming, with more than 70% nitric acid'' and ''Nitric acid, other than red fuming, with not more than 70% nitric acid'' is authorized to be transported in inner plastic bottles in rigid foam plastic receptacles or plastic bags lined with absorbent material in outer packagings. In its comments, UPS supports adoption of SP 8230 in § 173.158(j) as proposed.

Section 173.158 provides general requirements and exceptions for shipments and packagings of nitric acid. In the NPRM, we proposed to establish a new paragraph (i) to authorize ''Nitric acid of up to 40% concentration'' in a UN1H1 non-removable head plastic drums with certain conditions as prescribed in SP 14213. In its comments, Mauser questioned why SP 9722 was not also proposed for adoption as it is identical to Greif's SP 14213. After additional review, we agree and in this final rule are also adopting the provisions of SP 9722 into § 173.158 accordingly.

DGAC supports the adoption of SP 9610 with edits. However, the SP was revised in November 2014 after review of the SPs as part of this proceeding. We agree with the revisions made to the SP. Therefore, in this final rule, we are revising new paragraph § 173.29(f) to address the DGAC edits and the 2014

revisions to the SP, specifically, to include fiberboard boxes as authorized packagings for empty packagings containing the residue of smokeless powders.

Comments Requesting Reconsideration

IME and COSTHA firmly support that reconsideration should be given to adopt SP 8451. This SP authorizes transportation in commerce of not more than 25 grams of solid explosive or pyrotechnic material, including waste-containing explosives that have an energy density not significantly greater than that of pentaerythritol tetranitrate (PETN), classed as Division 1.4E, when packed in a special shipping container. Because SP 8451 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

IME firmly supports that reconsideration should be given to adopt SP 10880. This SP authorizes the transportation in commerce of ammonium nitrate-fuel oil mixture (ANFO), Division 1.5, in reusable, flexible intermediate bulk containers (IBCs) type UN 13H3 or UN 13H4 conforming to Subpart N and O of Part 178. Because SP 10880 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

IME and COSTHA firmly support that reconsideration should be given to adopt SP 11156. This SP authorizes transportation in commerce of NA0331, UN1942 and UN0331 in non-DOT specification multi-wall plastic-lined paper bags. Because SP 11156 was not proposed for adoption in the NPRM, the SP is not being adopted in this final rule.

SP 11624 was not proposed for adoption in the NPRM. The SP is in its fifteenth revision and has 114 grantees. The SP authorizes transportation in commerce of certain waste Class 3 paint and paint related material (UN1263; PG II and PG III) contained in metal or plastic pails further packed in non-specification bulk packagings such as cubic yard boxes, plastic rigid-wall bulk containers, dump trailers, and roll-off containers. In their comments, Veolia, ACA, and DGAC provided substantial justification why reconsideration should be given to adopt SP 11624 into the HMR. Therefore, after revaluation, SP 11624 and three related packaging SPs (*i.e.,* SP 13052, SP 14712, and 15235) are adopted as new § 172.102(c)(3), Special Provision B131.

V. Section-by-Section Review by Topic Area

A. Cylinders—General

Part 172

Section 172.102—Special Provisions

Section 172.102(c) lists special provisions applicable to specific entries in the Hazardous Materials Table (HMT). Special provisions may contain packaging requirements, conditions or limitations, and exceptions applicable to particular quantities or forms of hazardous materials.

In general, non-bulk packagings must be marked with an identification number and proper shipping name and bear labels communicating the hazard of the material contained in the package. SP 13544 authorizes the transportation in commerce of DOT Specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and propane and/or residue of LPG or propane without hazard warnings (*i.e.,* hazard communication) provided the materials are transported in a closed and placarded transport vehicle. This SP supports the propane cylinder exchange programs that accept expended cylinders in exchange for full cylinders. Cylinders collected during the course of these programs may not always bear the appropriate hazard markings and labels as required by the HMR. SP 13544 prescribes certain operational controls to ensure appropriate hazard communication, driver training, and appropriate securement of the cylinder on the transport vehicle.

In this final rule, PHMSA is adopting SP 13544 as proposed by adding new Special Provision, ''N95'' to § 172.102(c)(5) that excepts cylinders containing UN1075, Liquefied petroleum gas and UN1978, Propane from marking the identification number and proper shipping name or bear hazard labels provided certain conditions are met. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Section 172.400a

Section 172.400a provides exceptions or alternatives to the HMR labeling requirements under specific circumstances. One such alternative permits the use of a neckring marking, under certain conditions, in accordance with the Compressed Gas Association (CGA) Pamphlet C–7, *Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers,* Appendix A, 8th Edition (2004). Section 172.400a permits the use of a CGA Pamphlet C–7 marking in lieu of the required 100 mm x 100 mm square-on-point labels on a Dewar flask meeting the requirements in § 173.320 and on cylinders containing Division 2.1, 2.2, and 2.3 materials that are not overpacked.

SP 14251 authorizes the transportation of overpacked cylinders, containing Class 2 materials, with CGA C–7 neckring markings provided the overpack is labeled in accordance with § 172.400. Additionally, the CGA petitioned PHMSA (under petition P–1521) to allow cylinders to display the neckring marking even when overpacked. The petition, if adopted, would still require the overpack to display the 100 mm x 100 mm square-on-point labels in accordance with 49 CFR Part 172, Subpart E. The marking prescribed in Appendix A to CGA Pamphlet C–7 provides useful information in a clear and consistent manner and its widespread use on cylinders over the course of several years has enhanced its recognition. The adoption of SP 14251 and CGA's petition would provide greater flexibility for shipments of cylinders while ensuring adequate hazard communication. Therefore, PHMSA is revising as proposed § 172.400a by authorizing the transportation of overpacked cylinders marked in accordance with CGA Pamphlet C–7 provided the overpacks are properly labeled.

Part 173

Section 173.181

Section 173.181 prescribes authorized packagings for the transportation of pyrophoric materials (liquids).

SP 14419 authorizes the use of DOT Specification 3AL cylinders constructed from aluminum alloy 6061–T6 for the transportation of pyrophoric liquids provided: (1) The cylinders are constructed of 6061–T6 aluminum; (2) have a minimum marked service pressure of 1800 psig; (3) have a maximum water capacity of 49 liters; and (4) any preheating or heating of the cylinders is limited to a maximum temperature of 175 °F. In this final rule, PHMSA is revising § 173.181(a) as proposed to permit the use of DOT Specification 3AL cylinders constructed from aluminum alloy 6061–T6, with the same specified conditions for the transport of pyrophoric materials.

Section 173.193

Section 173.193(b) requires that ''Bromoacetone, Methyl bromide, Chloropicrin and Methyl bromide mixtures, Chloropicrin and Methyl chloride mixtures, and Chloropicrin

mixtures charged with non-flammable, non-liquefied compressed gas be packaged in DOT Specification 3A, 3AA, 3B, 3C, 3E, 4A, 4B, 4BA, 4BW, or 4C cylinders having not over 113 kg (250 pounds) water capacity (nominal).''

SP 12301 authorizes the transportation in commerce of Chloropicrin and Methyl bromide mixtures in DOT 4BW cylinders with water capacity (nominal) not over 454 kg (1,000 pounds). In this final rule, PHMSA is adopting as proposed the revisions to § 173.193(b) that allow for Chloropicrin and Methyl bromide mixtures to be packaged in DOT specification 4BW cylinders with a water capacity of not over 454 kg (1,000 pounds).

Section 173.301

Section 173.301 prescribes the general requirements for the use of cylinders including a list of authorized cylinders, general filling requirements, valve protection, and pressure relief device requirements. In the NPRM, we proposed revisions that would amend certain pressure relief device requirements and permit the use of valve caps made from a material other than metal as authorized under the terms of three SPs.

SP 13318 authorizes the transportation in commerce of DOT Specification 39 cylinders of 75 cubic inches or less volume, without the PRD in direct communication with the vapor space. PHMSA proposed to amend paragraph (f)(2) to state that this provision does not apply to cylinders of 75 cubic inches or less in volume filled with a Liquefied petroleum gas, Methyl acetylene and Propadiene mixtures, stabilized, Propylene, Propane or Butane. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

SP 8074 provides an exception from the PRD requirements for a DOT Specification 3E cylinder up to 12 inches long and 2 inches in diameter when filled with the following gases and associated quantity limits: Carbon dioxide, liquefied 0.24L (8 oz.), Ethane 0.12L (4 oz.), Ethylene (4 oz.), Hydrogen chloride, anhydrous 0.24L (8 oz.), Nitrous oxide 0.24L (8 oz.), Vinyl fluoride, stabilized 0.24L (8 oz.) and Monochlorotrifluoromethane 0.35L (12 oz.). In the NPRM, PHMSA proposed to create an additional exception to PRD requirements for DOT–3E cylinders under limited circumstances in new paragraph § 173.301(f)(7). Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

SP 12782 authorizes plastic valve protection caps for certain Division 2.1, 2.2, and 2.3 materials when the valve protection is sufficient to prevent leakage when the cylinder, with the valve installed, is dropped from 2.0 m (7 ft) or more onto a non-yielding floor, impacting the valve assembly or cap at the orientation most likely to cause damage. The HMR require that each cylinder with a valve must have a protective metal cap, other valve protection device, or an overpack which is sufficient to protect the valve from damage during transportation. In the NPRM, PHMSA proposed to amend §§ 173.40(d) and 173.301(h) to allow for the new valve protection standard, including the valve cap, to be made from plastic as authorized in SP 12782. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Section 173.302a

Sections 173.302, 173.302a, 173.304 and 173.304a prescribe additional requirements for the transport of non-liquefied (permanent) and liquefied compressed gases in DOT specification cylinders. These requirements include authorized cylinders and filling limits. Section 173.302a(b) states that a DOT 3A, 3AA, 3AX, 3AAX, and 3T cylinder may be filled with a compressed gas, other than a liquefied, dissolved, Division 2.1, or Division 2.3 gas, to a pressure 10% in excess of its marked service pressure, subject to certain criteria.

SP 6530 authorizes the transport in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen, in certain cylinders filled to 10% in excess of their marked service pressure. In the NPRM, PHMSA proposed to add a new paragraph (c) to include this exception and to redesignate the other paragraphs in this section to reflect this addition. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM with the exception of an editorial correction. In the NPRM, paragraph (c)(3)(ii) stated that cylinders manufactured with chrome moly steel must have been normalized. The paragraph has been corrected to state that the steel must have been quenched and tempered, not normalized. In addition the paragraph (c)(4) the term safety relief devices has been corrected to pressure relief devices for consistency with current regulations.

Section 173.304a

In § 173.304a(a)(2), a table provides the maximum filling densities and permissible cylinder types for certain named gases. Currently, § 173.304a(a)(2) permits a maximum filling density of 68% for carbon dioxide and nitrous oxide in DOT 3, DOT 3HT2000 and DOT 39 cylinders, and DOT 3A, 3AA, 3AX, 3AAX, 3E, 3T, and 3AL cylinders with a marked service pressure of 1800 psi.

SP 13599 authorizes additional maximum filling densities for carbon dioxide and nitrous oxide to include 70.3%, 73.2%, and 74.5% respectively in DOT 3A, 3AA, 3AX, 3AAX, 3AL, and 3T cylinders with marked service pressures of 2000, 2265, and 2400 psig, subject to operational controls. Air Products and Chemicals Inc. (Air Products) submitted a petition for rulemaking (P–1560) requesting PHMSA revise § 173.304a(a)(2) to adopt the provisions of SP 13599. In the NPRM, PHMSA proposed to modify the entries currently in the table in § 173.304a(a)(2) to add additional filling densities for carbon dioxide and nitrous oxide. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Part 180, Subpart C

Qualification, Maintenance and Use of Cylinders

The HMR prescribe requirements for the continuing qualification, maintenance, and periodic requalification of DOT specification cylinders, DOT SP cylinders, and UN pressure receptacles. These requirements ensure that cylinders conform to the appropriate specification and compromised cylinders are not filled with hazardous materials. The discussion of the proposed amendments includes a section-by-section review of the current requirements, and a brief discussion of SPs considered for adoption and proposed amendments.

Section 180.209

Paragraph (e) of § 180.209 authorizes a proof pressure test in lieu of the volumetric expansion test for 4B, 4BA, 4BW, or 4E cylinders protected with a corrosion resistant coating and used exclusively for the gases specified in that paragraph.

SP 12084 expands the list of authorized gases in paragraph (e). These gases include refrigerated and liquefied gases similar to those already permitted by § 180.209(e). In the NPRM, PHMSA proposed to adopt the provisions in SP 12084 by removing the list of authorized

gases and authorizing the use of the proof pressure test for DOT–4B, 4BA, 4BW, or 4E cylinders protected externally by a suitable corrosion resistant coating and used exclusively for non-corrosive gases. The authorized specifications limit the total pressure in the cylinder to 500 psi or less. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Section 180.213

Cylinders requalified in accordance with the HMR must bear requalification markings in accordance with § 180.213. As provided in § 180.213(c), ''The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing or other method that produces a legible, durable mark.''

SP 14937 allows the use of a label embedded in epoxy in lieu of other methods prescribed in § 180.213. In the NPRM, PHMSA proposed to amend paragraph (c) to allow the use of a label embedded in epoxy in lieu of stamping provided the marking is legible and durable. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

B. Cylinders—Non-Destructive Testing/ Aerosols

Part 173

Section 173.304

Section 173.304 prescribes requirements for the filling of cylinders with liquefied compressed gases. Paragraph (d) of this section provides for authorized containers for the filling of cylinders with refrigerant and dispersant gases. Current regulations authorize these gases in DOT 2Q non-refillable metal containers.

SP 12573 authorizes a refrigerant gas R 134a, (UN3159), in a non-DOT specification container similar to a DOT 2Q container with a maximum allowable pressure for the contents of 198 psig at 54.4 °C (130 °F). In the NPRM, we differed marginally from the SP and proposed to adopt a maximum pressure threshold of 200 psig at 55 °C (131 °F) for the container's contents. We indicated there was no safety basis for the 200 psig ceiling other than we believed it was a cleaner cutoff point than the 198 psig maximum found in the SP. In addition, as part of the variation on the design of a DOT 2Q container, we proposed the modified container would be marked as a ''DOT 2Q1.''

Current regulations require that the pressure of the contents of the metal containers not exceed 87 psig at 21 °C (70 °F). In the NPRM, we invited comment on whether the requirement for a maximum pressure should be specified at 21 °C (70 °F) for the 2Q1 container in addition to the limit at 55 °C (131 °F). If so, we invited comment on what the upper limit should be for a typical refrigerant or dispersant gas such as 1,1,1,2 Tetrafluoroethane, R134a.

In its comments, DSC suggests a single requirement of 210 psig at 55 °C (131 °F). It also suggests that such arbitrary actions if adopted could increase the number of SP applications submitted as a result. PHMSA recognizes the commenters concerns, however, changing the reference temperature for the refrigerant gases to 54.4 °C (130 °F) would make section 173.304(d) inconsistent with the other sections for filling of gases. As noted in the NPRM, PHMSA sought to have consistency where some sections referred to 54.4 °C (130 °F) and some to 55 °C (131 °F). In order to address the commenters concerns, PHMSA is raising the proposed maximum pressure authorized in the new DOT 2Q1 container to 210 psig at 55°C (131 °F) as authorized in §§ 173.304 and 173.306. The burst pressure of the DOT 2Q1 will have to be slightly raised accordingly to provide for the same safety factor. This will be discussed in a later section. See the associated discussion in the comments received from Dow earlier in this preamble.

Section 173.306

Section 173.306 prescribes the general requirements and exceptions for limited quantities of compressed gases. In the NPRM, we proposed numerous changes to this section. The proposed changes and resolutions are discussed in the following.

Conforming Revisions

Throughout § 173.306 of the HMR and within related SPs that provide exemptions from these regulations for gases, pressure standards are indicated at either 130 °F or 131 °F. In the interest of consistency and conformity with the general requirements for compressed gases in § 173.301 and 173.301a, in the NPRM we proposed to change all references of 54.4 °C (130 °F) to 55 °C (131 °F). We invited comment on whether there would be any negative impacts in making this conforming change. We also proposed making revisions to the construction and formatting of how this section is presented (*e.g.,* insertion of an ''if, then'' table) in an effort to make the requirements more reader-friendly.

Authorized Metal Containers

DOT 2P Inner Nonrefillable Metal Containers

Under § 173.306, limited quantities of foodstuffs or soaps with soluble or emulsified compressed gas are authorized in nonrefillable metal or plastic containers. The paragraph (b)(1) introductory text authorizes these containers subject to a pressure not to exceed 140 psig at 54.4 °C (130 °F). SP 13601 and SP 14503 authorize the transportation of ''UN1950, Aerosols, non-flammable (each not exceeding 1 L capacity), 2.2,'' and SP 7951 authorizes the transportation of ''UN1956, Compressed gas, n.o.s., 2.2,'' in containers that otherwise conform to DOT 2P or DOT 2Q specifications with some modifications. Under the terms of SP 13601, the containers must have a maximum pressure for the contents not to exceed 160 psig at 54.4 °C (130 °F) and, for SP 7951 and SP 14503, the containers must have a maximum pressure for the contents not to exceed 150 psig at 23.9 °C (75 °F) and must be transported in a refrigerated state.

In the NPRM, we requested comments on whether refrigeration should be a condition of transport of these foodstuffs under pressure. In their comments, DSC and CSPA both recommend that PHMSA continue to require refrigeration as a condition of transport of these foodstuffs under pressure. See the comment summary section for a more detailed discussion of this issue. Because at least one of the special permits to be incorporated (SP 13601) does not explicitly require refrigeration, this requirement will not be adopted. Note that the additional limit of 150 psig at 23.9 °C (75 °F) is required. The shipper may use refrigeration if needed to achieve this pressure. As part of the variation of the DOT 2P containers, the modified containers are to be marked as ''DOT 2P1'' under the provisions of new § 178.33c discussed separately in this rulemaking.

We also proposed in the NPRM to include the specification DOT 2P1 as an authorized metal aerosol container under § 173.306(a)(3)(ii). We saw no reason to limit the container to foodstuffs or soaps under paragraph (b)(1) because the pressure limit for the contents is the same as the current requirement for a standard DOT 2P container. Lastly, we proposed that the DOT 2P1 would be authorized for both Division 2.1 (flammable) and 2.2 (non-flammable) aerosols under

§ 173.306(a)(3)(ii). PHMSA received negative comments on the use of the DOT 2P1 container for flammable gases. Because there has been no experience with this type of container equipped with a pressure relief device in flammable gas service, we will not adopt the 2P1 for any materials other than those authorized in the special permits incorporated at this time.

DOT 2Q Inner Nonrefillable Metal Containers

Under § 173.306, limited quantities of compressed gas are authorized in metal aerosol containers as defined in § 171.8 of the HMR. Paragraph (a)(3) introductory text of this section authorizes metal aerosol containers under certain conditions to include packaging types and pressure thresholds. Section 173.306(a)(3)(ii) currently requires the use of a DOT 2Q container for pressures exceeding 160 psig at 54.4 °C (130 °F) but not to exceed 180 psig. Except for some modifications, SP 12573 authorizes the packaging of UN1950, Aerosols, non-flammable, in non-DOT specification containers that otherwise conform to the DOT 2Q specification with a maximum pressure of 198 psig at 54.4 °C (130 °F).

In the NPRM, we proposed to adopt the modified DOT 2Q as an authorized metal aerosol container. We differed marginally from the SP in that we proposed to adopt a maximum pressure threshold of 200 psig at 55 °C (131 °F). We stated that there was no safety basis for the 200 psig ceiling other than we believed it was a cleaner cutoff point than the 198 psig maximum found in the SP. Additionally, we sought to provide consistency by using a reference temperature of 55 °C (131 °F). PHMSA received comments about the negative impact of raising the reference temperature from 54.4 °C (130 °F) to 55 °C (131 °F) particularly for shippers of R134a which has a pressure of 198 psig at 54.4 °C (130 °F). The commenters further stated that the pressure of R134a at 55 °C (131 °F) is 202 psig and that a pressure of 210 psig should be adopted. Consequently, in this final rule, PHMSA will adopt a pressure of 210 psig at 55 °C (131 °F) in order to allow for small variations; however, the reference temperature will remain at 54.4 °C (130 °F). As part of the variation of the specification of a DOT 2Q container, we stated the modified container will be marked as ''DOT 2Q1.''

In the NPRM, the proposed design burst pressure of the DOT 2Q1 was 300 psig. Because the fill pressure of the DOT 2Q1 will be 210 psig at 55 °C (131 °F), PHMSA will raise the design burst pressure to 320 psig in this final rule. The pressure of 320 psig is consistent with the minimum design burst pressure in SP 12573.

The NPRM also proposed to expand authorized materials to include Division 2.1 aerosols for the DOT 2Q1 specification. At that time, we saw no reason to limit the use of this container to non-flammable aerosols based on its record of use and that DOT 2Q containers currently authorized in the HMR are authorized to be used for all aerosol types. We also invited comment on the suitability of the container for all aerosol types. See the associated comment summary discussions for §§ 173.304 and 178.33d. PHMSA received mixed comments on the use of the DOT 2Q1 container for flammable gases. Because there has been no experience with this type of container equipped with a pressure relief device in flammable gas service, we will not adopt the DOT 2Q1 for any materials other than those authorized in the special permits incorporated at this time.

SP 13581 is linked to the above proposed provision in that it authorizes the use of metal aerosol containers manufactured, tested, and marked according to SP 12573. We believe this SP will no longer be needed with the adoption of the modified DOT 2Q container (*i.e.,* a DOT 2Q1 container).

