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

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC88

Single Family Housing Direct Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule; change in effective date.

SUMMARY: On April 29, 2015, the Rural Housing Service (RHS) published a final rule to create a certified loan application packaging process for the direct single family housing loan program. On June 5, 2015, the final rule's effective date was deferred to October 1, 2015. On September 11, 2015, the final rule's effective date was further delayed until October 1, 2016. Given that Section 726 of the Consolidated Appropriations Act, 2016, requires RHS to establish a packaging program based on the pilot program, the final rule's effective date will be moved up to May 19, 2016.

DATES: The effective date of the final rule published April 29, 2015 (80 FR 23673), delayed June 5, 2015 (80 FR 31971) and September 11, 2015 (80 FR 54713), is now May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Tammy Repine, Finance and Loan Analyst, Single Family Housing Direct Loan Division, USDA Rural Development, 3625 93rd Avenue SW., Olympia, Washington 98512, Telephone: 360–753–7677. Email: *tammy.repine@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Once effective, all existing pilot intermediaries will be classified as Agency-approved intermediaries under the regulation for the states they covered under the pilot, and any subsequent state(s) they wish to cover. This classification is based on the fact that all of these pilot intermediaries applied under the ''Notice of Intent to Accept Applications To Be an Intermediary Under the Certified Loan Application Packaging Process Within the Section 502 Direct Single Family Housing Program'' (80 FR 32526) and demonstrated to the Agency's satisfaction that they meet all the requirements to be an intermediary. While the existing pilot intermediaries will not need to reapply, they must advise the Agency of new states they wish to cover.

On or around the final rule's effective date, program guidance will be issued that expounds upon the implementation, conditions, and parameters of the certified loan application packaging process. Among others items, the guidance will outline how other interested parties can apply to be an intermediary.

Dated: February 5, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–03289 Filed 2–18–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–7489; Airspace Docket No. 15–ASW–20]

Amendment of Class D and E Airspace; Enid Vance AFB, OK; Enid Woodring Municipal Airport, Enid, OK; and Enid, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of Class E surface area airspace, and Class E airspace designated as an extension in the Enid, OK, area eliminating the Notice to Airmen (NOTAM) part-time status at Vance AFB, and Enid Woodring Municipal Airport. This action also updates the geographic coordinates of Vance AFB, Woodring Municipal Airport, and the Vance VHF Omnidirectional Range Tactical Air Navigation (VORTAC) listed for Class D and Class E airspace. This is an administrative change to coincide with the FAA's aeronautical database.

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 online 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 amends controlled airspace at Vance AFB, Enid, OK, and Woodring Municipal Airport, Enid, OK.

History

In a review of the airspace, the FAA found the airspace for Vance AFB, and Enid Woodring Municipal Airport, Enid, OK, as published in FAA Order 7400.9Z, Airspace Designations and Reporting Points, does not require part time status. This is an administrative change removing the part time NOTAM information from the legal description for the airports, and also brings current the airport reference point and NAVAID coordinates.

Class E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 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 eliminating the NOTAM information that reads, ''This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.'' from the regulatory text of the Class E surface area airspace, and Class E airspace designated as an extension to Class D, at Vance AFB, Enid, OK, and Woodring Municipal Airport, Enid, OK. Additionally, the geographic coordinates of Vance AFB, Woodring Municipal Airport, and the Vance VORTAC are updated for the Class D and Class E airspace areas listed in this rule to coincide with the FAA's aeronautical database.

This is an administrative change amending the description for Vance AFB and Woodring Municipal Airport, Enid, OK, to be in concert with the FAA's aeronautical database, and does not affect the boundaries, or operating requirements of the airspace; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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 5–6.5.a. 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.

Lists 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, effective September 15, 2015, is amended as follows:

5000 Class D Airspace.

* * * * *

ASW OK D Enid Vance AFB, OK [Amended]

Enid, Vance AFB, OK
(Lat. 36°20′22″ N., long. 97°55′02″ W.)
Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 5.1-mile radius of Vance AFB, and within a 4.1-mile radius of Woodring Municipal Airport; excluding that portion of airspace east of long. 97°51′01″ W., when the Enid, Woodring Municipal Airport, OK, Class D airspace area is in effect. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

ASW OK D Enid Woodring Municipal Airport, OK [Amended]

Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of Woodring Municipal Airport; excluding that portion of airspace west of long. 97°51′01″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASW OK E2 Enid, OK [Amended]

Enid, Vance AFB, OK
(Lat. 36°20′22″ N., long. 97°55′02″ W.)
Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)
Within a 5.1-mile radius of Vance AFB, and within a 4.1-mile radius of Woodring Municipal Airport.