Alternatives to Testing of Metal Aerosol Containers by a Hot Water Bath Test

As a condition of the use of a metal aerosol container used for certain commodities, each container, after being filled, must be subjected to a hot water bath to raise the internal pressure to such a degree that leakage or permanent deformation, if any, can be determined [see § 173.306(a)(3)(v)]. The provision also provides for a testing protocol for a container where the contents may be sensitive to heat. Currently, this is the only method authorized for determining leakage or permanent deformation. Thus, fillers that have developed other testing protocols or do not want to subject their products to a hot water bath test, must obtain a SP to do so. A number of SPs that authorize the use of alternative methods to determine leakage or permanent deformation are discussed as follows:

(1) Alternate hot water bath test. SP 12995 authorizes a methodology that is a combination of a hot water bath test, a weight test, and visual inspection. Rather than subjecting each filled container to a hot water bath test, only one container out of each lot is subjected to the hot water bath test, a second is subjected to a weight test, the results of which must be compared to weight specification for the container as outlined in quality control procedures, and finally, the remainder of the lot must be visually inspected by examining the valve, crimp, and seam areas for evidence of leakage.

In the NPRM, we proposed to adopt SP 12995. The permit authorizes only DOT 2Q containers but we are applying it to all authorized metal aerosol containers. While determining if SP 12995 was suitable for inclusion in this rulemaking, PHMSA's technical evaluators confirmed that the methodology that includes a combination of hot water bath test, weight test, and visual inspection may be performed on a DOT 2P as well as a DOT 2Q. Since these containers are similar designs except in terms of strength, this alternative to the hot water bath test is applicable to any metal container. Previously, most applicants of SP 12995 only requested 2Q because that is what they needed for their particular hazmat, but that does not mean that alternative testing is not acceptable for similar containers. Additionally, the permit applies to specific filling conditions but we will apply this testing method to containers complying with the current filling conditions in § 173.306(a)(3). Finally, we vary from the permit with our proposed language in that we require maintenance and access to operating procedures especially with regard to the weight test and specification in order to effect a broader application of this alternative. Rather than specify standards, we will allow persons to develop their own procedures that best fit their product on the condition that DOT has access to these procedures. Commenters were very supportive of our proposals to adopt such testing alternatives and, in this final rule, we are codifying them as proposed.

(2) Automated in-line pressure test. SPs 14429, 14623, 14625, 14627, 14723, 14724, 14786, 14842, 14887, 14953, 15135, 15265, 15427, and 15972 all authorize the use of an automated process to check the pressure of filled containers (*i.e.,* an ''automated in-line pressure check'') instead of subjecting the containers to a hot water bath. In this final rule, we are adopting the provisions of these SPs as proposed that authorize the use of an automated process for pressure checks that does not involve a hot water bath.

(3) Weight test. SP 14440 authorizes the use of a process to check the weight of filled containers (*i.e.,* an ''automated in-line pressure check'') instead of subjecting the containers to a hot water bath. In this final rule, we are adopting the provisions of the SP as proposed to

authorize the use of weight checks as a means to determine compliance with pressure requirements.

(4) Leakage test. SP 14544 authorizes the use of a high pressure air test on empty containers combined with a leakage test for filled containers instead of subjecting the containers to a hot water bath. The testing protocol for filled containers found in this SP is currently applied to plastic containers under paragraph (a)(5) of this section in the HMR, however, the pressure and leakage test of the empty containers differs in its application. Under SP 14544, each empty container must be pressure tested at 120 psig instead of the HMR requirement that each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F), and that is at least two-thirds of the design pressure of the container. Under both tests, if there is evidence of leakage, the container must be rejected. In this final rule, we are adopting the provisions of the SP as proposed to authorize the use of a leakage test as a means to determine compliance with pressure requirements. Our implementation differs from the SP in that we are adopting the leakage testing requirements under § 173.306(a)(5)(v), but including the SP 14544 testing protocol for empty containers as an alternative.

Accumulators

The HMR provide special considerations for compressed gases in accumulators. SP 8786 authorizes the transport of accumulators under an alternative testing procedure than what is prescribed in paragraphs (f)(2) and (f)(3) of this section. Rather than testing each accumulator to three times (3x) the charge pressure, the SP provides for conditions to test one accumulator out of each lot of 1,000 to the burst design pressure, and two accumulators to two and a half times (2.5x) the charge pressure. In the NPRM, we proposed to adopt most of SP 8786 into § 173.306. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Aerosol Disposal

The general packaging requirements of the HMR forbid the transport of leaking or improperly-filled packages. This includes aerosol containers that are found to be leaking or improperly filled as part of a combination packaging. SP 11296 provides an option to transport these containers to an offsite facility for disposal under certain conditions (*e.g.,* overpacking in DOT specification packagings, modal restrictions, etc.). In the NPRM, we proposed to adopt the general scope of SP 11296 with some differences. We proposed to also permit non-flammable aerosols. Further, the proposed regulatory language was modeled after the salvage packaging requirements of § 173.3(c) in that: (1) The authorized outer packaging for overpacking the defective cylinders has been expanded to include other metal drums (*i.e.,* 1B2 and 1N2); (2) a condition for cushioning and absorbent material, when necessary, has been added; and (3) an ''aerosol salvage'' drum marking has been adopted. Commenters were very supportive of our proposals to adopt such provisions for aerosol disposal and, in this final rule, we are codifying them as proposed.

Part 178

Section 178.33c

Under the HMR, certain DOT specification containers with restricted capacity and commonly referred to as ''aerosol containers'' are authorized for the transportation of compressed and liquefied compressed gases under certain scenarios. These containers include DOT 2P (inner non-refillable metal) containers. The specification standards are prescribed in § 178.33 of the HMR and do not provide for variations of those standards. Thus, technological advances or design modifications to satisfy customer needs are such that the resulting metal containers would not conform to the standards for a DOT 2P container, nor any other container authorized under §§ 173.304 or 173.306 of the HMR. SPs 13601 and 14503 (also 7951) provide for a variation of the DOT 2P container specifications by authorizing construction of the container according to modifications of the standards for manufacture and testing.

The special permits authorized variations of a DOT 2P container that are equipped with some manner of pressure relief system (*e.g.,* a rim-vent release device or a dome expansion device). The rim vent release devices must function within a certain pressure range, otherwise the container is rejected. The dome expansion devices are designed to buckle to relieve pressure before bursting. For example, for a container built to SP 13601, the pressure relief system must function between 175 psig and 210 psig or be rejected.

In the NPRM, we stated that we have no specific information in the SP(s) on the relationship between the functional range and the tested burst pressure. The current minimum burst pressure for a DOT 2P container is 240 psig (§ 178.33–8). Using the SP 13601 construction requirements, the minimum burst pressure is indicated as 270 psig (assumed at 130 °F) and pressure of the contents at 130 °F may not exceed 160 psig thus, equating to approximately 1.7x the contents at 130 °F without bursting (which is more stringent than for a DOT 2P under the HMR). Thus, the upper pressure range of the relief system is 77.8% of the design burst pressure of 270 psig.

This is further complicated under SP 14503 (and 7951) where the standard for the pressure of the contents is set at 23.9 °C (75 °F) for which we do not have an equivalent requirement under the HMR. Additionally, the ranges for functioning of the relief systems have a higher upper bound, 175 psig to 250 psig and 175 psig to 235 psig, respectively. Lastly, there is no minimum burst pressure specified in SP 14503 (and 7951); therefore, we must default to the DOT 2P minimum burst pressure of 240 psig. Again, the circumstances are unclear in that the upper bounds for the functional ranges approach or exceed the DOT 2P minimum burst pressure yet we do not have information on the actual tested burst pressure which could be much larger. Therefore, based on the requirements of SP 13601, we proposed to implement a requirement that for containers with pressure relief systems, the upper bound of the functional range for a pressure relief system must be no greater than 85% of the minimum burst pressure. In the NPRM, we proposed to incorporate the standards for the modified DOT 2P container described in SP 13601 (and likely 14503 (7951)) as a variation of the DOT 2P container design. As adopted in this final rule, the variation is required to be marked as a ''DOT 2P1.'' All standards for a DOT 2P1 remain the same as those for a DOT 2P except for the variations prescribed in new § 178.33c–2.

Commenters expressed concerns about imposing pressure limits on the range of the pressure relief systems although there are various pressure limits in each special permit that incorporates a rim vent release type of device in the container design. The commenters state that the actual activation range of the pressure relief system design is not as important to safety as that the system must function before the container bursts. We agree with the commenters. In the testing requirement of DOT 2P1, the performance standard is that the containers must fail at the location of the pressure relief system or the lot will be rejected. PHMSA believes that incorporating the DOT 2P1 without a

specific functional range or limit for a rim vent release system will make the container specification more suitable for incorporation into the HMR because of broader applications rather than prescriptive regulatory text based on specific special permits. In this final rule, PHMSA will incorporate the requirements for the end expansion devices as proposed. The containers with an end expansion device must buckle prior to burst.

Section 178.33d

Under the HMR, certain DOT specification containers with restricted capacity and commonly referred to as ''aerosol containers'' are authorized for the transportation of compressed and liquefied compressed gases under certain scenarios. These containers include DOT 2Q (inner non-refillable metal) containers. Though the DOT 2Q specification is prescribed in § 178.33a of the HMR, it does not provide for variations of those standards. Thus, technological advances or design changes to satisfy customer needs are such that the resulting metal containers would not conform to the standards of a DOT 2Q container, nor any other container authorized under either §§ 173.304 or 173.306 of the HMR. SP 12573 provides for a variation of the DOT 2Q container specifications by authorizing construction of the container according to modifications to the standards for type and size, manufacture, wall thickness, and testing. SP 14503 also provides for a variation of the DOT 2Q container specification by authorizing construction of the container according to modifications to its manufacture and testing criteria.

Variations provided in the SPs for DOT 2Q containers require that they are equipped with some type of pressure relief system (*e.g.,* a rim-vent release device or a dome expansion device), that must function by a certain threshold level or within a certain pressure range, otherwise the container is rejected. In effect, these containers are designed to buckle to relieve pressure before bursting. For example, for a container built to SP 12573, the minimum pressure before the system buckles is 220 psig (and if not equipped with a pressure relief system, the container may not burst below 320 psig). The maximum pressure of the contents authorized under this SP is 198 psig at 54.4 °C (130 °F) (in the NPRM, we proposed a maximum pressure of 200 psig based on this SP in the § 173.306 discussion for DOT 2Q containers). After reviewing comments to the NPRM, we will adopt a maximum pressure of 210 psig at 55 °C (131 °F) in this final rule. The current requirements for a DOT 2Q container under § 173.306(a)(3)(ii) is that the pressure of the contents cannot exceed 180 psig at 54.4 °C (130 °F) and the container must be capable of withstanding a pressure of 1.5x the contents at 54.4 °C (130 °F) without bursting. Applying the same multiplier to 210 psig, the container must withstand at least 305 psig without bursting. The SP 12573 minimum burst pressure of 320 psig is more than the current required minimum burst pressure of 270 psig for a DOT 2Q container; however, it provides approximately the same safety factor of 1.52. In this final rule, we are adopting as proposed the standards for the modified DOT 2Q container found in SP 12573 as a variation of the DOT 2Q container design. This variation is required to be marked ''DOT 2Q1.''

The requirements under SP 14503 operate differently in that the standard for the pressure of the contents is set at 23.9 °C (75 °F) to which we do not have an equivalent requirement under the HMR. Additionally, the SP provides for a range of pressure for functioning of the relief systems, specifically, 180 to 300 psig. Lastly, there is no minimum burst pressure specified in SP 14503 so we must default to the DOT 2Q minimum burst pressure of 270 psig. The upper bound for the functional range exceeds the 2Q minimum burst pressure yet we do not have information on the actual tested burst pressure which could be much larger. Therefore, based on a similar proposal to implement provisions of SP 13601 for 2P containers (see § 178.33c preamble discussion), the upper bound of the functional range for a pressure relief system must be no greater than 80% of the test pressure. In the NPRM, we invited comment on using this approach and whether it would be preferable to implement a requirement for the upper bound of the range based on the pressure of the contents.

Commenters did not respond specifically to the question of functional range for the DOT 2Q1 or 2Q2; however, they expressed concerns about imposing pressure limits on the range of the pressure relief systems of the DOT 2P1 which incorporates a similar pressure relief system design. The commenters state that the actual activation range of the pressure relief system design is not as important to safety as that the system must function before the container bursts. We agree with the commenter. We are imposing the same testing requirement as that for the DOT 2P1 in that the containers must fail at the location of the pressure relief system or the lot will be rejected. The containers with an end expansion device must buckle prior to burst.

In this final rule, we are adopting as proposed the standards for the modified DOT 2Q container described in SP 14503 as a variation on the DOT 2Q container design. This variation is required to be marked as a ''DOT 2Q2.'' Further, the pressure relief device requirements for the DOT 2Q2 will be the same as that for the DOT 2P1 and 2Q1.

C. Cargo Tanks/Rail Cars/Portable Tanks

Part 173

Section 173.315

Section 173.315 prescribes bulk packaging provisions for liquefied compressed gases in UN and DOT specification cargo tanks and portable tanks.

SP 12576 authorizes non-DOT specification cargo tanks for the transportation of ''UN1080, Sulfur hexafluoride'' that otherwise conform to the MC 331 specifications except for design pressure, capacity, and marking. In the NPRM, we proposed to revise the § 173.315(a)(2) table by referring to a new note 28 in the entry for ''Division 2.2, materials not specifically provided for in this table'' as Sulfur hexafluoride is not listed by name in the table. New note 28 codifies such tanks specified in SP 12576 for the transportation of sulfur hexafluoride. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Section 173.319

Section 173.319 prescribes the loading and packaging provisions for cryogenic liquids transported in rail tank cars.

SP 12039 authorizes the transportation in commerce of DOT 113C120W rail tank cars containing ''UN1038, Ethylene, refrigerated liquid,'' at an internal pressure of 20 psig instead of the maximum 10 psig. Currently, the HMR authorizes a maximum of 10 psig in a DOT 113C120W rail tank car containing cryogenic ethylene when offered for transportation by rail. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

D. Operational Air/Vessel

Part 176

Section 176.90

Section 176.90 prescribes requirements for private automobiles

carrying Class 1 hazardous materials on board ferry vessels. There are four SPs that provide relief for ferry transport of private automobiles carrying engines, gasoline, and propane. SP 7465, 11150, 13213, and 14458 all contain slightly different provisions to facilitate this process safely. Where differences exist between these permits, PHMSA has attempted to choose the least restrictive provision for adoption.

In the NPRM, PHMSA proposed to renumber the existing paragraph in § 176.90 as paragraph (a), and add a new paragraph (b) to adopt an exception for ''UN3166, Engines, internal combustion, flammable gas powered *or* flammable liquid powered, including when fitted in machinery or vehicles (*i.e.* motor vehicles, recreational vehicles, campers, trailers), vehicle flammable liquid *or* flammable gas powered, gasoline, and petroleum gases, liquefied *or* liquefied petroleum gas'' when included as part of a motor home, recreational vehicle, camper, or trailer and carried aboard ferry vessels subject to certain operational controls. Because we did not receive public comment on this amendment, supportive or otherwise, it is adopted as proposed in the NPRM.

Section 176.800

Section 176.800 of the HMR prescribes general vessel stowage requirements for corrosive materials.

SP 11691 authorizes transportation in commerce of certain flammable and corrosive liquids, which are the ingredients of soft drinks (beverages), not subject to the segregation requirements for vessel stowage when shipped in the same transport unit. In the NPRM, we proposed to add a new special provision, W11, to § 172.102, regarding vessel segregation of corrosive and combustible materials and foodstuffs. Based on comments from PCSD, proposed Special provision W11 is being replaced by revising paragraph (a) of § 176.800 to allow Class 8 (corrosive) materials that are also foodstuffs or foodstuff ingredients intended for human consumption to not be considered incompatible for segregation purposes.

E. Operational Highway/Rail/Shipper/Other

Part 171

Section 171.8

Section 171.8 defines terms generally used throughout the HMR that have broad or multi-modal applicability.

In the NPRM, PHMSA proposed to add the following definition based on the adoption of SP 11458:

Display pack means a package intended to be placed at retail locations which provide direct customer access to consumer commodities contained within the package when all or part of the outer fiberboard packaging is removed.

SP 11458 authorizes the transportation in commerce of display packs of consumer commodity packages or limited quantity packages that exceed the 30 kg gross weight limit. The provisions of SP 11458 were proposed for adoption into § 173.156. However, the term ''display pack'' is not currently defined in the HMR. In the NPRM we proposed to adopt the definition of ''display pack'' in § 171.8 based upon its definition in SP 11458. Commenters were very supportive of our proposal to adopt a definition of display packs in § 171.8 and, in this final rule, we are codifying it as proposed.

Part 172

Sections 172.101 (Hazardous Materials Table) and 172.102 Special Provisions

Section 172.101 provides instructions for using the Hazardous Materials Table (HMT) and the HMT itself. Column 7 of the HMT provides codes for special provisions applicable to specific hazardous materials descriptions. Special provisions may contain unique packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. When Column 7 of the HMT refers to a special provision, the requirements of that special provision are as set forth in § 172.102. In the NPRM, PHMSA proposed the following revisions to § 172.102:

Special Provision 380

SP 10705 provides relief from the segregation requirements of § 177.848(d) for the transport of ''UN1092, Acrolein, stabilized,'' by private carrier in a motor vehicle. In the NPRM, PHMSA proposed to add Special Provision 380 to § 172.102(c)(1) to codify SP 10705. The SP prescribes the packaging that must be used and the materials in which it may be loaded. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Special Provision 381

SP 7991 provides relief from the HMR for the transportation of railroad flagging kits by highway. See § 173.184 for a detailed discussion of the adoption of SP 7991. In the NPRM, PHMSA proposed to add Special Provision 381 to § 172.102(c)(1) to codify SP 7991. As adopted in this final rule, Special Provision 381 will be assigned to the following HMT entries: Fusee (rail or highway) (NA1325, Division 4.1, PG II); Articles, pyrotechnic (UN0431, Division 1.4G, PG II); Signal Devices, hand (UN0373, Division 1.4S, PG II); Signal Devices, hand (UN0191, Division 1.4G, PG II); and Signals, railway track, explosive (UN0193, Division 1.4S, PG II). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Special Provision 382

SP 8006 provides relief from the labeling requirements of § 172.400(a) for the transportation of toy plastic or paper caps for toy pistols by motor vehicle, railcar, cargo vessel, and cargo aircraft. See § 172.400a(a)(8) for a detailed discussion of the adoption of SP 8006. In the NPRM, PHMSA proposed to add Special Provision 382 to § 172.102(c)(1) to codify SP 8006. Special Provision 382 will be assigned to the following HMT entries: Articles, explosive, n.o.s. (UN0349) and Toy caps (NA0337). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Special Provision 383

SP 11356 authorizes material meeting the conditions for high viscosity flammable liquids specified in § 173.121(b)(1)(i), (b)(1)(ii), and (b)(1)(iv), to be re-classed to Packing Group III for transportation by motor vehicle. In the NPRM, PHMSA proposed to add Special Provision 383 to § 172.102(c)(1) to codify SP 11356. The SP prescribes packaging, capacity limitations, and load securement requirements. Special Provision 383 will be assigned to the following HMT entries: Coating solution (UN1139, PG II) and Paint (and Paint related material) (UN1263, PG II). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Special Provision 384

SP 11666 authorizes the transportation of green graphite electrodes and shapes that are large single component solid objects not subject to sifting, in open rail flat cars, open bed motor vehicles, and intermodal containers. In the NPRM, PHMSA proposed to add Special Provision 384 to § 172.102(c)(1) to codify SP 11666. The SP prescribes load securement requirements for the electrodes and shapes. Further, the SP permits stacking two or more levels high

to achieve maximum allowable utilization of the designated vehicle, rail car weight, or intermodal freight container weight or vessel hold volume. Special Provision 384 will be assigned to the following HMT entries: Other regulated substances, n.o.s. (NA3077, PG III) and Environmentally hazardous substances, solid, n.o.s. (UN3077, PG III). In this final rule, we are adopting the amendments as proposed with minor editorial clarifications.

Special Provision 385

SP 13343 authorizes the use of cargo heaters when weather conditions are such that the freezing of certain wetted explosive material is likely. In the NPRM, PHMSA proposed to add Special Provision 385 to § 172.102(c)(1) to codify SP 13343. Transportation must be performed by private, leased or contract carrier vehicles in exclusive use. Further, cargo heaters must be reverse refrigeration (heat pump) units. Shipments made in accordance with the SP are excepted from the anti-freeze requirements of § 173.60(b)(4). The provisions of SP 13343 are specific to ''UN0394, Trinitroresorcinol, wetted *or* Styphnic acid, *wetted with not less than 20% water, or mixture of alcohol and water by mass'';* therefore, Special Provision 385 will be assigned exclusively to those HMT entries. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Special Provision 386

In the NPRM, we proposed to codify SP 6614 by establishing a new paragraph (b)(3) to authorize polyethylene bottles with rated capacities of one gallon (3.785 liters), packed inside an open-top, heavy wall, high density polyethylene box for shipping certain PG II and III corrosive liquids by private motor carrier. In this final rule, we are adopting SP 6614 as proposed; however, we are moving the amendment from paragraph (b) to new § 172.102(c)(1), Special provision 386, as it is a more appropriate location in the HMR for it.

Special Provision B130

SP 14525 provides relief from the HMR except for the shipping paper requirements of Subpart C of Part 172, emergency response information as required by § 172.602, and the marking requirements of § 172.302(a), (b), and (d) when transporting used diatomaceous earth filter material by highway. In the NPRM, PHMSA proposed to add Special Provision B130 to § 172.102(c)(3) to codify SP 14525. The SP prescribes packaging, quantity limitations, and the required method of storing the packages within the motor vehicle. The provisions of SP 14525 are specific to ''UN3088, Self-heating solid, organic, n.o.s'' (PG III); therefore, Special Provision B130 will be assigned exclusively to that HMT entry. Because we received minimal public comment on the proposal, in this final rule, we are adopting the amendment as proposed.

Special Provision B131

As previously discussed, SP 11624 was not proposed for adoption in the NPRM. The SP is in its fifteenth revision and has 114 grantees. The SP authorizes transportation in commerce of certain waste Class 3 paint and paint related material (UN1263; PG II and PG III) contained in metal or plastic pails further packed in non-specification bulk packagings such as cubic yard boxes, plastic rigid-wall bulk containers, dump trailers, and roll-off containers. After careful reevaluation, SP 11624 and three related packaging SPs (*i.e.,* SP 13052, SP 14712, and 15235) are adopted as new § 172.102(c)(3), Special Provision B131.

Special Provision B132

SP 11602 authorizes the transportation in commerce of certain Division 4.3 materials contained in sift-proof closed bulk packagings that prevent water from reaching the hazmat and have sufficient venting to preclude a dangerous accumulation of gaseous emissions. In the NPRM, we proposed to adopt the provisions of SP 11602 in its entirety in § 173.151(g). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed. However, in this final rule, we are moving the amendment to new § 172.102(c)(3), Special provision B132 as it is a more appropriate section for these provisions.

Section 172.202

Section 172.202 prescribes requirements for describing hazardous materials on shipping papers. In many scenarios, a net or gross quantity of the hazardous materials must be included.

SP 11811 provides relief from this requirement for local collections operations transporting hazardous materials and hazardous substances by highway that are ''household wastes'' as defined in 40 CFR 261.4 and not subject to the Environmental Protection Agency's hazardous waste regulations in 40 CFR, Parts 262 and 263. In the NPRM, we proposed to revise paragraph (c) of § 172.202 to adopt the provisions of SP 11811 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 172.315

Section 172.315 prescribes marking requirements for packages of limited quantities of hazardous materials.

SP 11197 provides relief from the requirement to display the limited quantity marking on packages containing certain low-risk materials assigned to PG II and III prepared in accordance with the limited quantity provisions in Subpart B of part 173 of the HMR for highway transportation by private motor carrier. The SP prescribes inner packaging and package quantity limitations; the maximum gross weight of packages that may be transported in one vehicle; and special package marking requirements. In the NPRM, we proposed to add a new paragraph (a)(3) to § 172.315 to adopt the provisions of SP 11197 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 172.400a

Section 172.400a provides exceptions from the § 172.400 general labeling requirements for packages or containment devices of hazardous materials.

SP 8006 provides relief from the § 172.400 general labeling requirements for toy plastic or paper caps for toy pistols described as ''UN0349, Articles, explosive, n.o.s. (Toy caps), 1.4S'' or ''NA0337, Toy caps, 1.4S'' when offered for transportation by motor vehicle, rail freight, cargo vessel, and cargo aircraft. The toy plastic or paper caps must have been examined in conformance with § 173.56 and approved by the Associate Administrator. In the NPRM, we proposed to add a new paragraph (a)(8) to § 172.400a to adopt the provisions of SP 8006 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Part 173

Section 173.12

Section 173.12 provides certain exceptions and authorizations for the transportation of waste hazardous materials.

SP 11470 authorizes transportation by motor vehicle and cargo vessel of shrink-wrapped pallets containing boxes of waste ORM–D or limited quantity materials when marked with the word ''WASTE'' on the outside of

the pallet instead of each individual box. The SP also prescribes packaging requirements for the waste materials. COSTHA requested that PHMSA adopt this SP into the HMR under petition for rulemaking P–1611. In the NPRM, we proposed to add a new paragraph (h) to § 173.12 to adopt the provisions of SP 11470 in its entirety. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendments as revised. Based on comments from Veolia, the revisions include authorizing ''stretch-wrapped'' pallets in addition to shrink-wrapped pallets and ''packages'' rather than boxes only.

Section 173.29

Section 173.29 prescribes certain requirements, exceptions, and authorizations for the transportation of empty packagings.

SP 9610 provides relief from shipping paper and placarding requirements of Subparts C and F of part 172, respectively, for smokeless powder residue when transported by motor vehicle or railcar in ''Container-on-flat-car'' (COFC) or ''Trailer-on-flat-car'' (TOFC) service. The smokeless powder must be approved in conformance with § 173.56 as a Class 1 explosive substance. The SP prescribes packaging requirements, quantity limitations, operational controls, and a specific shipping description for the material. In the NPRM, we proposed to revise paragraph (f) of § 173.29 to adopt the provisions of SP 9610 in its entirety. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendments as proposed with minor revisions to allow additional packaging types.

Section 173.63

Section 173.63 provides packaging exceptions for certain Class 1 (explosive) materials.

SP 4850 authorizes Cord, detonating, *or* Fuse detonating, *metal clad* (UN0290, Div. 1.1D) to be renamed and reclassed as Cord, detonating, mild effect, *or* Fuse, detonating, mild effect, *metal clad* (UN0104, Div. 1.4D); and Charges, shaped, flexible, linear (UN0288, Div. 1.1D) to be renamed and reclassed Charges, shaped, flexible, linear (UN0237, Div. 1.4D) and transported by motor vehicle, railcar, cargo vessel, and cargo aircraft. The SP prescribes packaging requirements and quantity limitations. In the NPRM, we proposed to revise paragraph (a) of § 173.63 to adopt the provisions of SP 4850 in its entirety. However, during review of the final rule, concerns that there was insufficient hazard communication to prevent the reclassed shipments from finding their way into the air mode were raised. In addition, concerns regarding the distinctions between shipping being offered domestically versus internationally were discussed. Because additional conditions for its adoption were not proposed in the January 30, 2015 NPRM, in this final rule, we are not codifying SP 4850 into the HMR at this time but intend to consider it for incorporation in the near future considering the hazard communication concerns. We will include any proposals in upcoming NPRMs for comment.

Section 173.156

Section 173.156 provides exceptions for the transportation of certain limited quantities and other regulated materials (ORM).

SP 11458 authorizes *display packs* of consumer commodity packages that exceed 30 kg gross weight for transportation by railcar in trailer-on-flat-car (TOFC) or container-on-flat-car (COFC) service, or roadrailer and/or railrunner trailers or by motor vehicle, or cargo vessel. See § 171.8 for a discussion of the addition of the definition of *display pack.* In a petition for rulemaking (P–1607), COSTHA requested PHMSA adopt this SP into the HMR. In the NPRM, we proposed to add a new paragraph (c) to § 173.156 to adopt the provisions of SP 11458 in its entirety. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendment as proposed.

SP 11470 authorizes transportation by motor vehicle and cargo vessel of shrink-wrapped pallets containing boxes of waste ORM–D or limited quantity materials when marked with the word ''WASTE'' on the outside of the pallet instead of each individual box. The adoption of SP 11470 relating to exceptions for waste limited quantity and ORM–D materials is discussed in the preamble for § 173.12. In the NPRM, we proposed to add a new paragraph (d) to § 173.156 that directs the reader to the new paragraph (h) of § 173.12 which codifies the provisions of SP 11470. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendment as proposed with one modification. Veolia supports adoption of SP 11470 with one substantial modification—the HMR should not limit to ''expired'' consumer products but rather all consumer commodities shipped for disposal/recycling under manufacturer recalls, off-spec/unwanted/unneeded product, etc. We recognized the merit of Veolia's comment and revised § 173.12 accordingly.

Section 173.159

Section 173.159 prescribes requirements for the transportation of wet electric storage batteries.

SP 11078 conditionally excepts the transportation of nickel cadmium batteries containing potassium hydroxide, a Class 8 material, from other requirements of the HMR when transported by motor vehicle, railcar, cargo vessel and passenger and cargo aircraft. In the NPRM, we proposed to add a new paragraph (j) to § 173.159 to codify the provisions of SP 11078 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

SP 13548 authorizes transportation in commerce of lead acid batteries and packages of battery acid (with two different identification numbers) on the same vehicle. Commenters were supportive of its adoption in the HMR. In this final rule, the introductory text in paragraph (e) is revised accordingly.

Section 173.168

Section 173.168 prescribes specific approval, testing, protection, packaging, and equipment marking requirements for chemical oxygen generators.

SP 11984 authorizes certain unapproved chemical oxygen generators with only one positive means of preventing unintentional actuation of the generator, and without the required approval number marked on the outside of the package, to be transported by motor vehicle, railcar, and cargo vessel. In the NPRM, we proposed to add a new paragraph (g) to § 173.168 to adopt the provisions of SP 11984 in its entirety. Veolia supports adoption of SP 11984 with one modification—the HMR should require flame-proof outer packaging for chemical oxygen generators shipped with only one positive means of preventing unintentional activation as expressed in concern for equivalent level of safety in proposed SP modification in August 2011. Veolia's comments notwithstanding, because of the mainly supportive public comment received and safety evaluation as a result of our proposal, in this final rule, we are adopting the amendment as proposed.

Section 173.184

Section 173.184 prescribes packaging requirements for the transportation of highway or rail fusees.

When in conformance with SP 7991, flagging kits transported on railroad motor vehicles including privately-owned motor vehicles under the direct control of on-duty railroad employees, are excepted from the requirements of the HMR. Flagging kits may only contain fusees and railroad torpedoes described as: Fusee (rail or highway) (NA1325, Division 4.1, PG II); Articles, pyrotechnic (UN0431, Division 1.4G, PG II); Signal devices, hand (UN0373, Division 1.4S, PG II); Signal devices, hand (UN0191, Division 1.4G, PG II); and Signals, railway track, explosive (UN0193, Division 1.4S, PG II). This SP prescribes packaging requirements, quantity limitations, and operational controls. In the NPRM, we proposed to add a new paragraph (c) to § 173.184 to adopt the provisions of SP 7991 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.226

Section 173.226 prescribes specific packaging requirements for the transportation of materials poisonous by inhalation, Division 6.1, PG I, Hazard Zone A.

When transported as prescribed in SP 11055, liquid hazardous materials in Division 6.1, PG I, Hazard Zone A, are excepted from the segregation requirements of §§ 174.81, 176.83, and 177.848(d). The SP prescribes packaging and testing requirements, quantity limitations, and cushioning and absorbent material requirements. In the NPRM, we proposed to add a new paragraph (f) to § 173.226 to adopt the provisions of SP 11055 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.306

Section 173.306 provides exceptions for limited quantities of compressed gas. Section 173.306(e) currently permits only new (unused) refrigerating machines to be excepted from specification packaging, placarding, and certain rail and highway modal requirements.

SP 13199 permits reconditioned (used) refrigerating machines (UN2857, Div. 2.2) to be transported under the requirements prescribed in § 173.306(e) and excepted from the marking requirements of § 172.302(c) when transported by motor vehicle and meeting certain structure and Class A refrigerant gas weight requirements. In the NPRM, we proposed to add new paragraph (e)(2) to § 173.306 to adopt the provisions of SP 13199 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.322

Section 173.322 prescribes packaging requirements for ethyl chloride. In the January 30, 2015 NPRM, we proposed to add a new paragraph (f) to § 173.322 to adopt the provisions of SP 14422 in its entirety. Because SP 14422 is no longer an active special permit, in this final rule, we are not adopting the amendment as proposed.

Part 174

Section 174.67

Section 174.67 prescribes operational requirements for the railroad tank car unloading of hazardous materials.

SP 12002 authorizes the clearing of frozen liquid blockages from tank car outlets by attaching a fitting to the outlet line and applying nitrogen at a pressure of 50 to 100 psi for combustible liquid or Class 3 liquid petroleum distillate fuels. In the NPRM, we proposed to revise paragraph (g) to § 174.67 to adopt the provisions of SP 12002 in its entirety. In its comments, ACA recommends that the use of nitrogen should be permitted ''at a pressure of up to 100 psi'' for clarity. We agree and revise § 174.67(g) accordingly.

Part 177

Section 177.820

Currently there is no § 177.820 in the HMR. However, in the NPRM, we proposed to add a new § 177.820 that authorizes the movement of certain hazardous materials across public roads with limited exceptions.

SPs 11352, 12207, 12306, 13165, and 14945 authorize the movement of certain hazardous materials across public roads. Such movements are not subject to Subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172. The SPs prescribe specific operational controls. In the NPRM, we proposed to add a new § 177.820 to adopt the provisions of these SPs in their entirety. COSTHA and DGAC support the adoption of SPs 11352, 12207, 12306, 13165, and 14945; however, according to COSTHA, the proposed regulatory text in § 177.820 appears to be more restrictive than the HMR applicability exceptions currently in § 171.1(d)(4). We agree with COSTHA and are not adopting the five SPs and new Section 177.820 as proposed in the NPRM.

Section 177.834

Section 177.834 establishes general operational requirements for hazardous materials transportation by highway.

SPs 9874, 13190, 13424, 13959, 14141, 14150, 14680, 14822, 14827, and 14840 authorize ''attendance'' of the loading or unloading of a cargo tank by a qualified person observing all loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station. In the NPRM, we proposed to revise paragraphs (i)(3) and (i)(4) of § 177.834 to adopt the provisions of these SPs in their entirety.

In its comments, Dow supports codification of the SPs but has specific concerns: (1) SP 9874 and 14822 authorize instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment in addition to video monitoring; (2) SPs 9874 and 14822 do not require a video camera with a ''motorized zoom lens capable of panning and zooming from the remote control station''; (3) SPs 9874 and 14822 do not require that the view capability must include the entire containment area; and (4) the need for assurance that the attendance requirements in § 177.834 (i) apply to motor carriers only. We agree that Dow's comments have merit and, in this final rule, except for number (4), the regulatory text in § 177.834(i) is revised accordingly. Regarding issue number (4), long-standing interpretations preclude the need to revise the attendance applicability provisions of the HMR.

SPs 13484 and 14447 authorize ''attendance'' of the loading or unloading of a cargo tank through the use of hoses equipped with cable connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation. The SPs prescribe inspection requirements and operational controls for use of the hoses. In the NPRM, we proposed to revise paragraphs (i)(3) and (i)(4) of § 177.834 to adopt the provisions of SPs 13484 and 14447 in their entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendments as proposed.

SPs 10597, 10803, 10882, 14618, and 14726 authorize the use of diesel or propane fueled combustion cargo

heaters in motor vehicles used to transport Class 3 (flammable liquid) or Division 2.1 (flammable gas) materials. The SPs prescribe operational controls for use of heaters. In the NPRM, we proposed to revise paragraph (l)(2)(i) of § 177.834 to adopt the provisions of these SPs in their entirety. In this final rule, because the existing paragraph (l)(2)(ii) of § 177.834 relating to the *Effective date for combustion heater requirements* is obsolete, we are removing it as proposed. In addition, we are redesignating paragraph (l)(2)(iii) of § 177.834 as paragraph (l)(2)(ii) as proposed in the NPRM. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 177.838

Section 177.838 prescribes operational requirements for the transportation of Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (self-heating and pyrophoric liquid) materials.

Notwithstanding the segregation requirements of § 177.848(d), SP 11373 authorizes the transport on the same transport vehicle of ''UN1384, Sodium hydrosulfite *or* sodium dithionite'' (PG II or III), ''UN3341, Thiourea dioxide'' (PG II or III); and ''UN3088, Self-heating, solid, organic, n.o.s.'' (PG II or III) with Class 8 materials. The SP prescribes packaging and separation requirements. In the NPRM, we proposed to revise the title of § 177.838 and add a new paragraph (i) to § 177.838 to adopt the provisions of SP 11373 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 177.840

Section 177.840 establishes specific operational requirements for the transportation of Class 2 (gases) materials.

Notwithstanding the segregation requirements of § 177.848(d), SP 11043 authorizes the transport on the same transport vehicle of Division 2.3, Hazard Zone A materials with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8. The SP prescribes packaging, marking, separation requirements.

Notwithstanding the segregation requirements of § 177.848(d), SP 14335 authorizes the transport on the same transport vehicle of Division 2.3, Hazard Zone A materials with specification non-bulk packagings and IBCs containing only the residue of Division 2.1, 4.3, 5.1, and Class 3 and 8 materials. The SP prescribes separation and securement requirements, operational controls, quantity limitations, and carrier safety rating requirements.

In the NPRM, we proposed to add a new paragraph (a)(3) to § 177.840 to adopt the provisions of SPs 11043 and 14335 in their entirety. Veolia supports the adoption of SP 11043; however, they recommend the regulatory text proposed in § 177.840(a)(3)(i) should be revised to require a 4-foot separation rather than a 5-foot separation for consistency with the segregation spacing requirements in § 173.12(e). We agree and are revising § 177.840(a)(3)(i) accordingly.

Section 177.841

Section 177.841 establishes specific operational requirements for the transportation of Division 6.1 and Division 2.3 materials.

Notwithstanding the segregation requirements of § 177.848(d), SP 11151 authorizes transportation by private or contract motor carrier of Division 6.1 PG I, Hazard Zone A materials meeting the definition of a hazardous waste as defined in § 171.8 on the same transport vehicle with materials classed as Class 3, Class 4, Class 5, and Class 8. The Division 6.1 PG I, Hazard Zone A materials must be loaded on pallets and separated from the Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 2.74 m (9 feet). In the NPRM, we proposed to add a new paragraph (f) to § 177.841 to adopt the provisions of SP 11151 in its entirety. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

F. Non-Bulk Packaging Specifications/ IBCs

Part 172

Section 172.101

The § 172.101 HMT designates the materials listed therein as hazardous materials for the purpose of transportation of those materials. For each listed material, the HMT identifies the hazard class or specifies that the material is forbidden in transportation, and provides the proper shipping name or directs the user to the preferred proper shipping name. In addition, the HMT specifies or references requirements in this subchapter pertaining to labeling, packaging, quantity limits aboard aircraft, and stowage of hazardous materials aboard vessels. In the NPRM, we proposed to revise several entries in the HMT to adopt SPs relating to non-bulk packagings and IBCs. Specifically, for ''UN1415, Lithium,'' ''UN2257, Potassium,'' ''UN3190, Self-heating solid, inorganic, n.o.s.,'' ''UN1428, Sodium,'' ''UN1381, Phosphorus, yellow, under water'' and ''UN2813, Water-reactive solid, n.o.s.'' (Packing Group II and III), we proposed to add a reference to § 173.151 to provide packaging exceptions for relevant Hazard Class 4 materials. In this final rule, the provisions adopted for ''UN1381, Phosphorus, yellow, under water'' and ''UN2813, Water-reactive solid, n.o.s.'' (Packing Group II and III) are moved to the more appropriate §§ 173.188 and the new § 172.102(c)(3), Special provision B132 respectively. The revisions are discussed in the following sections.

Part 173

Section 173.62

Section 173.62 prescribes packaging instructions for explosives.

SP 12335 authorizes the transportation by motor vehicle, cargo vessel, and cargo aircraft when authorized in the HMT, and passenger-carrying aircraft when authorized for carriage by the HMT and used exclusively to transport personnel to remote work sites certain Division 1.1D and 1.4D detonating cords without the ends being sealed in alternative packaging, provided that the inner packaging containing the detonating cord is made of a static-resistant plastic bag of at least 3 mil thickness and the bag is securely closed for transportation. In the NPRM, we proposed to adopt the provisions of SP 12335 in its entirety in § 173.62. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.150

Section 173.150 provides exceptions from the HMR for certain Class 3 (flammable liquid) material.

To codify SP 13217, in the NPRM, PHMSA proposed to add a paragraph (h) to § 173.150 that included an exception to permit Diesel fuel (UN1202 or NA1993) and Gasoline (UN1203) to be transported one way, by motor vehicle, directly from the loading location to an equipment repair facility in non-specification non-bulk packaging, known as a gasoline dispenser. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.151

Section 173.151 provides exceptions for certain Class 4 materials.

In the NPRM, we proposed to add new paragraph (e) that would except ''UN1415, Lithium,'' ''UN2257, Potassium,'' and ''UN1428, Sodium,'' with a net quantity of material per inner packaging not exceeding 25 grams, from the labeling requirements of Part 172, Subpart E and the placarding requirements of Part 172 Subpart F, if they are offered for transportation or are transported in the packagings with conditions set forth in that paragraph. We also proposed to codify SP 11736 by establishing a new paragraph (f) to authorize shipments of ''UN3190, Self-heating solid, inorganic, n.o.s,'' in unlined, non-DOT specification multi-wall paper bags containing a maximum of 55 pounds (net) weight. Because SP 11736 is no longer active, in this final rule, we are not amending § 173.151 to codify the SP. We further proposed adding new paragraph (g) to authorize ''UN2813, Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides)'' in PG II or III to be packaged in sift-proof bulk packagings. These revisions codify SPs 11602, 11736, 13796, and 15373. Because we did not receive public comment on the proposals, adverse or otherwise, in this final rule, we are adopting the amendments as proposed.

SP 11602 authorizes the transportation in commerce of certain Division 4.3 materials contained in sift-proof closed bulk packagings that prevent water from reaching the hazmat and have sufficient venting to preclude a dangerous accumulation of gaseous emissions. In the NPRM, we proposed to adopt the provisions of SP 11602 in its entirety in § 173.151(g). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed. However, in this final rule, we are moving the amendment to new § 172.102(c)(3), Special provision B132 as it is a more appropriate section for these provisions.

SP 13796 authorizes the transportation in commerce of ''UN1381, Phosphorus, yellow, under water,'' in a 30 gallon UN 1A2 steel drum certified at a minimum to the PG I performance level for solids and the PG II performance level for liquids and, as a minimum, dual marked as UN1A2/X400/S (for solids) and UN1A2 Y/1.4/150 (for liquids). In the NPRM, we proposed to adopt the provisions of SP 13796 in its entirety in § 173.151. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed. However, in this final rule, we are moving the amendment to the most appropriate section for yellow phosphorus, § 173.188; we are also removing the § 173.151 column (8A) exception reference to its HMT entry.

SP 15373 authorizes the manufacture, mark, sale and use of the specially designed combination packagings for ''UN1415, Lithium,'' ''UN2257, Potassium,'' and ''UN1428, Sodium,'' without hazard labels or placards, for quantity limits not exceeding 25 grams. In the NPRM, we proposed to adopt the provisions of SP 15373 in its entirety in new § 173.151(e). Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.154

Section 173.154 provides exceptions for Class 8, (corrosive) materials.

In the NPRM, we proposed to codify SP 6614 by establishing a new paragraph (b)(3) to authorize polyethylene bottles with rated capacities of one gallon (3.785 liters), packed inside an open-top, heavy wall, high density polyethylene box for shipping certain Packing Group II and III corrosive liquids by private motor carrier. In this final rule, we are adopting SP 6614 as proposed; however, we are moving the amendment from paragraph (b) to new § 172.102(c)(1), Special provision 386, as it is a more appropriate location in the HMR.

In the NPRM, we also proposed to codify SP 14137 in new paragraph (e) to authorize hydrochloric acid concentration not exceeding 38%, in Packing Group II, to be packaged in UN31H1 or UN31HH1 intermediate bulk containers when loaded in accordance with the requirements of § 173.35(h). In this final rule, we are adopting SP 14137 as proposed; however, we are moving the amendment from § 173.154(e) to new § 172.102(c)(3), Special provision B133, as it is a more appropriate location in the HMR.

These amendments to § 173.154 codify SP 6614 and 14137. Because we did not receive public comment on the proposals, adverse or otherwise, in this final rule, we are adopting the amendments as proposed. However, the proposed provisions of SP 12030 are now codified in § 173.159(h)(2), as it is a more appropriate location in the HMR for battery fluid packaging provisions.

Section 173.158

Section 173.158 prescribes the general requirements, authorized packagings, and exceptions for nitric acid.

To codify SPs 8230, 9722, and 14213, we proposed in the NPRM to establish a new paragraph (i) to authorize ''Nitric acid of up to 40% concentration'' in a UN1H1 non-removable head plastic drum with certain conditions set forth in that paragraph and add new paragraph (j) for the transportation of ''Nitric acid, other than red fuming, with more than 70% nitric acid'' and ''Nitric acid, other than red fuming, with not more than 70% nitric acid'' in a combination packaging when offered for transportation by rail, highway, or cargo vessel. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendments as proposed.

Section 173.159

Section 173.159 prescribes packaging, shipping specifications, and exceptions for the transportation of wet electric storage batteries.

To codify SP 13548, in the NPRM, we proposed to revise paragraph (e) to include shipments of electric storage batteries containing electrolyte or corrosive battery fluid, and electric storage batteries and battery acid. SP 13548 authorizes the transportation in commerce of lead acid batteries and packages of battery acid with two different UN numbers on the same motor vehicle with the packages secured against shifting. Because of the supportive public comments received as a result of our proposal, in this final rule, we are adopting the amendments as proposed.

In the NPRM, we proposed to revise § 173.154 by codifying SP 12030 in new paragraph (f). After comment review and our own analysis, we believe this amendment is more appropriately codified in new § 173.159(h)(2) along with the existing provision in new § 173.159(h)(1). Special provision N6 of § 172.102 specifies that battery fluid, acid or alkali, when packaged with an electric storage battery, wet or dry, is to be packaged as prescribed in § 173.159(g) or (h). Thus, in this final rule, we are moving the amendment from § 173.154(f) to § 173.159(h)(2) and codifying it as proposed.

Section 173.181

Section 173.181 sets forth packaging and other requirements for pyrophoric materials (liquids).

To codify SP 12920, in the NPRM, we proposed to add new paragraph (d) to § 173.181 that authorizes the transportation of certain pyrophoric materials in a combination package consisting of UN1A2 outer package and a UN1A1 inner package. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed.

Section 173.188

Section 173.188 prescribes the packaging instructions for white and yellow phosphorus.

SP 13796 authorizes the transportation of ''UN1381, Phosphorus, yellow, under water,'' in a 30 gallon UN 1A2 steel drum certified as a minimum to the PG I performance level for solids and the PG II performance level for liquids and, as a minimum, dual marked as UN1A2/X400/S (for solids) and UN1A2 Y/1.4/150 (for liquids). In the NPRM, we proposed to adopt the provisions of SP 13796 in its entirety in § 173.151. Because we did not receive public comment on the proposal, adverse or otherwise, in this final rule, we are adopting the amendment as proposed. However, in this final rule, we are moving the amendment to the most appropriate section for yellow phosphorus, § 173.188; we are also removing the § 173.151 column (8A) exception reference to its HMT entry.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Section 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This rulemaking codifies certain SPs into the HMR.

B. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 (''Regulatory Planning and Review''), as supplemented and reaffirmed by Executive Order 13563 (''Improving Regulation and Regulatory Review''), stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives, and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

In this final rule, PHMSA is amending the HMR to adopt provisions contained in certain widely-used or long-standing SPs that have an established safety record. The revisions are intended to provide wider access to the regulatory flexibility offered in SPs and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Although difficult to quantify, PHMSA assumes that for most regulated entities in these categories, the revisions in this final rule require little or no change to existing practice or behavior and incremental compliance costs will thus be close to zero. At the same time, the potential for additional safety benefits is also very limited in these cases, as existing practice and operations are already minimizing the number of incidents.

Estimated benefits associated with this rule result from the regulated community no longer being required to apply for an SP and amount to approximately $14,000 annually. Costs associated with the rule are estimated to be negligible annually. Since existing SP holders are already complying with the specifications of the current SPs, the amendments adopted in this final rule would not impose new obligations on current non-holders of SPs. The overall costs and benefits of the rule are dependent on the level of pre-existing compliance and the overall effectiveness of the new requirements specified in this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), 64 FR 43255 (Aug. 10. 1999) and the President's May 20, 2009 memorandum (74 FR 24693 [May 22, 2009]). The requirements in this final rule would preempt state, local, and Indian tribe requirements but would not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.,* contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of these subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than 2 years after the date of issuance.

This rule would address subject areas (1), (2), (3), and (5) above and would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. The effective date of Federal preemption is April 20, 2016.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The primary costs to small entities associated with this rule include developing and updating a risk assessment, developing and updating operating procedures, and additional training for hazmat employees who perform loading and unloading operations.

PHMSA expects the impacts of this rule will be limited for many small entities due to their compliance with other existing Federal regulations. In this rulemaking, PHMSA also explicitly acknowledges that many regulated entities are holders of SPs or are part of industry associations with voluntary codes of safe practice, and that these may be sufficient for compliance with the final rule as long as all of the relevant safety areas are addressed and documented. For regulated entities in these categories, the rulemaking requires little or no change to existing practices or behavior and incremental compliance costs will thus be close to zero. Therefore, the benefit and cost figures discussed below should be viewed as upper bounds, both of which will be reduced by the extent of current practice.

PHMSA estimates that there are 50 potentially affected small entities. The annualized documentation cost for developing and updating the risk assessment and the operating procedures is estimated to be $375 per small entity. The annualized cost of additional training for affected employees is estimated to be approximately $5.50 per employee. Further, PHMSA estimates that approximately 50% of small businesses are already implementing procedures that would be compliant with this rulemaking. Based upon the above estimates and assumptions, PHMSA certifies that this rulemaking does not have a significant economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control No. 2137–0051, entitled ''Special Permits and Approvals,'' expiring on May 31, 2018. Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This rulemaking adds new exceptions to the HMR while eliminating the need for persons to apply for a SP, resulting in a decrease in burden. PHMSA estimates the reduction in information collection burden as follows:

OMB Control No. 2137–0051: SPs and Approvals
Decrease in Annual Number of Respondents: 96
Decrease in Annual Responses: 96
Decrease in Annual Burden Hours: 194
Decrease in Annual Burden Cost: $14,027

There are 832 grantees associated with the 96 SPs being adopted in this rulemaking. Over 10 years, a SP would on average be renewed twice, resulting in 1,664 renewals (832 × 2). The average number of applications per year would be approximately 166 (1,664/10). The annual estimated cost savings would total $14,027 (166 number of renewals per year × $39.50/hr. preparation cost + 166 renewals per year × $45.00/hr compliance cost).

Please direct your requests for a copy of this final information collection to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC, 20590–0001.

G. Regulatory Identifier Number (RIN)

A regulatory identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. PHMSA has concluded that the rule will not impose annual expenditures of $141.3 million on State, local, or tribal governments or the private sector, and thus does not require an Unfunded Mandates Act analysis.

I. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

J. Environmental Assessment and NEPA Analysis

PHMSA is amending the HMR by adopting provisions contained in certain widely-used or long-standing SPs that have an established safety record. The revisions are intended to provide wider access to the regulatory flexibility offered in SPs and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4375, requires that federal agencies analyze

proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b). A detailed NEPA assessment has been placed in the docket for this rulemaking for public review.

K. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (65 FR 19477) which may be viewed at: *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule does not involve voluntary consensus standards.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation, Radioactive materials, and Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Public Law 101–410 section 4 (28 U.S.C. 2461 note); Public Law 104–121 sections 212–213; Public Law 104–134 section 31001; Public Law 112–141 section 33006, 33010; 49 CFR 1.81 and 1.97.

■ 2. In § 107.1, revise the definitions for ''insufficient corrective action'' and ''sufficient corrective action'' to read as follows:

§ 107.1 Definitions.

* * * * *

Insufficient corrective action means that either a PHMSA Field Operations (FOPS) Division officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant's corrective action in response to prior enforcement cases is inadequate or incomplete and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation remain inadequate to prevent recurrence of a violation.

* * * * *

Sufficient corrective action means that either a PHMSA Field Operations officer or an authorized representative or special agent of DOT upon request, such as an Operating Administration (OA) representative, has determined that evidence of an applicant's corrective action in response to prior enforcement cases is sufficient and the basic safety management controls proposed for the type of hazardous material, packaging, procedures, and/or mode of transportation are adequate.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 3. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 101, section 4 (28 U.S.C. 2461 note); Public Law 104–121, sections 212–213; Public Law 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 4. In § 171.8, the definition of ''Display pack'' is added in alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Display pack means a package intended to be placed at retail locations which provide direct customer access to consumer commodities contained within the package when all or part of the outer fiberboard packaging is removed.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 6. In § 172.101, the Hazardous Materials Table is amended by revising entries under ''[REVISE]'' to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE].												
	*		*		*	*	*		*	*			
	Acrolein, stabilized	6.1	UN1092	I	6.1, 3	1, 380, B9, B14, B30, B42, B77, T22, TP2, TP7, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Adhesives, *containing a flammable liquid.*	3	UN1133	I	3	T11, TP1, TP8, TP27	150	201	243	1 L	30 L	B.	
				II	3	149, 383, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
				III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
G	Articles, explosive, n.o.s	1.4S	UN0349	II	1.4S	101, 148, 382	None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Articles, pyrotechnic *for technical purposes.*	1.4G	UN0431	II	1.4G	381	None	62	None	Forbidden	75 kg	02	25
	*		*		*	*	*		*	*			
	Coating solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining).*	3	UN1139	I	3	T11, TP1, TP8, TP27	150	201	243	1 L	30 L	B.	
				II	3	149, IB2, T4, TP1, TP8, 383.	150	202	242	5 L	60 L	B.	
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
G	Corrosive liquid, acidic, inorganic, n.o.s.	8	UN3264	I	8	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
G	Corrosive liquid, acidic, organic, n.o.s.	8	UN3265	I	8	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40
				II	8	148,B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40
				III	8	386, IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
G	Corrosive liquid, basic, inorganic, n.o.s.	8	UN3266	I	8	A6, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40, 52
				II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40, 52
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40, 52
	*		*		*	*	*		*	*			
G	Corrosive liquids, n.o.s	8	NA1760	I	8	A6, A7, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40

					II	8	386, B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40
					III	8	386, IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
G	Environmentally hazardous substance, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, 384, A112, B54, B120, IB8, IP3, N20, N91, T1, TP33.	155	213	240	No limit	No limit	A.		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
D	Fusee *(railway or highway).*	4.1	NA1325	II	4.1	381	None	184	None	15 kg	50 kg	B.		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Hydrochloric acid	8	UN1789	II	8	386, A3, A6, B3, B15, B133, IB2, N41, T8, TP2.	154	202	242	1 L	30 L	C.		
				III	8	A3, IB3, T4, TP1	154	203	241	5 L	60 L	C	8
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Hypochlorite solutions	8	UN1791	II	8	148, A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24.	154	202	242	1 L	30 L	B	26
				III	8	386, IB3, N34, T4, TP2, TP24.	154	203	241	5 L	60 L	B	26
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Lithium	4.3	UN1415	I	4.3	A7, A19, IB4, IP1, N45	151	211	244	Forbidden	15 kg	E	13, 52, 148
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
D G	Other regulated substances, solid, n.o.s.	9	NA3077	III	9	384, B54, IB8, IP2, T1, TP33.	155	213	240	No limit	No limit	A.		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base.*	3	UN1263	I	3	367, T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	E.		
				II	3	149, 367, 383, B52, B131, IB2, T4, TP1, TP8, TP28.	150	173	242	5 L	60 L	B.		
				III	3	367, B1, B52, B131, IB3, T2, TP1, TP29.	150	173	242	60 L	220 L	A.		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	I	3	367, T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	E.		
		3	UN1263	II	3	149, 367, 383, B52, B131, IB2, T4, TP1, TP8, TP28.	150	173	242	5 L	60 L	B.		
				III	3	367, B1, B52, B131, IB3, T2, TP1, TP29.	150	173	242	60 L	220 L	A.		
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Petroleum gases, liquefied *or* Liquefied petroleum gas.	2.1	UN1075		2.1	T50, N95	306	304	314, 315	Forbidden	150 kg	E	40
	*	*	*	*	*	*	*	*	*	*	*	*	*	*
	Potassium	4.3	UN2257	I	4.3	A7, A19, A20, B27, IB4, IP1, N6, N34, T9, TP7, TP33.	151	211	244	Forbidden	15 kg	D	52

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Printing ink, flammable *or* Printing ink related material *(including printing ink thinning or reducing compound),* flammable.	3	UN1210	I	3	367, T11, TP1, TP8	150	201	243	1 L	30 L	E.	
				II	3	149, 367, 383, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
				III	3	367, B1, IB3, T2, TP1	150	173	242	60 L	220 L	A.	
	*		*		*	*	*		*	*			
	Propane, *see also* Petroleum gases, liquefied.	2.1	UN1978		2.1	19, T50, N95	306	304	314, 315	Forbidden	150 kg	E	40
	*		*		*	*	*		*	*			
	Resin Solution, *flammable.*	3	UN1866	I	3	B52, T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E.	
				II	3	149, 383, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
				III	3	B1, B52, IB3, T2, TP1	150	173	242	60 L	220 L	A	
	*		*		*	*	*		*	*			
G	Self-heating solid, organic, n.o.s.	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33	None	212	241	15 kg	50 kg	C.	
				III	4.2	B116, B130, IB8, IP3, TP33.	None	213	241	25 kg	100 kg	C.	
	*		*		*	*	*		*	*			
	Signal devices, hand	1.4G	UN0191	II	1.4G	381	None	62	None	Forbidden	75 kg	02	25
	Signal devices, hand	1.4S	UN0373	II	1.4S	381	None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Signals, railway track, explosive.	1.4S	UN0193	II	1.4S	381	None	62	None	25 kg	100 kg	01	25
	*		*		*	*	*		*	*			
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46.	151	211	244	Forbidden	15 kg	D	52
	*		*		*	*	*		*	*			
	Sulfuric acid *with not more than 51% acid.*	8	UN2796	II	8	386, A3, A7, B2, B15, IB2, N6, N34, T8, TP2.	154	202	242	1 L	30 L	B.	
	*		*		*	*	*		*	*			
D	Toy caps	1.4S	NA0337	II	1.4S	382	None	62	None	25 kg	100 kg	01	25

		*		*		*	*	*	*	*	*				
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass.*	1.1D	UN0394	II	1.1D	385	None	62	None	Forbidden	Forbidden	04	25, 5E
		*		*		*	*	*	*	*					
G	Water-reactive solid, n.o.s.	4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33	None	211	242	Forbidden	15 kg	E	40
				II	4.3	B132, IB7, IP2, T3, TP33.	151	212	242	15 kg	50 kg	E	40
				III	4.3	B132, IB8, IP4, T1, TP33.	151	213	241	25 kg	100 kg	E	40

* * * * *

■ 7. In § 172.102:

■ a. In paragraph (c)(1), special provisions 380, 381, 382, 383, 384, 385, and 386 are added in numerical sequence.

■ b. In paragraph (c)(3), special provisions B130, B131, B132, and B133 are added in numerical sequence.

■ c. In paragraph (c)(5), special provision N95 is added in numerical sequence.

The additions are to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

380 For transportation by private carrier in a motor carrier only, this material is not subject to the segregation requirements of § 177.848(d) of this subchapter under the following conditions:

a. The material is packaged in a DOT Specification 4BW240 cylinder, or in a DOT–51 portable tank.

b. The material may only be loaded with Class 3, Class 8, and Division 4.1 materials in Packing Group II or III.

c. The motor carrier must maintain a satisfactory safety rating as prescribed in 49 CFR part 385.

381 For railroad flagging kits, see § 173.184 (c) of this subchapter.

382 Packages containing toy plastic or paper caps for toy pistols described as ''UN0349, Articles, explosive, n.o.s. (Toy caps), 1.4S'' or ''NA0337, Toy caps, 1.4S'' are not subject to the subpart E (labeling) requirements of this part when offered for transportation by motor vehicle, rail freight, cargo vessel, and cargo aircraft and, notwithstanding the packing method assigned in § 173.62 of this subchapter, in conformance with the following conditions:

a. The toy plastic or paper caps must be in the form of sheets, strips, rolls, or individual caps;

b. The caps must not contain more than an average of twenty-five hundredths of a grain of explosive composition per cap;

c. The caps must be packed inside packagings constructed of cardboard not less than 0.013-inch in thickness, metal not less than 0.008-inch in thickness, non-combustible plastic not less than 0.015-inch in thickness, or a composite blister package consisting of cardboard not less than 0.013-inch in thickness and non-combustible plastic not less than 0.005-inch in thickness that completely encloses the caps;

d. The minimum dimensions of each side and each end of the cardboard packaging must be 1/8th inch in height or more;

e. The number of caps inside each packaging must be limited so that not more than 10 grains of explosives composition may be packed into one cubic inch of space, and not more than 17.5 grains of the explosive composition of toy caps may be packed in any inner packaging;

f. Inner packagings must be packed in outer packagings meeting PG II performance criteria;

g. Toy caps may be packed with non-explosive or non-flammable articles provided the outer packagings are marked as prescribed in this paragraph;

h. Toy paper caps of any kind must not be packed in the same packaging with fireworks;

i. The outside of each package must be plainly marked ''ARTICLES, EXPLOSIVES, N.O.S. (TOY CAPS)—HANDLE CAREFULLY'' OR ''TOY CAPS—HANDLE CAREFULLY''; and

j. Explosives shipped in conformance with this paragraph must have been examined in accordance with § 173.56 of this subchapter and approved by the Associate Administrator.

383 For transportation by motor vehicle, substances meeting the conditions for high viscosity flammable liquids as prescribed in § 173.121(b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this subchapter, may be reassigned to Packing Group III under the following conditions:

a. Packaging must be UN standard metal drums attached with heavy duty steel strapping to a pallet; and

b. The capacity of each drum must not exceed 220 L (58 gallons).

384 For green graphite electrodes and shapes that are large single component solid objects not subject to shifting, transport in open rail flat cars, open bed motor vehicles, and intermodal containers is also authorized. The objects must be secured to the flat car, motor vehicle, intermodal container, or unitized by steel banding to wooden runners or pallets and the units secured to the flat car, motor vehicle, or freight container to prevent shifting and movement, including relative motion between the objects, under conditions normally incident to transportation. Stacking is permitted two or more levels high to achieve maximum allowable utilization of the designated vehicle, rail car weight, or intermodal freight container weight or vessel hold volume.

385 Notwithstanding the provisions of § 177.834(l) of this subchapter, cargo heaters may be used when weather conditions are such that the freezing of a wetted explosive material is likely. Shipments must be made by private, leased or contract carrier vehicles under exclusive use of the offeror. Cargo heaters must be reverse refrigeration (heat pump) units. Shipments made in accordance with this Special provision are excepted from the requirements of § 173.60(b)(4) of this subchapter.

386 When transported by private motor carrier only, the following corrosive liquids may be packaged in polyethylene bottles with a capacity no greater than 3.785L (one gallon), further packed inside an open-top, heavy wall, high density polyethylene box (*i.e.,* crate) in a manner that the polyethylene bottles are not subjected to any superimposed weight, and the boxes must be reasonably secured against movement within the transport vehicle and loaded so as to minimize the possibility of coming in contact with other lading:

Compounds, cleaning liquid, NA1760, PG II or III;
Corrosive liquid, acidic, inorganic, n.o.s., UN3264, PG II;
Corrosive liquid, acidic, organic, n.o.s., UN 3265, PG III;
Corrosive liquid, basic, inorganic, n.o.s., UN3266, PG II;
Hypochlorite solutions, UN1791, PG III;
Hydrochloric acid solution, UN 1789, PG II; and
Sulfuric acid, UN2796, PG II.

a. No more than four bottles, securely closed with threaded caps, may be packed in each box.

b. Each empty bottle must have a minimum weight of not less than 140 grams and a minimum wall thickness of not less than 0.020 inch (0.508 mm).

c. The completed package must meet the Packing Group II performance level, as applicable for combination packagings with a plastic box outer packaging, in accordance with subpart M of part 178 of this subchapter.

(i) Tests must be performed on each type and size of bottle, for each manufacturing location. Samples taken at random must withstand the prescribed tests without breakage or leakage.

(ii) One bottle for every two hours of production, or for every 2500 bottles produced, must be tested by dropping a bottle filled to 98% capacity with water from a height of 1.2 meters (3.9 feet) onto solid concrete directly on the closure.

(iii) A copy of the test results must be kept on file at each facility where packagings are offered for transportation, and must be made available to a representative of the Department upon request.

(iv) The name or symbol of the bottle producer, and the month and year of manufacture, must be marked by

embossing, ink-jet printing of permanent ink, or other permanent means on the face or bottom of each bottle, in letters and numbers at least 6 mm (0.2 inch) high. Symbols, if used, must be registered with the Associate Administrator.

(v) The box must be constructed from high-density polyethylene in the density range 0.950–0.962, and be capable of holding liquid when in the upright position.

* * * * *

(3) * * *

B130 When transported by motor vehicle, used diatomaceous earth filter material is not subject to any other requirements of this subchapter except for the shipping paper requirements of subpart C of part 172 of this subchapter; emergency response information as required by § 172.602(a)(2) through (a)(7) of this subchapter; and the marking requirements of § 172.302 of this subchapter, if the following requirements are met:

a. Packagings are non-DOT specification sift-proof motor vehicles or sift-proof roll-on/roll-off bulk bins, which are covered by a tarpaulin or other equivalent means.

b. The temperature of the material at the time it is offered for transport and during transportation may not exceed 55 °C (130 °F).

c. The time between offering the material for transportation at the point of origin, and unloading the material at the destination does not exceed 48 hours.

d. In addition to the training requirements prescribed in §§ 172.700 through 172.704, each driver must be trained regarding the properties and hazards of diatomaceous earth filter material, precautions to ensure safe transport of the material, and actions to be taken in the event of an emergency during transportation, or a substantial delay in transit.

B131 When transported by highway, rail, or cargo vessel, waste Paint and Paint related material (UN1263; PG II and PG III), when in plastic or metal inner packagings of not more than 26.5 L (7 gallons), are excepted from the marking requirements in § 172.301(a) and (c) and the labeling requirements in § 172.400(a), when further packed in the following specification and non-specification bulk outer packagings and under the following conditions:

a. Primary receptacles must conform to the general packaging requirements of subpart B of part 173 of this subchapter and may not leak. If they do leak, they must be overpacked in packagings conforming to the specification requirements of part 178 of this subchapter or in salvage packagings conforming to the requirements in § 173.12 of this subchapter.

b. Primary receptacles must be further packed in non-specification bulk outer packagings such as cubic yard boxes, plastic rigid-wall bulk containers, dump trailers, and roll-off containers. Bulk outer packagings must be liquid tight through design or by the use of lining materials.

c. Primary receptacles may also be further packed in specification bulk outer packagings. Authorized specification bulk outer packagings are UN11G fiberboard intermediate bulk containers (IBC) and UN13H4 woven plastic, coated and with liner flexible intermediate bulk containers (FIBCs) meeting the Packing Group II performance level and lined with a plastic liner of at least 6 mil thickness.

d. All inner packagings placed inside bulk outer packagings must be blocked and braced to prevent movement during transportation that could cause the container to open or fall over. Specification IBCs and FIBCs are to be secured to a pallet.

B132 Except for transportation by aircraft, UN2813, Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides) in PG II or III may be packaged in sift-proof bulk packagings that prevent liquid from reaching the hazardous material with sufficient venting to preclude dangerous accumulation of flammable, corrosive or toxic gaseous emissions such as methane, hydrogen and ammonia.

B133 Hydrochloric acid concentration not exceeding 38%, in Packing Group II, is authorized to be packaged in UN31H1 or UN31HH1 intermediate bulk containers when loaded in accordance with the requirements of § 173.35(h) of this subchapter.

(5) * * *

* * * * *

N95 UN1075, Liquefied petroleum gas and UN1978, Propane authorized for transport in DOT 4BA240 cylinders is not subject to the UN identification number and proper shipping name marking or the label requirements of this part subject to the following conditions:

a. The cylinder must be transported in a closed motor vehicle displaying FLAMMABLE GAS placards in accordance with subpart F of part 172 of this subchapter.

b. Shipping papers at all times must reflect a correct current accounting of all cylinders both full and expended.

c. The cylinders are collected and transported by a private or a contract carrier for reconditioning, reuse or disposal.

* * * * *

■ 8. In 172.202, paragraph (c) is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

* * * * *

(c)(1) The total quantity of the material covered by one description must appear before or after, or both before and after, the description required and authorized by this subpart. The type of packaging and destination marks may be entered in any appropriate manner before or after the basic description. Abbreviations may be used to express units of measurement and types of packagings.

(2) Hazardous materials and hazardous substances transported by highway considered ''household wastes'' as defined in 40 CFR 261.4, and not subject to the Environmental Protection Agency's hazardous waste regulations in 40 CFR parts 262 and 263, are excepted from the requirements of this paragraph.

* * * * *

■ 9. In 172.315 paragraph (a)(3) is added to read as follows:

§ 172.315 Limited quantities.

(a) * * *

(3) Except for Class 1 and 7, and Division 6.1 and 6.2 materials, for highway transportation by private motor carrier, the limited quantity marking is not required to be displayed on a package containing materials assigned to Packing Group II and III prepared in accordance with the limited quantity requirements in subpart B of part 173 of this subchapter provided:

(i) Inner packagings for liquid hazardous materials do not exceed 1.0 L (0.3 gallons) net capacity each;

(ii) Inner packagings for solid hazardous materials do not exceed 1.0 kg (2.2 pounds) net capacity each;

(iii) No more than 2 L (0.6 gallons) or 2 kg (4.4 pounds) aggregate net quantity of any one hazardous material is transported per vehicle;

(iv) The total gross weight of all the limited quantity packages per vehicle does not exceed 60 kg (132 pounds); and

(v) Each package is marked with the name and address of the offeror, a 24-hour emergency response telephone number and the statement ''Contains Chemicals'' in letters at least 25 mm (one-inch) high on a contrasting background.

* * * * *

■ 10. In § 172.400a, paragraph (a)(1) is revised and paragraph (a)(8) is added to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter or a cylinder containing a Division 2.1, 2.2, or 2.3 material that is durably and legibly marked in accordance with CGA C–7, Appendix A (IBR; see § 171.7 of this subchapter). Notwithstanding this exception, overpacks must be labeled (see § 173.25 of this subchapter).

* * * * *

(8) Packages containing toy plastic or paper caps for toy pistols described as ''UN0349, Articles, explosive, n.o.s. (Toy caps), 1.4S'' or ''NA0337, Toy caps, 1.4S'' when offered in conformance with the conditions of § 172.102(c)(1), Special provision 382.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 11. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 12. In § 173.12, add paragraph (h) to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(h) *Shrink-wrapped or stretch-wrapped pallets of limited quantity waste.* Shrink-wrapped or stretch-wrapped pallets containing packages of waste ORM–D or limited quantity materials may be transported by motor vehicle and cargo vessel under the following conditions:

(1) The waste materials must be in their original undamaged packaging and marked with the ''Consumer Commodity ORM–D'' marking in conformance with § 172.316 or an authorized limited quantity marking in conformance with § 172.315 of this subchapter, as appropriate. The word ''waste'' in association with the proper shipping name is not required on individual packages;

(2) Packages must be securely affixed to a pallet and shrink-wrapped or stretch-wrapped;

(3) The outside of the shrink-wrap or stretch-wrap must be marked on opposite sides with either ''Waste, Consumer Commodity, ORM–D'' or ''Waste, Limited Quantity.''

■ 13. In § 173.29, paragraph (f) is added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(f) Smokeless powder residue when transported by motor vehicle or container/trailer in container-on-flatcar (COFC) or trailer-on-flatcar (TOFC) service is excepted from subpart C (shipping papers) and the subpart F (placarding) requirements of part 172 of this subchapter when transported in conformance with the following:

(1) The outer packaging must be:

(i) A UN specification 1G fiber drum or 1A2 steel drum; or

(ii) A UN specification 4G fiberboard box or non-specification fiberboard box containing plastic receptacle inner packagings with not more than 2.5 grams of smokeless powders in each inner packaging;

(2) The amount of smokeless powder per outer packaging does not exceed 5 grams;

(3) The smokeless powder is approved in accordance with § 173.56 as a Class 1 explosive material;

(4) The empty packages must be transported in a closed transport vehicle;

(5) The empty packages must be loaded by the shipper and unloaded by the shipper or consignee; and

(6) The hazardous materials description to be used for the material is ''RESIDUE: Last Contained Powder, smokeless, Hazard Class N/A, Identification Number N/A, Packing Group N/A''.

* * * * *

■ 14. In § 173.40, revise paragraph (d)(1)(ii) to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(d) * * *

(1) * * *

(ii) Each cylinder with a valve must be equipped with a protective metal or plastic cap, other valve protection device, or an overpack which is sufficient to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. Impact must be at an orientation most likely to cause damage.

* * * * *

■ 15. In § 173.62, Packing Instruction 139 in the paragraph (c)(5) Table of Packing Methods is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

(5) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	*
139	Bags	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely. 2. For UN0065, 0104, 0289, 0290 the ends of the detonating cord are not required to be sealed provided the inner packaging containing the detonating cord consists of a static-resistant plastic bag of at least 3 mil thickness and the bag is securely closed. 3. For UN0065 and UN0289, inner packagings are not required when they are fastened securely in coils.			
* * *	*	* *	*

* * * * *

■ 16. In § 173.150, add paragraph (h) to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(h) Diesel fuel (NA1993) and Gasoline (UN1203) may be transported one way, by motor vehicle, directly from the loading location to an equipment repair facility, in a non-DOT specification, non-bulk packaging, known as a gasoline dispenser, that has been removed from service at a fueling station under the following conditions:

(1) Prior to loading, each dispenser must be prepared for transportation by capping or plugging all product inlet and outlet piping, so that no fluid may be released during transportation;

(2) No dispenser may contain more than 2 gallons of gasoline; and

(3) Each dispenser must be blocked, braced or strapped to the motor vehicle in accordance with the requirements of this subchapter to prevent shifting during transportation.

■ 17. In § 173.151, paragraph (e) is added to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(e) For transportation by motor vehicle only, Lithium (UN1415), Potassium (UN2257), and Sodium (UN1428) with a net quantity of material per inner packaging not exceeding 25 grams, are excepted from the labeling requirements of part 172, subpart E and the placarding requirements of part 172, subpart F of this subchapter, when offered for transportation in the following packagings under the following conditions:

(1) *Packaging.* (i) The hazardous material is placed in a tightly closed plastic bottle after being submerged in mineral oil;

(ii) The plastic bottle is placed inside a plastic bag that is securely closed to prevent leaks or punctures;

(iii) The bagged bottle is then be placed inside a metal can with all void spaces filled with an oil-absorbing material and sealed tight; and

(iv) The can is then placed into a heat sealed barrier bag.

(2) *Marking.* Each inner plastic bottle, outer metal can, and barrier bag must be marked with: Chemical name; quantity; and the name and address of the offeror. Each outer packaging must be marked with the proper shipping name and identification number in conformance with § 172.301. Additionally, each outer packaging must be marked, ''FOR TRANSPORT BY MOTOR VEHICLE ONLY.''

(3) *Recordkeeping.* (i) Records of the preparation, packaging, and marking of each chemical must be documented and all components in each package must be noted; and

(ii) Records must be retained for a minimum of 5 years and be accessible at or through the shipper's principal place of business and be made available, upon request, to the Associate Administrator or designated official.

■ 18. In § 173.156, paragraphs (c) and (d) are added to read as follows:

§ 173.156 Exceptions for limited quantity and ORM.

* * * * *

(c) *Display packs.* Display packs, as defined in § 171.8 of this subchapter, of consumer commodity or limited quantity packages that exceed 30 kg gross weight limitation may be transported by container/trailer in trailer-on-flatcar (TOFC) or container-on-flat-car (COFC) service, roadrailer and/or railrunner trailers, motor vehicle, or cargo vessel under the following conditions:

(1) *Packaging.* Combination packages must conform to the requirements of Subpart B of this part and meet the following, as appropriate:

(i) Primary containers must conform to the quantity limits for inner packagings prescribed in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b) and 173.306(a) and (b), as appropriate;

(ii) Primary containers must be packed into trays that secure individual containers from shifting inside the completed combination package during transportation;

(iii) Tray(s) must be placed into a fiberboard box, and the fiberboard box must be banded and secured to a pallet by metal, fabric, or plastic straps to form a single palletized unit; and

(iv) The maximum net quantity of hazardous material permitted in one palletized unit is 550 kg (1,210 lbs.).

(2) *Marking.* The outside of each package must be plainly and durably marked in accordance with one of the following, as appropriate:

(i) As a consumer commodity as prescribed in § 172.316 of this subchapter; or

(ii) As a limited quantity as prescribed in § 172.315 of this subchapter.

(d) *Exceptions for waste limited quantities and ORM–D materials.* Exceptions for certain waste limited quantity and ORM–D materials are prescribed in § 173.12(h).

■ 19. In § 173.158, paragraphs (i) and (j) are added to read as follows:

§ 173.158 Nitric acid.

* * * * *

(i) Nitric acid solutions of concentrations up to 40%, nitric acid by weight when offered for transportation or transported by rail, highway, or cargo vessel, may be packaged in a UN1H1 non-removable head plastic drum, tested and marked at the PG II performance level for liquids with a specific gravity of at least 1.8, and a hydrostatic test pressure appropriate for the hazardous material.

(1) Each drum may only be used one time and must be destroyed after emptying.

(2) Each drum must be permanently and legibly marked ''Single Trip Only'' and ''Must be Destroyed When Empty.''

(j) Nitric acid solutions, other than red fuming, with more than 70% nitric acid and Nitric acid solutions, other than red fuming, with not more than 70% nitric acid, when offered for transportation or transported by rail, highway, cargo vessel, or cargo-only aircraft may be packaged in a UN 4G outer fiberboard box meeting the Packing Group I or II performance level, as appropriate, subject to the following conditions:

(1) Inner packaging: A plastic (''fluorinated ethylene-propylene'' [FEP] polymers, ''perfluoroalkoxy'' [PFA] polymers or similar materials) bottle with lined screw closure meeting the compatibility requirements of § 173.24(e) of this section and having a net capacity not greater than 2.5 liters (0.66 gallon) each. For cargo-only aircraft, the inner packaging for PG I material may not exceed 1 L (0.3 gal) capacity. The wall thickness of the bottle must not be less than 0.020''.

(2) Intermediate packaging: (i) A tightly closed rigid-foam plastic receptacle each containing one inner packaging; or

(ii) A plastic bag containing one inner packaging and placed inside a heavy-wall polypropylene bag lined with polypropylene absorbent material of sufficient capacity to completely absorb the liquid contents of each inner package. Both bags must be tightly sealed with either plastic tape, a wire tie or a cable tie.

■ 20. In § 173.159:

■ a. The paragraph (e) introductory text is revised.

■ b. Paragraph (h) is revised.

■ c. Paragraph (j) is added.

The revisions and additions read as follows:

§ 173.159 Batteries, wet.

* * * * *

(e) When transported by highway or rail, electric storage batteries containing electrolyte, acid, or alkaline corrosive battery fluid and electric storage batteries packed with electrolyte, acid,

or alkaline corrosive battery fluid, are not subject to any other requirements of this subchapter, if all of the following are met:

* * * * *

(h)(1) Dry batteries or battery charger devices may be packaged in 4G fiberboard boxes with inner receptacles containing battery fluid. Completed packages must conform to the Packing Group III performance level. Not more than 12 inner receptacles may be packed in one outer box. The maximum authorized gross weight for the completed package is 34 kg (75 pounds).

(2) Battery fluid, acid (UN2796) may be packaged in a UN6HG2 composite packaging further packed in a UN4G fiberboard box with a dry storage battery. The UN6HG2 composite packaging may not exceed 8.0 liters in capacity. Completed packages must conform to the Packing Group III performance level. The maximum authorized gross weight for the completed package is 37.0 kg (82.0 lbs).

* * * * *

(j) *Nickel cadmium batteries containing liquid potassium hydroxide solution.* Nickel-cadmium batteries that contain no more than 10 ml of liquid potassium hydroxide solution (UN1814) in each battery are not subject to the requirements of this subchapter under the following conditions:

(1) Each battery must be sealed in a heat sealed bag, packaged to prevent short circuits, and placed in the center of an outer packaging surrounded with a foam-in-place packaging material;

(2) The completed package must meet the Packing Group II performance level;

(3) The gross weight of the package may not exceed 15.2 kg (33.4 pounds); and

(4) The cumulative amount of potassium hydroxide solution in all of the batteries in each package may not exceed 4 ounces (0.11 kg).

■ 21. In § 173.168, add paragraph (g) to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(g) *Exceptions.* An unapproved chemical oxygen generator with only one positive means of preventing unintentional actuation of the generator, and without the required approval number marked on the outside of the package, may be transported by motor vehicle, railcar, and cargo vessel only under the following conditions:

(1) *Packaging.* (i) The one positive means of preventing unintentional actuation of the generator shall be installed in such a manner that the percussion primer is so completely protected from its firing pin that it cannot be physically actuated or the electric firing circuit is so completely isolated from the electric match that it cannot be electrically actuated.

(ii) *Inner packaging.* Except as provided in paragraph (g)(1)(iii) of this section below, an unapproved chemical oxygen generator, or unapproved chemical oxygen generator installed in smaller size equipment such as a PBE shall be packaged in a combination packaging consisting of a non-combustible inner packaging that fully encloses the chemical oxygen generator or piece of equipment inside an outer packaging which meets the requirements in paragraph (d)(1) of this section.

(iii) *Impractical size packaging.* If the piece of equipment in which the unapproved chemical oxygen generator is installed is so large (*e.g.,* an aircraft seat) as to not be practically able to be fully enclosed in the packaging prescribed in paragraph (g)(1)(ii) of this section, then a visible and durable warning tag must be securely attached to the piece of equipment stating ''THIS ITEM CONTAINS A CHEMICAL OXYGEN GENERATOR.''

(2) *Testing.* Each unapproved chemical oxygen generator, without its packaging, must be capable of withstanding a 1.8 meter drop onto a rigid, non-resilient, flat and horizontal surface, in the position most likely to cause damage, with no actuation or loss of contents.

(3) Marking. (i) If the unapproved chemical oxygen generator is inside a piece of equipment which is sealed or difficult to determine if an oxygen generator is present, for example—a closed sealed passenger service unit, then a visible and durable warning sign must be attached to the piece of equipment stating: ''THIS ITEM CONTAINS A CHEMICAL OXYGEN GENERATOR''; and

(ii) Each outer package, and overpack if used, must be visibly and durably marked with the following statement: ''THIS PACKAGE IS NOT AUTHORIZED FOR TRANSPORTATION ABOARD AIRCRAFT''.

■ 22. In § 173.181, revise paragraph (a) and add paragraph (d) to read as follows:

§ 173.181 Pyrophoric materials (liquids).

* * * * *

(a) *Authorized cylinders.* (1) A specification steel or nickel cylinder prescribed for any compressed gas, except acetylene, having a minimum design pressure of 1206 kPa (175 psig).

(2) DOT 3AL cylinders constructed of aluminum alloy 6061–T6 with a minimum marked service pressure of 1,800 psig and a maximum water capacity of 49 liters (13 gal) may be used for the transportation of inorganic pyrophoric liquids (UN3194). Any preheating or heating of the DOT 3AL cylinder must be limited to a maximum temperature of 79.4 °C (175 °F).

(3) Cylinders authorized under paragraphs (a)(1) and (a)(2) of this section equipped with valves must be:

(i) Equipped with steel valve protection caps or collars; or

(ii) Overpacked in a wooden box (4C1, 4C2, 4D or 4F); fiberboard box (4G), or plastic box (4H1 or 4H2). Cylinders must be secured to prevent shifting in the box and, when offered for transportation or transported, must be so loaded that pressure relief devices remain in the vapor space of the cylinder. (See § 177.838(h) of this subchapter.)

* * * * *

(d) Combination packagings consisting of the following:

(1) *Inner packaging.* A 10 liter or 20 liter UN1A1 drum which has been certified to PG I of subpart M of part 178 of this subchapter. Each inner drum must—

(i) Have minimum wall thickness of 1.9 mm;

(ii) Have 4 NPT or VCR openings, each with a diameter of 6.3 mm;

(iii) Be fabricated from stainless steel; and

(iv) On the upper head, be fitted with a center opening with a maximum diameter of 68.3 mm and the opening sealed with a threaded closure fabricated from 316 stainless steel. No more than two (2) inner drums may be placed inside the outer drum.

(2) *Outer packaging.* A UN1A2 drum that has been certified to the PG I performance level of subpart M of part 178 of this subchapter and a capacity not to exceed 208 L (55 gal). The drum must have a minimum wall thickness of 1.0 mm and the top head must be closed with a steel closing ring with a minimum thickness of 2.4 mm. No more than two (2) inner drums described in paragraph (d)(1) of this section may be placed inside the outer drum.

■ 23. In § 173.184, add paragraph (c) to read as follows:

§ 173.184 Highway or rail fusees.

* * * * *

(c) For transportation by highway, railroad flagging kits are not subject any other requirements of this subchapter when all of the following conditions are met:

(1) The flagging kits may only contain fusees and railroad torpedoes as follows:

(i) Fusee (rail or highway) (NA1325, Division 4.1, PG II).

(ii) Articles, pyrotechnic (UN0431, Division 1.4G, PG II).

(iii) Signal devices, hand (UN0373, Division 1.4S, PG II).

(iv) Signal devices, hand (UN0191, Division 1.4G, PG II).

(v) Signals, railway track, explosive (UN0193, Division 1.4S, PG II).

(2) Fusees and railroad torpedoes must be transported in compartmented metal containers. Each compartment must have a cover with a latching device. Compartments for railroad torpedoes must be equipped with a spring-loaded positive locking device. Each compartment may only contain one type of device.

(3) Each flagging kit may contain a maximum of 36 fusees and 36 railroad torpedoes. No more than six (6) flagging kits may be transported at one time on any motor vehicle.

(4) Flagging kits may only be transported on railroad motor vehicles including privately owned motor vehicles under the direct control of on-duty railroad employees.

(5) The fusees and railroad torpedoes must be kept in the closed flagging kits whenever they are not being used on the railroad right-of-way, while the motor vehicle is being driven, or whenever the motor vehicle is located on other than railroad property.

(6) When left in unattended motor vehicles on non-railroad property, a flagging kit must be locked inside the motor vehicle, or stored in a locked compartment on the motor vehicle.

■ 24. In § 173.188, add paragraph (a)(3) to read as follows:

§ 173.188 White or yellow phosphorus.

* * * * *

(a) * * *

(3)(i) A 115 L (30 gallon) UN1A2 steel drum certified to the PG I performance level for solids and the PG I or PG II performance level for liquids and dual marked, at a minimum, as a UN1A2/X400/S (for solid) and UN1A2 X(or Y)/1.4/150 (for liquids) subject to the following conditions:

(ii) Enough water must be present in each drum to ensure that the phosphorous is covered by water at all times during transportation, in any orientation of the drum;

(iii) Drums must be held and observed for a minimum of 24-hours before transportation. Any leaking or otherwise unsuitable drums must be replaced prior to transportation;

(iv) Packages must be destroyed and may not be reused;

(v) The net mass of the material and water, in kilograms, must not exceed the mass that would be permitted by calculating the volume of the packaging in liters multiplied by the specific gravity indicated on the package certification;

(vi) Transportation is by private or contract motor carrier only; and

(vii) Transportation is authorized from the offeror's location to a facility where it must be unloaded by the consignee.

* * * * *

■ 25. In § 173.193, revise paragraph (b) to read as follows:

§ 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.

* * * * *

(b) Bromoacetone, methyl bromide, chloropicrin and methyl bromide mixtures, chloropicrin and methyl chloride mixtures, and chloropicrin mixtures charged with non-flammable, non-liquefied compressed gas must be packed in Specification 3A, 3AA, 3B, 3C, 3E, 4A, 4B, 4BA, 4BW, or 4C cylinders having not over 113 kg (250 pounds) water capacity (nominal) except:

(1) DOT Specification 4BW cylinders containing chloropicrin and methyl bromide mixtures may not exceed 453 kg (1000 pounds); and

(2) The capacity limit of this paragraph does not apply to shipments of methyl bromide.

* * * * *

■ 26. In § 173.226, add paragraph (f) to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(f) Liquid hazardous materials in Division 6.1, PG I, Hazard Zone A, are excepted from the segregation requirements of §§ 174.81, 176.83, and 177.848(d) of this subchapter when packaged as follows:

(1) *Inner packaging system.* The inner packaging system must consist of three packagings:

(i) A glass, plastic or metal receptacle, with a capacity of not more than 1 liter (1 quart), securely cushioned with a non-reactive, absorbent material. The receptacle must have a closure that is held in place by any means capable of preventing back-off or loosening of the closure by impact or vibration during transportation.

(ii) The receptacle must be packed within a leak-tight packaging of metal, with a capacity of not less than 4 liters (1 gallon); and

(iii) The metal packaging must be securely cushioned with a nonreactive absorbent material and packed in a leak-tight UN 1A2 steel drum or UN 1H2 plastic drum, with a capacity of not less than 19 liters (5 gallons).

(2) *Outer packaging.* The inner packaging system must be placed in a UN 1A2 steel drum or UN 1H2 plastic drum, with a capacity of not less than 114 liters (30 gallons). The inner packaging system must be securely cushioned with a non-reactive, absorbent material. The total amount of liquid contained in the outer packaging may not exceed 1 liter (1 quart).

(3) Both the inner packaging system and the outer packaging must conform to the performance test requirements of subpart M of part 178 of this subchapter at the PG I performance level. The inner packaging system must meet these tests without benefit of the outer packaging.

■ 27. In § 173.301, revise paragraphs (f)(1), (f)(2), and (h)(2)(i), and add paragraph (f)(7) to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) *Pressure relief device systems.* (1) Except as provided in paragraphs (f)(5) through (f)(7) and (j) of this section, and § 171.23(a) of this subchapter, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S–1.1 (compliance with paragraph 9.1.1.1 is not required) and CGA Pamphlet S–7 (IBR, see § 171.7 of this subchapter). The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA C–14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA C–12 (IBR, see § 171.7 of this subchapter).

(2) A pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material. This requirement does not apply to DOT Specification 39 cylinders of 1.2L (75 cubic inches) or less in volume filled with a Liquefied petroleum gas, Methyl acetylene and Propadiene mixtures, stabilized, Propylene, Propane or Butane.

* * * * *

(7) A pressure relief device is not required on a DOT Specification 3E cylinder measuring up to 50mm (2 inches) in diameter by 305mm (12

inches) in length for the following specified gases and maximum weight limits:

(i) Carbon Dioxide 0.24L (8 oz.)

(ii) Ethane 0.12L (4 oz.)

(iii) Ethylene 0.12L (4 oz.)

(iv) Hydrogen Chloride, anhydrous 0.24L (8 oz.)

(v) Monochlorotrifluoromethane 0.35L (12 oz.)

(vi) Nitrous oxide, 0.24L (8 oz.)

(vii) Vinyl fluoride, stabilized 0.24L (8 oz.)

* * * * *

(h) * * *

(2) * * *

(i) By equipping the cylinder with securely attached metal or plastic caps of sufficient strength to protect valves from damage during transportation;

* * * * *

■ 28. In § 173.302, revise paragraph (f)(1) to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases or adsorbed gases.

* * * * *

(f) * * *

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, 39 cylinders, 4E (filled to less than 200 psig at 21 °C (70 °F), and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

* * * * *

■ 29. In § 173.302a:

■ a. Revise paragraphs (a)(1) and (a)(5);

■ b. Add paragraph (a)(6);

■ c. Redesignate paragraphs (c), (d) and (e) as paragraphs (d), (e), and (f); and

■ d. Add new paragraph (c).

The revisions and additions are to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) * * *

(1) DOT 3, 3A, 3AA, 3AL, 3B, 3E, 4B, 4BA, 4BW, and 4E cylinders.

* * * * *

(5) Aluminum cylinders manufactured in conformance with specifications DOT 39, 3AL and 4E are authorized for oxygen only under the conditions specified in § 173.302(b).

(6) DOT 4E cylinders- DOT 4E cylinders with a maximum capacity of 43L (11 gal) must have a minimum rating of 240 psig and be filled to no more than 200 psig at 21 °C (70 °F).

* * * * *

(c) *Special filling limits for DOT 3A, 3AX, 3AA, and 3AAX cylinders containing Division 2.1 gases.* Except for transportation by aircraft, a DOT specification 3A, 3AX, 3AA, and 3AAX cylinder may be filled with hydrogen and mixtures of hydrogen with helium, argon or nitrogen, to a pressure 10% in excess of its marked service pressure subject to the following conditions:

(1) The cylinder must conform to the requirements of paragraph (b)(2) and (b)(3) of this section;

(2) The cylinder was manufactured after December 31, 1945;

(3) DOT specification 3A and 3AX cylinders are limited to those having an intermediate manganese composition.

(i) Cylinders manufactured with intermediate manganese steel must have been normalized, not quench and tempered. Quench and temper treatment of intermediate steel is not authorized.

(ii) Cylinders manufactured with chrome moly steel must have been quenched and tempered, not normalized. Use of normalized chrome moly steel cylinders is not permitted.

(4) Cylinders must be equipped with pressure relief devices as follows:

(i) Cylinders less than 1.7 m (65 inches) in length must be equipped with fusible metal backed frangible disc devices;

(ii) Cylinders 1.7 m (65 inches) or greater in length and 24.5 cm (9.63 inches) in diameter or larger must be equipped with fusible metal backed frangible disc devices or frangible disc devices. Cylinders with a diameter of 0.56 m (22 inches) or larger must be equipped with frangible disc devices.

* * * * *

■ 30. In § 173.304, revise paragraph (d) to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(d) *Refrigerant and dispersant gases.* Nontoxic and nonflammable refrigerant or dispersant gases must be offered for transportation in cylinders prescribed in § 173.304a of this subchapter, or in DOT 2P, 2Q, or 2Q1 containers (§§ 178.33, 178.33a, and 178.33d–2 of this subchapter). DOT 2P, 2Q, and 2Q1 containers must be packed in strong outer packagings of such design that protect valves from damage or accidental functioning under conditions incident to transportation. For DOT 2P and 2Q containers, the pressure inside the containers may not exceed 87 psia at 21.1°C (70 °F). For 2Q1 containers, the pressure inside the container may not exceed 210 psig at 55 °C (131 °F). Each completed metal container filled for shipment must be heated until its contents reach a minimum temperature of 55 °C (131 °F) without evidence of leakage, distortion, or other defect. Each outer package must be plainly marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS''.

* * * * *

■ 31. In § 173.304a, in the paragraph (a)(2) table, add three new entries each for Carbon dioxide and Nitrous oxide alphabetically and in numerical order according to the maximum permitted filling density to read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (%) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
* * *	*	* * *
Carbon dioxide (see Notes 4, 7, and 8)	70.3	DOT–3A2000, DOT–3AA2000, DOT–3AX2000, DOT–3AAX2000, DOT–3T2000.
Carbon dioxide (see Notes 4, 7, and 8)	73.2	DOT–3A2265, DOT–3AA2265, DOT–3AX2265, DOT–3AAX2265, DOT–3T2265.
Carbon dioxide (see Notes 4, 7, and 8)	74.5	DOT–3A2400, DOT–3AA2400, DOT–3AX2400, DOT–3AAX2400, DOT–3T2400.
* * *	*	* * *
Nitrous oxide (*see* Notes 7, 8, and 11)	70.3	DOT–3A2000, DOT–3AA2000, DOT–3AX2000, DOT–3AAX2000, DOT–3T2000.

Kind of gas	Maximum permitted filling density (%) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
Nitrous oxide (*see* Notes 7, 8, and 11)	73.2	DOT–3A2265, DOT–3AA2265, DOT–3AX2265, DOT–3AAX2265, DOT–3T2265.
Nitrous oxide (*see* Notes 7, 8, and 11)	74.5	DOT–3A2400, DOT–3AA2400, DOT–3AX2400, DOT–3AAX2400, DOT–3T2400.
* * *	*	* * *

* * * * *

■ 32. In § 173.306:
■ a. Revise paragraphs (a) and (b);
■ b. Add paragraph (e)(2); and
■ c. Revise paragraphs (f) and (k).
■ The revisions and additions read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) Limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter are excepted from labeling, except when offered for transportation or transported by air, and, unless required as a condition of the exception, specification packaging requirements of this subchapter when packaged in accordance with the following paragraphs. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter except § 174.24, and to part 177 of this subchapter except § 177.817. Except as otherwise provided in this section, each package may not exceed 30 kg (66 lbs.) gross weight.

(1) When in containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) except cigarette lighters. Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

(2) When in refillable metal containers filled with a material that is not classed as a hazardous material to not more than 90% of capacity at 21.1 °C (70 °F) and then charged with nonflammable, nonliquefied gas. Each container must be tested to three times the pressure at 21.1 °C (70 °F) and, when refilled, be retested to three times the pressure of the gas at 21.1 °C (70 °F). Also, one of the following conditions must be met:

(i) The container is not over 0.95 L (1 quart) capacity and charged to not more than 170 psig (1172.1 kPa) at 21.1 °C (70 °F), and must be packed in a strong outer packaging; or

(ii) The container is not over 114 L (30 gallons) capacity and charged to not more than 75 psig (517.1 kPa) at 21.1 °C (70 °F).

(3) When in a metal aerosol container (see § 171.8 of this subchapter for the definition of *aerosol*). Authorized containers include non-specification, DOT 2P (§ 178.33 of this subchapter), DOT 2Q (§ 178.33a of this subchapter), or DOT 2Q1 (§ 178.33(d) of this subchapter) design, provided the following conditions are met. Additional exceptions for aerosol containers conforming to this paragraph (a)(3) are provided in paragraph (i) of this section.

(i) *Capacity.* The capacity of the container must not exceed 1 L (61.0 cubic inches).

(ii) *General pressure conditions.* The authorized metal aerosol containers and associated pressure limitations are provided in the following table. Pressure inside the container may not exceed 180 psig at 54.4 °C (130 °F) except as may be authorized by variations of a DOT specification container type. In any event, the metal container must be capable of withstanding without bursting a pressure of at least one and one-half times the equilibrium pressure of the contents at 54.4 °C (130 °F).

AUTHORIZED METAL AEROSOL CONTAINERS

If the gauge pressure (psig) at 54.4 °C (130 °F) is . . .	Authorized container
140 or less	Non-DOT specification, DOT 2P, DOT 2Q, DOT 2Q1.
Greater than 140 but not exceeding 160	DOT 2P, DOT 2Q, DOT 2Q1.
Greater than 160 but not exceeding 180	DOT 2Q, DOT 2Q1.
Not to exceed 210	DOT 2Q1 (Non-flammable only).

(iii) *Liquid fill.* The liquid content of the material and gas must not completely fill the container at 54.4 °C (130 °F).

(iv) *Outer packaging.* The containers must be packed in strong outer packagings.

(v) *Pressure testing.* Except as otherwise provided in this paragraph, each container, after it is filled, must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F), or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F)). If the contents are sensitive to heat, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur. However, instead of this standard water bath test, container(s) may be tested using one of the following methods subject to certain conditions—

(A) *Alternative water bath test.* (*1*) One filled container in a lot of 2,000 must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F). If the container shows evidence of leakage or permanent

deformation, the lot of 2,000 containers must be rejected;

(*2*) A second filled container in the lot of 2,000 must be weighed and compared to the weight specification for the containers as documented in the operating procedures for the weight test. Failure of the container to meet the weight specification is evidence of leakage or overfilling and the lot of 2,000 must be rejected;

(*3*) The remainder of the containers in the lot of 2,000 must be visually inspected (e.g, examination of the seams). Containers showing evidence of leakage or overfilling must not be transported; and

(*4*) Each person employing this test must maintain a copy of the operating procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department.

(B) *Automated pressure test.* Each person employing an automated process for pressure testing of filled containers must develop procedures for implementation of the test. Each person must maintain a copy of the procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department. The procedures must, at a minimum, include instruction on the following:

(*1*) Pressure specifications. Each person must specify pressure standard(s) (*e.g.* a pressure limit or range) for a container respective of the design and/or contents. Each container, after it is filled, must be pressure checked and compared to the standards. For a pressure limit, any container exceeding the pressure limit must be rejected. For a pressure range, any container outside of the set range must be rejected. The instruments used to determine the pressure must be properly calibrated before a production run to an accuracy of +/- or better; and

(*2*) Periodic inspection. At designated intervals, a randomly selected container must be inspected for proper closure and verification of filling pressure. If a container shows signs of improper closure or over-filling, five (5) additional randomly selected containers must be inspected. If any of the additional containers show signs of improper closure or over-filling, all containers produced since the last inspection must be rejected.

(C) *Weight test.* Each person employing a weight test of filled containers must develop procedures for implementation of the test. Each person must maintain a copy of the procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department. The procedures must, at a minimum, include instruction on the following:

(*1*) Weight specifications. Each person must specify target weight specifications for a particular container. Each container, after it is filled, must be weighed and compared to the target weight specification for the container. Any container outside the target weight specification is an indication of leakage or overfilling and must be rejected. The instruments used to determine the weight must be properly calibrated before a testing run and be sufficiently sensitive to measure within 0.10 g of the true weight of the container;

(*2*) Heat testing and pressure limits. One container out of each lot of successfully filled containers must be heat tested by raising the internal pressure until it reaches that which would be reached at 55 °C (131 °F). The lot size should be no greater than 2,000. If the pressure in the container exceeds the maximum pressure allowed for the container type or if the container shows signs of leakage or permanent deformation, the lot must be rejected. Alternatively, five (5) additional randomly selected containers from the lot may be tested to qualify the lot but if any of the five containers fail the test, the entire lot must be rejected;

(*3*) Periodic inspection. At intervals of not more than 10 minutes, a randomly selected container must be inspected for proper closure and verification of filling pressure. If a container shows signs of improper closure or over-filling, five (5) additional randomly selected containers must be inspected. If any of the additional containers show signs of improper closure or over-filling, all containers produced since the last inspection must be rejected; and

(*4*) Visual inspection. Each container must be visually inspected prior to being packed. Any container showing signs of leakage or permanent deformation must be rejected.

(D) *Leakage test.* (*1*) Pressure and leak testing before filling. Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). This must be at least two-thirds of the design pressure of the container. If any container shows evidence of leakage at a rate equal to or greater than 3.3×10^{-2} mbar L/s at the test pressure, distortion or other defect, it must be rejected; and

(*2*) Testing after filling. The person filling each container must ensure that the crimping equipment is set appropriately and the specified propellant is used before filling a container. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of 2.0×10^{-3} mbar L/s at 20 °C (68 °F). Any filled container which shows evidence of leakage, deformation, or overfilling must be rejected.

(vi) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(4) Gas samples must be transported under the following conditions:

(i) A gas sample may only be transported as non-pressurized gas when its pressure corresponding to ambient atmospheric pressure in the container is not more than 105 kPa absolute (15.22 psia).

(ii) Non-pressurized gases, toxic (or toxic and flammable) must be packed in hermetically sealed glass or metal inner packagings of not more than one L (0.3 gallons) overpacked in a strong outer packaging.

(iii) Non-pressurized gases, flammable must be packed in hermetically sealed glass or metal inner packagings of not more than 5 L (1.3 gallons) and overpacked in a strong outer packaging.

(5) For limited quantities of Division 2.2 gases with no subsidiary risk, when in a non-DOT specification or a specification DOT 2S (§ 178.33b of this subchapter) plastic aerosol container (see § 171.8 of this subchapter for the definition of aerosol) provided all of the following conditions are met. Additional exceptions for aerosols conforming to this paragraph (a)(5) are provided in paragraph (i) of this section.

(i) *Capacity.* The capacity of the container must not exceed 1 L (61.0 cubic inches).

(ii) *General pressure conditions.* Authorized plastic aerosol containers and associated pressure limitations are provided in the following table. The pressure in the container must not exceed 160 psig at 54.4 °C (130 °F). The container must be capable of withstanding without bursting a pressure of at least one and one-half times the equilibrium pressure of the contents at 54.4 °C (130 °F).

AUTHORIZED PLASTIC AEROSOL CONTAINERS

If the gauge pressure (psig) at 55 °C (131 °F) is . . .	Authorized plastic container
Less than 140	Non-DOT specification, DOT 2S.
140 or greater but not exceeding 160	DOT 2S.

(iii) *Liquid fill.* Liquid content of the material and gas must not completely fill the container at 54.4 °C (130 °F).

(iv) *Outer packaging.* The containers must be packed in strong outer packagings.

(v) *Pressure testing.* Except as provided in paragraph (a)(5)(vi) of this section, each container must be subjected to a test performed in a hot water bath. The temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat, or if the container is made of plastic material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container is permitted except that a plastic container may be deformed through softening provided that it does not leak.

(vi) *Leakage test.* As an alternative to the hot water bath test in paragraph (a)(5)(v) of this section, testing may be performed as follows:

(A) Pressure and leak testing before filling. Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). This must be at least two-thirds of the design pressure of the container. If any container shows evidence of leakage at a rate equal to or greater than 3.3×10^{-2} mbar L/s at the test pressure, distortion or other defect, it must be rejected; and

(B) Testing after filling. Prior to filling, the filler must ensure that the crimping equipment is set appropriately and the specified propellant is used before filling the container. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of 2.0×10^{-3} mbar L/s at 20 °C (68 °F). Any filled container that shows evidence of leakage, deformation, or excessive weight must be rejected.

(vii) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(b) Exceptions for foodstuffs, soap, biologicals, electronic tubes, and audible fire alarm systems. Limited quantities of compressed gases (except Division 2.3 gases) for which exceptions are provided as indicated by reference to this section in § 172.101 of this subchapter, when in conformance with one of the following paragraphs, are excepted from labeling, except when offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter, except § 174.24, and to part 177 of this subchapter, except § 177.817. Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

(1) Foodstuffs or soaps with soluble or emulsified compressed gas are authorized in non-refillable metal or plastic containers not to exceed 1 L (61.0 cubic inches) capacity provided the pressure in each container does not exceed 140 psig at 54.4 °C (130 °F) unless authorized by variation of a container type. For pressures ranging from greater than 140 psig to 160 psig, a variation DOT 2P1 or DOT 2Q2 (§§ 178.33(c) and (d) of this subchapter, respectively) container must be used. However, the pressure of the contents in the container may not be greater than 150 psig at 23.9 °C (75 °F). Plastic containers may only contain Division 2.2 non-flammable soluble or emulsified compressed gas. Metal or plastic containers must be capable of withstanding, without bursting, a pressure of at least one and one-half times the equilibrium pressure of the contents at 54.4 °C (130 °F).

AUTHORIZED AEROSOL CONTAINERS FOR FOODSTUFFS AND SOAPS

If the gauge pressure (psig) at 54.4 °C (130 °F) is . . .	Authorized container
Not exceeding 140	Non-DOT specification, DOT 2P, DOT 2P1, DOT 2Q, DOT 2Q2.
Greater than 140 but not exceeding 160	DOT 2P, DOT 2P1, DOT 2Q, DOT 2Q2.
Greater than 160 but not exceeding 180	DOT 2Q, DOT 2Q2.

(i) Containers must be packed in strong outer packagings.

(ii) Liquid content of the material and the gas must not completely fill the container at 55 °C (131 °F).

(iii) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(2) Cream in refillable metal or plastic containers with soluble or emulsified compressed gas. Plastic containers must only contain Division 2.2 non-flammable soluble or emulsified compressed gas. Containers must be of such design that they will hold pressure without permanent deformation up to 375 psig and must be equipped with a device designed so as to release pressure without bursting of the container or dangerous projection of its parts at higher pressures. This exception applies to shipments offered for transportation by refrigerated motor vehicles only.

(3) Nonrefillable metal or plastic containers charged with a Division 6.1 PG III or nonflammable solution containing biological products or a medical preparation that could be deteriorated by heat, and compressed gas or gases. Plastic containers may only contain 2.2 non-flammable soluble or emulsified compressed gas. The

capacity of each container may not exceed 35 cubic inches (19.3 fluid ounces). The pressure in the container may not exceed 140 psig at 54.4 °C (130 °F), and the liquid content of the product and gas must not completely fill the containers at 54.4 °C (130 °F). One completed container out of each lot of 500 or less, filled for shipment, must be heated, until the pressure in the container is equivalent to equilibrium pressure of the contents at 54.4 °C (130 °F). There must be no evidence of leakage, distortion, or other defect. The container must be packed in strong outer packagings.

(4) Electronic tubes, each having a volume of not more than 30 cubic inches and charged with gas to a pressure of not more than 35 psig and packed in strong outer packagings are authorized.

(5) Audible fire alarm systems powered by a compressed gas contained in an inside metal container when shipped are authorized under the following conditions:

(i) Each inside container must have contents that are not flammable, poisonous, or corrosive as defined under this part,

(ii) Each inside container may not have a capacity exceeding 35 cubic inches (19.3 fluid ounces),

(iii) Each inside container may not have a pressure exceeding 70 psig at 21.1 °C (70 °F) and the liquid portion of the gas may not completely fill the inside container at 54.4 °C (130 °F), and

(iv) Each nonrefillable inside container must be designed and fabricated with a burst pressure of not less than four times its charged pressure at 54.4 °C (130 °F). Each refillable inside container must be designed and fabricated with a burst pressure of not less than five times its charged pressure at 54.4 °C (130 °F).

* * * * *

(e) * * *

(2) *Used refrigerating machines.* (i) *Packaging.* Reconditioned (used) refrigerating machines (UN 2857, Div. 2.2) may be excepted from the marking requirements of § 172.302(c) of this subchapter and transported by motor vehicle when they conform to the requirements prescribed in § 173.306(e)(1), are secured or permanently attached to the motor vehicle, and are:

(A) Permanently affixed to a steel base structure,

(B) Permanently affixed to a trailer, or

(C) Manufactured with a rigid internal structure designed for transportation and stacking conditions such that they do not leak and do not deteriorate, distort, or become damaged in a manner that could adversely affect their safety or reduce their strength in transportation, cause instability in stacks of refrigerating machines, or cause damage to these machines in a way that is likely to reduce safety in transportation.

(ii) *Testing.* Used refrigerating machines returned from their rental locations must be transported back to an authorized original equipment manufacturer service facility and undergo maintenance, repair and/or replacement that renders these machines operational at the same level as that of new refrigerating machines, and must undergo a leak test by a certified technician, prior to re-shipment.

(f) *Accumulators (Articles, pressurized pneumatic or hydraulic containing non-flammable gas).* The following applies to accumulators, which are hydraulic accumulators containing nonliquefied, nonflammable gas, and nonflammable liquids or pneumatic accumulators containing nonliquefied, nonflammable gas, fabricated from materials which will not fragment upon rupture.

(1) Accumulators installed in motor vehicles, construction equipment, and assembled machinery and designed and fabricated with a burst pressure of not less than five times their charged pressure at 70 °F, when shipped, are not subject to the requirements of this subchapter.

(2) Accumulators charged with limited quantities of compressed gas to not more than 200 psig at 70 °F are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments are not subject to subpart F (placarding) of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 and to part 177 of this subchapter except § 177.817.

(i) Each accumulator must be shipped as an inside packaging;

(ii) Each accumulator may not have a gas space exceeding 2,500 cubic inches under stored pressure; and

(iii) Each accumulator must be tested, without evidence of failure or damage, to at least three times its charged pressure of 70 °F, but not less than 120 psi before initial shipment and before each refilling and reshipment.

(3) Accumulators with a charging pressure exceeding 200 psig at 70 °F and in compliance with the requirements stated in paragraph (f)(2) of this section, as applicable, are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions:

(i) Each accumulator must be designed and fabricated with a burst pressure of not less than five (5) times its charged pressure at 70 °F when shipped;

(ii) For an accumulator with a gas space not to exceed 100 cubic inches, it must be designed and fabricated with a burst pressure of not less than five (5) times its charged pressure at 70 °F. Out of each lot not to exceed 1,000 successively produced accumulators per day of the same type, accumulators must be tested, in lieu of the testing of paragraph (f)(2)(iii) of this section, as follows:

(A) One (1) accumulator must be tested to the minimum design burst pressure;

(B) Two (2) accumulators, one at the beginning of production and one at the end must be tested to at least two and a half times the charge pressure without evidence of leakage or distortion;

(C) If accumulators fail either test, an additional four (4) sets of accumulators from the lot may be tested. If any additional accumulators fail, the lot must be rejected;

(iii) For an accumulator with a gas space not to exceed 30 cubic inches, it must be designed and fabricated with a burst pressure of not less than four (4) times its charged pressure at 70 °F. Out of each lot not to exceed 1,000 successively produced accumulators per day of the same type, accumulators must be tested, in lieu of the testing of paragraph (f)(2)(iii) of this section, as follows:

(A) One (1) accumulator must be tested to the minimum design burst pressure;

(B) Two (2) accumulators, one at the beginning of production and one at the end must be tested to at least two and a half times the charge pressure without evidence of leakage or distortion;

(C) If accumulators fail either test, an additional four (4) sets of accumulators from the lot may be tested. If any additional accumulators fail, the lot must be rejected;

(iv) Accumulators must be packaged in strong outer packaging.

(4) Accumulators intended to function as shock absorbers, struts, gas springs, pneumatic springs or other impact or energy-absorbing devices are not subject to the requirements of this subchapter provided each:

(i) Has a gas space capacity not exceeding 1.6 L and a charge pressure not exceeding 280 bar, where the product of the capacity expressed in

liters and charge pressure expressed in bars does not exceed 80 (for example, 0.5 L gas space and 160 bar charge pressure);

(ii) Has a minimum burst pressure of 4 times the charge pressure at 20 °C for products not exceeding 0.5 L gas space capacity and 5 times the charge pressure for products greater than 0.5 L gas space capacity;

(iii) Design type has been subjected to a fire test demonstrating that the article relieves its pressure by means of a fire degradable seal or other pressure relief device, such that the article will not fragment and that the article does not rocket; and

(iv) Accumulators must be manufactured under a written quality assurance program which monitors parameters controlling burst strength, burst mode and performance in a fire situation as specified in paragraphs (f)(4)(i) through (f)(4)(iii) of this section. A copy of the quality assurance program must be maintained at each facility at which the accumulators are manufactured.

(5) Accumulators not conforming to the provisions of paragraphs (f)(1) through (f)(4) of this section may only be transported subject to the approval of the Associate Administrator.

* * * * *

(k) *Aerosols for recycling or disposal.* Aerosols (as defined in § 171.8 of this subchapter) intended for recycling or disposal may be transported under the following conditions:

(1) Aerosols conforming to paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are not subject to the 30 kg (66 pounds) gross weight limitation when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(i) The aerosols must be packaged in a strong outer packaging. The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(ii) Each aerosol must be secured with a cap to protect the valve stem or the valve stem must be removed; and

(iii) The packaging must be offered for transportation or transported by—

(A) Private or contract motor carrier; or

(B) Common carrier in a motor vehicle under exclusive use for such service.

(2) Aerosols intended to conform to paragraphs (a)(3) or (a)(5) of this section at the time of filling but are leaking, have been improperly filled, or otherwise no longer conform to paragraphs (a)(3) or (a)(5) of this section may be offered for transportation and transported for disposal or recycling under the conditions provided in this paragraph (k)(2). Such aerosols are not eligible for the exceptions provided in paragraphs (a) and (i) of this section except for subpart F (Placarding) of part 172 of this subchapter.

(i) *Packaging.* (A) The aerosols must be packaged in a metal or plastic removable head UN 1A2, 1B2, 1N2 or 1H2 drum tested and marked to the PG II performance level or higher for liquids;

(B) Each drum must be provided, when necessary, with sufficient cushioning and absorption material to prevent excessive shifting of the aerosols and to eliminate the presence of any free liquid at the time the drum is closed. All cushioning and absorbent material used in the drum must be compatible with the hazardous material; and

(C) The pressure inside each completed drum, at any time during transportation, may not exceed the design test pressure marked on the drum.

(ii) *Hazard communication.* (A) Notwithstanding the marking requirements for non-bulk packages in § 172.301 of this subchapter, each drum must be marked ''AEROSOL SALVAGE'' or ''AEROSOL SALVAGE DRUM'' in association with the required label(s); and

(B) The overpack marking requirements of § 173.25 of this subchapter do not apply.

(3) *Modal restrictions.* The completed drums must be offered for transportation and transported by private or contract carrier by highway or rail. Vessel and air transportation are not authorized.

* * * * *

■ 33. In § 173.315, paragraph (a)(2) table, the entry ''Division 2.2 materials not specifically provided for in this table'' is revised, and a note 28 is added to the end of the table. The revision and addition read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density		Specification container required	
	Percent by weight (see Note 1)	Percent by volume (see par. (f) of this section)	Type (see Note 2)	Minimum design pressure (psig)
* *	*	* *	*	*
Division 2.2, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT–51, MC–330, MC–331.	See Notes 19 and 28.
* *	*	* *	*	*

* * * * *

Note 28: For UN1080, Sulfur hexafluoride, a non-specification cargo tank that otherwise conforms to a DOT Specification MC 331 cargo tank except for design pressure and capacity is authorized. Design pressure may not exceed 600 psig. The water capacity range for each tank is 15 to 500 gallons.

* * * * *

■ 34. In § 173.319, revise paragraph (d)(2) table to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(d) * * *

(2) * * *

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)			
	Ethylene	Ethylene	Ethylene	Hydrogen
17				6.60.
45	52.8.			
75		51.1	51.1.	
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig.	
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F.
Specification (see § 180.507(b)(3) of this subchapter).	113D60W, 113C60W	113C120W	113D120W	113A175W, 113A60W.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 35. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 36. In § 174.67, revise paragraph (g) to read as follows:

§ 174.67 Tank car unloading.

* * * * *

(g) The valve cap, or the reducer when a large outlet is to be used, must be removed with a suitable wrench after the set screws are loosened and a pail must be placed in position to catch any liquid that may be in the outlet chamber. If the valve cap or reducer does not unscrew easily, it may be tapped lightly with a mallet or wooden block in an upward direction. If leakage shows upon starting the removal, the cap or reducer may not be entirely unscrewed. Sufficient threads must be left engaged and sufficient time allowed to permit the controlled escape of any accumulation of liquid in the outlet chamber. If the leakage stops or the rate of leakage diminishes materially, the cap or reducer may be entirely removed. If the initial rate of leakage continues, further efforts must be made to seat the outlet valve (see paragraph (f) of this section). If this fails, the cap or reducer must be screwed up tight and the tank must be unloaded through the dome. If upon removal of the outlet cap the outlet chamber is found to be blocked with frozen liquid or any other matter, the cap must be replaced immediately and a careful examination must be made to determine whether the outlet casting has been cracked. If the obstruction is not frozen liquid, the car must be unloaded through the dome. If the obstruction is frozen liquid and no crack has been found in the outlet casting, the car may, if circumstances require it, be unloaded from the bottom by removing the cap and attaching unloading connections immediately. Before opening the valve inside the tank car with a frozen liquid blockage:

(1) Steam must be applied to the outside of the outlet casting or the outlet casting must be wrapped with burlap or other rags and hot water applied to the wrapped casting to melt the frozen liquid; or

(2) For combustible liquid or Class 3 liquid petroleum distillate fuels, the blockage may be cleared by attaching a fitting to the outlet line and applying nitrogen at a pressure not to exceed 100 psig.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 37. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 38. Revise § 176.90 to read as follows:

§ 176.90 Private automobiles.

(a) *Class 1 (explosive) material.* A private automobile which is carrying any Class 1 (explosive) material (except permitted fireworks or small arms ammunition) may not be transported on a passenger-carrying ferry vessel unless the Class 1 (explosive) material conforms to the packaging, labeling, marking, and certification requirements of this subchapter. Permitted fireworks and small arms ammunition may be carried without the required packaging, labeling, marking, or certification if they are in tight containers.

(b) *Engines, gasoline, or liquefied petroleum gas.* Engines, internal combustion, flammable gas powered *or* flammable liquid powered, including when fitted in machinery or vehicles (*i.e.* motor vehicles, recreational vehicles, campers, trailers), vehicle flammable liquid *or* flammable gas powered, gasoline, and petroleum gases, liquefied *or* liquefied petroleum gas when included as part of a motor home, recreational vehicle, camper, or trailer; are excepted from the requirements of this subchapter if the following conditions are met:

(1) Any container showing deterioration which might affect its integrity must not be allowed on board the vessel. A visual inspection by a responsible member of the crew must be made of each cylinder of liquefied petroleum gas before it may be allowed aboard the vessel. A cylinder that has a crack or leak, is bulged, has a defective valve or a leaking or defective pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, may not offered for transportation on board the vessel. Leaking or damaged containers of gasoline may not be offered for transportation on board the vessel.

(2) Motor vehicles may be stowed in the same hold or compartment or on the vehicle deck of passenger vessels with cylinders of liquefied petroleum gas when the cylinders are securely attached to recreational vehicles, such as campers or trailers.

(3) Extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas (including cylinders for camping equipment) not securely attached to recreational vehicles must be stowed in the vessel's paint locker. Containers must be securely closed.

(4) All liquefied petroleum gas cylinders must be secured by closing the shut-off valves prior to the recreational vehicles being loaded on the vessels. The owner or operator of each recreational vehicle must be directed to close all operating valves within the vehicles.

(5) ''No smoking'' signs must be posted on the vehicle decks and, if used for storage of hazardous materials; in close proximity to the vessel's paint locker.

(6) An hourly patrol of the vehicle decks must be made by a crewmember. Any unusual or dangerous situation must be reported to the vessel's master.

(7) Passengers may be allowed on the vehicle decks during the voyage and are subject to the control of the crew personnel conducting the continuous vehicle deck patrol.

(8) Each person responsible for performing a function authorized by this section must be trained in accordance with subpart H of part 172 of this subchapter and on the requirements of this section.

(9) Shipments made under this paragraph are subject to the Incident Reporting requirements prescribed in §§ 171.15 and 171.16 of this subchapter.

■ 39. In § 176.800, revise paragraph (a) to read as follows:

§ 176.800 General stowage requirements.

(a) Each package required to have a Class 8 (corrosive) label thereon being transported on a vessel must be stowed clear of living quarters, and away from foodstuffs and cargo of an organic nature. For the purposes of this section, food ingredients intended for human consumption (ingredients) that are Class 8 (corrosive) materials are not considered to be incompatible with other food ingredients if the intended use of those ingredients is for the manufacture of food, or food ingredients containing those food ingredients (or like ingredients), with or without other ingredients.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 40. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.81 and 1.97.

■ 41. In § 177.834, revise paragraphs (i)(3), (i)(4), and (l)(2)(i), and remove and reserve paragraph (l)(2)(ii) to read as follows:

§ 177.834 General requirements.

* * * * *

(i) * * *

(3) A qualified person ''attends'' the loading or unloading of a cargo tank only if, throughout the process:

(i) Except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), the qualified person is within 7.62 m (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must be alert and have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation;

(ii) The qualified person observes all loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station, and the loading or unloading system is equipped as follows:

(A) For a video monitoring system used to meet the attendance requirement, the camera must be mounted so as to provide an unobstructed view of all equipment involved in the loading or unloading operations, including all valves, hoses, domes, and pressure relief devices.

(B) For an instrumentation and signaling system used to meet the attendance requirement, the system must provide a surveillance capability at least equal to that of a human observer.

(C) Upon loss of video monitoring capability or instrumentation and signaling systems, loading or unloading operations must be immediately terminated.

(D) Shut-off valves operable from the remote control station must be provided.

(E) In the event of a remote system failure, a qualified person must immediately resume attending the loading or unloading of the cargo tank as provided in paragraph (i)(3)(i) of this section.

(F) A containment area must be provided capable of holding the contents of as many cargo tank motor vehicles as might be loaded at any single time.

(G) A qualified person must personally conduct a visual inspection of each cargo tank motor vehicle after it is loaded, prior to departure, for any damage that may have occurred during loading.

(iii) Hoses used in the loading or unloading operations are equipped with cable-connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation.

(A) Prior to each use, each hose must be inspected to ensure that it is of sound quality, without defects detectable through visual observation; and

(B) The loading or unloading operations must be physically inspected by a qualified person at least once every sixty (60) minutes.

(4) A person is ''qualified'' if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, has been instructed on the procedures to be followed in emergencies, and except for persons observing loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station and persons inspecting hoses in accordance with paragraph (i)(3)(iii) of this section, is authorized to move the cargo tank, and has the means to do so.

* * * * *

(l) * * *

(2) * * *

(i) *Use of combustion cargo heaters.* A motor vehicle equipped with a combustion cargo heater may be used to transport Class 3 (flammable liquid) or Division 2.1 (flammable gas) materials only subject to the following conditions:

(A) The combustion cargo heater is powered by diesel fuel or propane and each of the following requirements are met:

(*1*) Electrical apparatus in the cargo compartment is non-sparking or explosion proof.

(*2*) There is no combustion apparatus in the cargo compartment.

(*3*) There is no connection for return of air from the cargo compartment to the combustion apparatus.

(*4*) The heating system will not heat any part of the cargo to more than 54 °C (130 °F).

(*5*) Heater requirements under § 393.77 of this title are complied with.

(*6*) The heater unit and its fuel supply must be externally mounted on the truck or trailer.

(*7*) The heater unit must retain combustion in a sealed combustion chamber.

(*8*) The heater unit must utilize outside air for combustion (air from the cargo space cannot be used for combustion).

(*9*) Heater unit combustion gases must be exhausted to the outside of the truck or trailer.

(B) The combustion cargo heater is a catalytic heater and each of the following requirements are met:

(*1*) The heater's surface temperature cannot exceed 54 °C (130 °F)—either on a thermostatically controlled heater or on a heater without thermostatic control when the outside or ambient temperature is 16 °C (61 °F) or less.

(*2*) The heater is not ignited in a loaded vehicle.

(*3*) There is no flame, either on the catalyst or anywhere in the heater.

(*4*) The manufacturer has certified that the heater meets the requirements under paragraph (l)(2)(i)(B) of this section by permanently marking the heater *''MEETS DOT REQUIREMENTS FOR CATALYTIC HEATERS USED*

WITH FLAMMABLE LIQUID AND GAS.''

(*5*) The heater is also marked ''*DO NOT LOAD INTO OR USE IN CARGO COMPARTMENTS CONTAINING FLAMMABLE LIQUID OR GAS IF FLAME IS VISIBLE ON CATALYST OR IN HEATER.''*

(*6*) *Heater requirements under § 393.77 of this title are complied with.*

(ii) [Reserved]

* * * * *

■ 42. In § 177.838, the heading of the section is revised and paragraph (i) is added to read as follows:

§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (self-heating and pyrophoric liquid) materials.

* * * * *

(i) Division 4.2 (self-heating liquid) material. Notwithstanding the segregation requirements of § 177.848(d), the following Division 4.2 (self-heating) materials may be transported on the same transport vehicle with Class 8 (corrosive) materials. The hazardous materials must be palletized with a minimum height of 100 mm (4 inches) off the floor of the vehicle, and the self-heating material must be separated from the corrosive material by a minimum horizontal distance of 1.2 m (4 feet).

(1) Sodium hydrosulfite *or* sodium dithionite, UN1384, in PG II or III packaged in UN 1A2 steel drums that meet the Packing Group II performance requirements of subpart M of part 178 of this title.

(2) Thiourea dioxide, UN3341, in PG II or III packaged in UN 1G fiber drums meeting packing group II performance requirements of subpart M of part 178 of this subchapter.

(3) Self-heating, solid, organic, n.o.s., UN3088, in PG II or III packaged in UN 1G fiber drums meeting the Packing Group II performance level requirements of subpart M of part 178 of this subchapter.

■ 43. In § 177.840, add paragraph (a)(3) to read as follows:

§ 177.840 Class 2 (gases) materials.

(a) * * *

(3) *Cylinders containing material classed as Division 2.3, Hazard Zone A.* (i) Notwithstanding the segregation requirements of § 177.848(d), a cylinder containing a Division 2.3, Hazard Zone A materials may be transported on the same transport vehicle with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8 if all of the following requirements are met:

(A) The Division 2.3, Hazard Zone A material must be packaged as authorized by this subchapter. In addition, each package must be must be placed in a plastic bag which is taped closed and then overpacked in a UN 1A2 steel drum tested and marked for a PG II or higher performance level with insulation material inside to protect the cylinders from fire. The outside of the overpack must be marked with an indication that the inner packagings conform to the prescribed specifications.

(B) A Division 2.1 material requiring strong non-bulk outer packagings in accordance with § 173.301(a)(9) of this subchapter must be overpacked in a UN 1A2 steel or 1H2 plastic drum tested and marked for a PG II or higher performance level. The outside of the overpack must be marked with an indication that the inner packagings conform to the prescribed specifications.

(C) Packages containing Division 2.3 Hazard Zone A material must be separated within the transport vehicle from packages containing Division 2.1, Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 1.2 m (4 feet). In addition, all steel or plastic overpacks containing packages of Division 2.3, Hazard Zone A or Division 2.1 material must be placed on pallets within the transport vehicle.

(ii) Notwithstanding the segregation requirements of § 177.848(d), Division 2.3, Hazard Zone A material may be transported on the same transport vehicle with non-bulk packagings and IBCs meeting a UN performance standard containing only the residue of Division 2.1, 4.3, 5.1, and Class 3 and 8 materials if all of the following requirements are met:

(A) The materials are transported in enclosed trailers equipped with inlet and outlet vent openings with a minimum total area of one square foot per 1,000 cubic feet of trailer volume. Electrical systems within the trailer's interior must be non-sparking or explosion proof.

(B) Cylinders must be transported in an upright position and securely restrained within the trailer, or loaded into racks, secured to pallets, or packed in wooden or fiberboard boxes or crates to prevent the cylinders from shifting or overturning within the motor vehicle under normal transportation conditions. If cylinders are secured to a pallet, the pallet must be designed to transport 1,590 kg (3,500 lbs.) per pallet and the cylinders must be secured within the pallet by a web strap rated at 4,545 kg (10,000 lbs.).

(C) A cylinder containing Division 2.3 Hazard Zone A materials must be separated from non-bulk packagings and IBCs meeting a UN performance standard containing the residue of materials in Division 2.1, 4.3, or 5.1, or Class 3 or 8 by a minimum horizontal distance of 3 m (10 feet). The maximum gross weight of Division 2.3 Hazard Zone A material carried on one vehicle must not exceed 3,636 kg (8,000 lbs.).

(D) Motor carriers must have a satisfactory safety rating as prescribed in 49 CFR part 385.

* * * * *

■ 44. In § 177.841, add paragraph (f) to read as follows:

§ 177.841 Division 6.1 and Division 2.3 materials.

* * * * *

(f) Notwithstanding the segregation requirements of § 177.848(d), when transported by highway by private or contract motor carrier, Division 6.1 PG I, Hazard Zone A toxic-by-inhalation (TIH) materials meeting the definition of a hazardous waste as provided in § 171.8 of this subchapter, may be transported on the same transport vehicle with materials classed as Class 3, Class 4, Class 5, and Class 8. The Division 6.1 PG I, Hazard Zone A materials must be loaded on pallets and separated from the Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 2.74 m (9 feet) when in conformance with the following:

(1) The TIH materials are packaged in combination packagings as prescribed in § 173.226(c) of this subchapter.

(2) The combination packages containing TIH materials must be:

(i) Filled and packed by the offeror's hazmat employees;

(ii) Be placed on pallets, when in a transport vehicle; and

(iii) Separated from hazardous materials classed as Class 3, Class 8 or Divisions 4.1, 4.2, 4.3, 5.1, or 5.2 by a nine-foot (minimum distance) buffer zone, when in a transport vehicle. The buffer zone maybe established by:

(A) A load lock;

(B) Empty drums;

(C) Drums containing hazardous materials (*e.g.,* Class 9) that are compatible with materials in all other drums immediately around them; or

(D) Drums containing non-hazardous materials that are compatible with materials in all other drums immediately around them.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 45. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 46. Sections 178.33c, 178.33c–1, and 178.33c–2 are added to subpart B to read as follows:

§ 178.33c Specification 2P; inner nonrefillable metal receptacle variation.

§ 178.33c–1 Compliance.

Required in all details.

§ 178.33c–2 Variation.

Notwithstanding the variation provided in this section, each container must otherwise conform to a DOT 2P container in accordance with § 178.33. The following conditions also apply under Variation 1—

(a) *Manufacture.* Side seams: not permitted. Ends: The ends shall be designed to withstand pressure and be equipped with a pressure relief system (*e.g.,* rim-venting release or a dome expansion device) designed to function prior to bursting of the container.

(b) *Tests.* (1) One out of each lot of 25,000 containers or less, successively produced per day complete with ends assembled (and without a pressure relief system assembled) shall be pressure tested to destruction at gauge pressure and must not burst below 240 psig. For containers with a pressure relief system as described in paragraph (a) of this section and assembled, failure at a location other than the pressure relief system will reject the lot. For containers with an end expansion device, the lot must be rejected if the container bursts prior to buckling of the device.

(2) Each such 25,000 containers or less, successively produced per day, shall constitute a lot and if the test container(s) shall fail, the lot shall be rejected. Otherwise, ten (10) additional containers of each container design produced may be selected at random and subjected to the test. These containers shall be complete with ends assembled. Should any of the containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(c) *Marking.* By means of printing, lithographing, embossing, or stamping, each container must be marked:

(1) DOT–2P1.

(2) With the name or symbol of the person making the mark. A symbol, if used, must be registered with the Associate Administrator.

■ 47. Sections 178.33d, 178.33d–1, 178.33d–2 and 178.33d–3 are added to subpart B to read as follows:

§ 178.33d Specification 2Q; inner nonrefillable metal receptacle variations.

§ 178.33d–1 Compliance.

Required in all details.

§ 178.33d–2 Variation 1.

Notwithstanding the variation provided in this paragraph, each container must otherwise conform to a DOT 2Q container in accordance with § 178.33a. The following conditions also apply under Variation 1—

(a) *Type and size.* The maximum capacity of containers in this class may not exceed 0.40 L (24.4 cubic inches). The maximum inside diameter shall not exceed 2.1 inches.

(b) *Manufacture.* Ends: The top of the container must be designed with a pressure relief system consisting of radial scores on the top seam(s). The bottom of the container must be designed to buckle at a pressure greater than the pressure at which the top buckles and vents.

(c) *Wall thickness.* The minimum wall thickness for any container shall be 0.0085 inches.

(d) *Tests.* (1) Two containers (one without a pressure relief system and one with) out of each lot of 25,000 or less, successively produced per day shall be pressure tested to destruction at gauge pressure. The container without a pressure relief system must not burst below 320 psig. The container assembled with a pressure relief system as described in paragraph (b) of this section must be tested to destruction. The bottom of the container must buckle at a pressure greater than the pressure at which the top buckles and vents.

(2) Each such 25,000 containers or less, successively produced per day, shall constitute a lot and if the test container(s) shall fail, the lot shall be rejected. Otherwise, ten (10) additional pairs of containers may be selected at random and subjected to the test under which failure occurred. Should any of the containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(e) *Marking.* By means of printing, lithographing, embossing, or stamping, each container must be marked:

(1) DOT–2Q1.

(2) With the name or symbol of the person making the mark. A symbol, if used, must be registered with the Associate Administrator.

§ 178.33d–3 Variation 2.

Notwithstanding the variation provided in this paragraph, each container must otherwise conform to a DOT 2Q container in accordance with § 178.33a. The following conditions also apply under Variation 2—

(a) *Manufacture.* Ends: The ends shall be designed to withstand pressure and the container equipped with a pressure relief system (*e.g.,* rim-venting release or a dome expansion device) designed to buckle prior to the burst of the container.

(b) *Tests.* (1) One out of each lot of 25,000 containers or less, successively produced per day shall be pressure tested to destruction at gauge pressure and must not burst below 270 psig. For containers with a pressure relief system as described in paragraph (a) of this section and assembled, failure at a location other than the pressure relief system will reject the lot.

(2) Each such 25,000 containers or less, successively produced per day, shall constitute a lot and if the test container(s) shall fail, the lot shall be rejected. Otherwise, ten (10) additional containers of each container design produced may be selected at random and subjected to the test. These containers shall be complete with ends assembled. Should any of the containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(c) *Marking.* By means of printing, lithographing, embossing, or stamping, each container must be marked:

(1) DOT–2Q2.

(2) With the name or symbol of the person making the mark. A symbol, if used, must be registered with the Associate Administrator.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 48. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 49. Section 180.209 is amended as follows:

■ a. In paragraph (a), Table 1 ''Requalification of Cylinders'' is revised, and a footnote is added;

■ b. Revise paragraph (e); and

■ c. Amend the Table in paragraph (g) by adding an entry for ''DOT 4BW'' at the end of the table.

The revision and amendments read as follows.

§ 180.209 Requirements for requalification of specification cylinders.

(a) * * *

TABLE 1—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
DOT 3	3000 psig	5.
DOT 3A, 3AA	5/3 times service pressure, except noncorrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(b), (e), (f), (h), and (j).
DOT 3AL	5/3 times service pressure	5, 10 or 12 (*see* § 180.209(e), (j) and § 180.209(m) [3]).
DOT 3AX, 3AAX	5/3 times service pressure	5, 10 (*see* § 180.209(e).
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(e), (f)).
3E	Test not required.	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
3T	5/3 times service pressure	5.
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(e) or (h)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e), (f), and (j)).
4D, 4DA, 4DS	2 times service	5.
DOT 4E	2 times service pressure, except non-corrosive (*see* § 180.209(g)).	5 or 10 (*see* § 180.209(e)).
4L	Test not required.	
8, 8AL		10 or 20 (*see* § 180.209(i)).
Exemption or special permit cylinder	See current exemption or special permit	See current exemption or special permit.
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.
[3] This provision does not apply to cylinders used for carbon dioxide, fire extinguisher or other industrial gas service.

* * * * *

(e) *Proof pressure test.* A cylinder made in conformance with DOT Specifications 4B, 4BA, 4BW, or 4E protected externally by a suitable corrosion-resistant coating and used exclusively for non-corrosive gas that is commercially free from corroding components may be requalified by volumetric expansion testing or proof pressure testing every 10 years instead of every 5 years. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

(g) * * *

Cylinders conforming to . . .	Used exclusively for . . .
*	* * * * * *
DOT 4BW	Alkali metal alloys, liquid, n.o.s., Alkali metal dispersions or Alkaline earth metal dispersions, Potassium, Potassium Sodium alloys and Sodium that are commercially free of corroding components.

* * * * *

■ 50. In § 180.213, revise paragraph (c) introductory text to read as follows:

§ 180.213 Requalification markings.

* * * * *

(c) *Requalification marking method.* The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing, or applying a label embedded in epoxy that will remain legible and durable throughout the life of the cylinder, or by other methods that produce a legible, durable mark.

* * * * *

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–00780 Filed 1–20–16; 8:45 am]

BILLING CODE 4910–60–P

FEDERAL REGISTER

Vol. 81 Thursday,

No. 13 January 21, 2016

Part IV

The President

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Proclamation 9390—Martin Luther King, Jr., Federal Holiday, 2016

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Presidential Documents

Title 3—

The President

Proclamation 9389 of January 15, 2016

Religious Freedom Day, 2016

By the President of the United States of America

A Proclamation

Since our country's founding, religious freedom has been heralded as one of our most cherished ideals. The right to practice religion freely has brought immigrants from all over the world to our shores, often in the face of great adversity, so they could live their lives in accordance with the dictates of their consciences. Some of America's earliest settlers, the Pilgrims, arrived at our shores in search of a more tolerant society, free from religious persecution. Since that time, people of many religious traditions have added their own threads to the fabric of our Nation, helping advance a profound and continuous vindication of the idea of America.

When the Virginia Statute for Religious Freedom was adopted on January 16, 1786, it formed a blueprint for what would become the basis for the protection of religious liberty enshrined in our Constitution. Drafted by Thomas Jefferson, the statute proclaims that ''all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.'' The First Amendment prohibits Government from establishing religion, and it protects the free exercise of every faith. Our Government does not sponsor a religion, nor does it pressure anyone to practice a particular faith, or any faith at all. The United States stands for the protection of equal rights for all people to practice their faith freely, without fear or coercion, and as Americans, we understand that when people of all religions are accepted and are full and equal members of our society, we are all stronger and freer.

Our commitment to religious freedom has fostered unprecedented religious diversity and freedom of religious practice. But these ideals are not self-executing. Rather, they require a sustained commitment by each generation to uphold and preserve them. Here at home, my Administration is working to preserve religious liberty and enforce civil rights laws that protect religious freedom—including laws that protect employees from religious discrimination and require reasonable accommodation of religious practices on the job. We will keep upholding the right of religious communities to establish places of worship and protecting the religious rights of those so often forgotten by society, such as incarcerated persons and individuals confined to institutions. We will also continue to protect students from discrimination and harassment that is based on their faith, and we will continue to enforce hate crime laws, including those perpetrated based on a person's actual or perceived religion. This work is crucial, particularly given the recent spike in reports of threats and violence against houses of worship, children, and adults simply because of their religious affiliation.

As we strive to uphold religious freedom at home, we recognize that this basic element of human dignity does not stop at our shores, and we work to promote religious freedom around the globe. We are working with a broad coalition against those who have subjected religious minorities to unspeakable violence and persecution, and we are mobilizing religious and civic leaders to defend vulnerable religious communities. In addition, we are calling for the elimination of improper restrictions that suppress religious

practice, coordinating with governments around the world to promote religious freedom for citizens of every faith, and expanding training for our diplomats on how to monitor and advocate for this freedom. All people deserve the fundamental dignity of practicing their faith free from fear, intimidation, and violence.

On Religious Freedom Day, let us recommit ourselves to protecting religious minorities here at home and around the world. May we remember those who have been persecuted, tortured, or murdered for their faith and reject any politics that targets people because of their religion, including any suggestion that our laws, policies, or practices should single out certain faiths for disfavored treatment. And as one Nation, let us state clearly and without equivocation that an attack on any faith is an attack on every faith and come together to promote religious freedom for all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2016 as Religious Freedom Day. I call on all Americans to commemorate this day with events and activities that teach us about this critical foundation of our Nation's liberty, and that show us how we can protect it for future generations at home and around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–01323
Filed 1–20–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9390 of January 15, 2016

Martin Luther King, Jr., Federal Holiday, 2016

By the President of the United States of America

A Proclamation

With profound faith in our Nation's promise, the Reverend Dr. Martin Luther King, Jr., led a non-violent movement that urged our country's leaders to expand the reach of freedom and provide equal opportunity for all. Dr. King joined a long line of heroes and vindicated the belief at the heart of our founding: that humble citizens, armed with little but faith, can come together to change the world and remake an America that more closely aligns with our highest ideals.

Dr. King recognized that, as a country built on the foundation of self-governance, our success rested on engaging ordinary citizens in the work of securing our birthright liberties. Together, with countless unsung heroes equally committed to the idea that America is a constant work in progress, he heeded the call etched into our founding documents nearly two centuries before his time, marching and sacrificing for the idea of a fair, just, and inclusive society. By preaching his dream of a day when his children would be judged by the content of their character—rather than by the color of their skin—he helped awaken our Nation to the bitter truth that basic justice for all had not yet been realized. And in his efforts, he peaceably yet forcefully demonstrated that it is not enough to only have equal protection under the law, but also that equal opportunity for all of our Nation's children is necessary so that they can shape their own destinies.

Today, we celebrate the long arc of progress for which Dr. King and so many other leaders fought to bend toward a brighter day. It is our mission to fulfill his vision of a Nation devoted to rejecting bigotry in all its forms; to rising above cynicism and the belief that we cannot change; and to cherishing dignity and opportunity not only for our own daughters and sons, but also for our neighbors' children.

We have made great advances since Dr. King's time, yet injustice remains in many corners of our country. In too many communities, the cycle of poverty persists and students attend schools without adequate resources—some that serve as a pipeline to prison for young people of color. Children still go to bed hungry, and the sick go without sufficient treatment in neighborhoods across America. To put up blinders to these realities or to intimate that they are inherent to a Nation as large and diverse as ours would do a disservice to those who fought so hard to ensure ours was a country dedicated to the proposition that all people are created equal.

''We may have all come on different ships, but we're in the same boat now,'' Dr. King once said. As the most diverse country on Earth, ensuring this creed is reflected in our hearts, minds, and policies is the imperative of our citizenship. As Americans of all races and beliefs come together on this day of service to honor the life and legacy of the Reverend Dr. Martin Luther King, Jr., let us pledge to recognize the common humanity of all people, regardless of the color of their skin or the station into which they were born.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim January 18, 2016, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service projects in honor of Dr. King and to visit www.MLKDay.gov to find Martin Luther King, Jr., Day of Service projects across our country.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–01324
Filed 1–20–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Executive Order 13716 of January 16, 2016

Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the Iran Sanctions Act of 1996 (Public Law 104–172) (50 U.S.C. 1701 note), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195) (22 U.S.C. 8501 *et seq.*), the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112–158), the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112–239) (22 U.S.C. 8801 *et seq.*) (IFCA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, have determined that Iran's implementation of the nuclear-related measures specified in sections 15.1–15.11 of Annex V of the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA) between the P5+1 (China, France, Germany, the Russian Federation, the United Kingdom, and the United States), the European Union, and Iran, as verified by the International Atomic Energy Agency, marks a fundamental shift in circumstances with respect to Iran's nuclear program. In order to give effect to the United States commitments with respect to sanctions described in section 4 of Annex II and section 17.4 of Annex V of the JCPOA, I am revoking Executive Orders 13574 of May 23, 2011, 13590 of November 20, 2011, 13622 of July 30, 2012, and 13645 of June 3, 2013, and amending Executive Order 13628 of October 9, 2012, by revoking sections 5 through 7 and section 15. In addition, in section 3 of this order, I am taking steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995, to provide implementation authorities for aspects of certain statutory sanctions that are outside the scope of the U.S. commitment to lift nuclear-related sanctions under the JCPOA.

This action is not intended to, and does not, limit the applicability of waiver determinations or any renewals thereof issued by the Secretary of State, or licenses issued by the Secretary of the Treasury, to give effect to sanctions commitments described in sections 17.1–17.3 and 17.5 of Annex V of the JCPOA, or otherwise affect the national emergency declared in Executive Order 12957, which shall remain in place, or any Executive Order issued in furtherance of that national emergency other than Executive Orders 13574, 13590, 13622, 13628, and 13645.

I hereby order:

Section 1. *Revocation of Executive Orders.* The following Executive Orders are revoked:

(a) Executive Order 13574 of May 23, 2011 (Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996, as Amended);

(b) Executive Order 13590 of November 20, 2011 (Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors);

(c) Executive Order 13622 of July 30, 2012 (Authorizing Additional Sanctions With Respect to Iran); and

(d) Executive Order 13645 of June 3, 2013 (Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions With Respect To Iran).

Sec. 2. *Amendment of Executive Order.* Executive Order 13628 of October 9, 2012 (Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions with Respect to Iran), is amended by:

(a) Revoking current sections 5 through 7 and 15;

(b) Revising current section 4 by removing ''section 5 of Executive Order 13622 of July 30, 2012,'' in subsection (a), replacing ''section 12'' with ''section 9'' in subsection (a), and replacing ''section 12'' with ''section 9'' in subsection (b);

(c) Revising current section 8 by inserting ''and'' between ''2(a),'' and ''3(a)'' and removing '', and 7(a)(iv)'';

(d) Revising current section 9 by inserting ''and'' between ''2(a),'' and ''3(a)'' and removing '', and 7(a)(iv)'';

(e) Revising current section 14 by inserting ''and'' between ''2(a),'' and ''3(a)'' and removing '', and 7(a)(iv)'';

(f) Renumbering current sections 8 through 14 as sections 5 through 11, respectively; and

(g) Renumbering current sections 16 through 19 as sections 12 through 15, respectively.

Sec. 3. *Provision of Implementation Authorities for Sanctions Outside the Scope of the JCPOA.*

(a)(i) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (a)(ii) of this section upon determining, pursuant to authority delegated by the President and in accordance with the terms of such delegation, that sanctions shall be imposed on such person pursuant to section 1244(c)(1)(A) of IFCA for knowingly providing significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of persons described in section 1244(c)(2)(C)(iii) of IFCA.

(ii) With respect to any person determined by the Secretary of the Treasury in accordance with this subsection to meet the criteria set forth in subsection (a)(i) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(iii) The prohibitions in subsection (a)(ii) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

(b)(i) When the Secretary of State or the Secretary of the Treasury, pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined that sanctions shall be imposed on a person pursuant to sections 1244(d)(1)(A), 1245(a)(1), or 1246(a)(1) of IFCA (including in each case as informed by section 1253(c)(2) of IFCA) for engaging in transactions or activities outside the scope of the waiver

determinations as to IFCA issued by the Secretary of State to give effect to sanctions commitments described in sections 17.1–17.3 and 17.5 of Annex V of the JCPOA, and any renewals thereof, such Secretary may select one or more of the sanctions set forth below to impose on that person, and the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions selected and maintained by the Secretary of State or the Secretary of the Treasury:

(A) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(B) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(C) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(D) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(E) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(F) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(G) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (b)(i)(A)–(F) of this section, as selected by the Secretary of State or the Secretary of the Treasury, as appropriate.

(ii) The prohibitions in subsection (b)(i) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

(c)(i) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(A) to have engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran;

(B) to have engaged, on or after January 2, 2013, in corruption or other activities relating to the misappropriation of proceeds from the sale or resale of goods described in subsection (c)(i)(A) of this section;

(C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsection (c)(i)(A) or (c)(i)(B) of this section

or any person whose property and interests in property are blocked pursuant to subsection (c)(i) of this section; or

(D) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to subsection (c)(i) of this section.

(ii) The prohibitions in subsection (c)(i) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

Sec. 4. *Donations.* I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsections 3(a)(ii), 3(b)(i)(D), and 3(c)(i) of this order.

Sec. 5. *Prohibitions.* The prohibitions in subsections 3(a)(ii), 3(b)(i)(D), and 3(c)(i) of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 6. *Entry into the United States.* I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens who are determined to meet one or more of the criteria in subsections 3(a)(i) and 3(c)(i) of this order would be detrimental to the interests of the United States, and I hereby suspend the entry into the United States, as immigrants or nonimmigrants, of such persons as of the date of this order. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 7. *General Authorities.* The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order, other than the purposes described in section 6 of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law.

Sec. 8. *Evasion and Conspiracy.* (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 9. *Definitions.* For the purposes of this order:

(a) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''financial institution,'' as used in subsection 3(b) of this order, includes:

(i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7));

(ii) a credit union;

(iii) a securities firm, including a broker or dealer;

(iv) an insurance company, including an agency or underwriter; and

(v) any other company that provides financial services;

(c) the term ''Government of Iran'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(d) the term ''Iran'' means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(e) the term ''person'' means an individual or entity;

(f) the term ''sanctioned person'' means a person that the Secretary of State or the Secretary of the Treasury, pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined is a person on whom sanctions shall be imposed pursuant to section 1244(d)(1)(A), 1245(a)(1), or 1246(a)(1) of IFCA (including in each case as informed by section 1253(c)(2) of IFCA) for engaging in transactions or activities outside the scope of the waiver determinations as to IFCA issued by the Secretary of State to give effect to sanctions commitments described in sections 17.1–17.3 and 17.5 of Annex V of the JCPOA, and any renewals thereof, and on whom the Secretary of State or the Secretary of the Treasury has imposed any of the sanctions in subsection 3(b) of this order;

(g) the term ''United States financial institution'' means a financial institution as defined in subsection (b) of this section (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States; and

(h) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 10. *Notice.* For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of an action taken pursuant to subsection 3(a)(ii), 3(b)(i)(D), or 3(c)(i) of this order.

Sec. 11. *Direction to Agencies.* All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 12. *Rights.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 13. *Effect on Actions or Proceedings.* Pursuant to section 202 of the NEA (50 U.S.C. 1622), the revocation of Executive Orders 13574, 13590, 13622, and 13645 and the amendments to Executive Order 13628 as set forth in sections 1 and 2 of this order, shall not affect any action taken or proceeding pending not finally concluded or determined as of the date

of this order, or any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.

Sec. 14. *Relationship to Algiers Accords.* The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

THE WHITE HOUSE,
January 16, 2016.

[FR Doc. 2016–01325
Filed 1–20–16; 11:15 am]
Billing code 3295–F6–P

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