6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ASW OK E4 Enid Vance AFB, OK [Amended]

Enid, Vance AFB, OK
(Lat. 36°20′22″ N., long. 97°55′02″ W.)
Vance VORTAC
(lat. 36°20′42″ N., long. 97°55′07″ W.)
Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)
Woodring VOR/DME
(Lat. 36°22′26″ N., long. 97°47′17″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the 188° radial of the Vance VORTAC extending from the 5.1-mile radius of Vance AFB to 6.1 miles south of the airport, and within 2.1 miles each side of the 355° radial of the Woodring VOR/DME extending from the 4.1-mile radius of Woodring Municipal Airport to 5.8 miles north of the airport, and within 2 miles each side of the 185° radial extending from the 4.1-mile radius of Woodring Municipal Airport to 5.5 miles south of the airport; excluding that portion of airspace east of

long. 97°51′01″ W., when the Enid, Woodring Municipal Airport, OK, Class E airspace area is in effect.

ASW OK E4 Enid Woodring Municipal Airport, OK [Amended]

Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)
Woodring VOR/DME
(Lat. 36°22′26″; N., long. 97°47′17″ W.)

That airspace extending upward from the surface within 2.1 miles each side of the 355° radial of the Woodring VOR/DME extending from the 4.1-mile radius of Woodring Municipal Airport to 5.8 miles north of the airport, and within 2 miles each side of the 185° radial of the VOR/DME extending from the 4.1-mile radius of the airport to 5.5 miles south of the airport; excluding that portion of airspace west of long. 97°51′01″ W.

6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW OK E5 Enid, OK [Amended]

Enid, Vance AFB, OK
(Lat. 36°20′22″ N., long. 97°55′02″ W.)
Enid, Woodring Municipal Airport, OK
(Lat. 36°22′33″ N., long. 97°47′22″ W.)
Woodring VOR/DME
(Lat. 36°22′26″ N., long. 97°47′17″ W.)

That airspace extending upward from 700 feet above the surface within 8.7 miles east and west of Vance AFB extending to 15.2 miles north and south of Vance AFB, and within a 6.6-mile radius of Woodring Municipal Airport, and within 2.4 miles each side of the 355° radial of the Woodring VOR/DME extending from the 6.6-mile radius to 7.5 miles north of the airport, and within 2.4 miles each side of the 185° radial of the Woodring VOR/DME extending from the 6.6-mile radius to 7.3 miles south of the airport.

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

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–03365 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31061; Amdt. No. 3682]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 19, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been

previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 29, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

Airac Date	State	City	Airport	FDC No.	FDC Date	Subject
3–Mar–16	NJ	Vincentown	Red Lion	5/0276	1/19/16	VOR–A, Amdt 6.
3–Mar–16	NJ	Vincentown	Red Lion	5/0277	01/19/16	RNAV (GPS) RWY 5, Orig.
3–Mar–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field.	5/3599	01/13/16	VOR/DME–A, Amdt 1.
3–Mar–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field.	5/3600	01/13/16	RNAV (GPS) RWY 17, Orig–A.
3–Mar–16	SC	Mount Pleasant	Mt Pleasant Rgnl-Faison Field.	5/3601	01/13/16	RNAV (GPS) RWY 35, Orig–A.
3–Mar–16	AL	Gadsden	Northeast Alabama Rgnl	5/4535	01/13/16	RNAV (GPS) RWY 24, Amdt 1A.
3–Mar–16	NY	Jamestown	Chautauqua County/ Jamestown.	5/7656	01/13/16	ILS OR LOC RWY 25, Amdt 7A.
3–Mar–16	SC	Greenwood	Greenwood County	6/1509	01/13/16	VOR OR GPS RWY 9, Amdt 13B.
3–Mar–16	ME	Pittsfield	Pittsfield Muni	6/2519	1/13/16	NDB RWY 36, Amdt 4C.
3–Mar–16	ME	Pittsfield	Pittsfield Muni	6/2520	1/13/16	RNAV (GPS) RWY 36, Orig–B.

[FR Doc. 2016–03352 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31059; Amdt. No. 3680]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 19, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION:

This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 15, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
3–Mar–16	NJ	Blairstown	Blairstown	5/1269	1/7/16	VOR RWY 25, Amdt 2.
3–Mar–16	NY	Fulton	Oswego County	5/1664	12/29/15	RNAV (GPS) RWY 33, Orig–B.
3–Mar–16	NY	Fulton	Oswego County	5/1665	12/29/15	ILS OR LOC RWY 33, Amdt 1B.
3–Mar–16	PA	Allentown	Allentown Queen City Muni.	5/1666	12/29/15	RNAV (GPS) RWY 7, Amdt 1C.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
3–Mar–16	PA	Allentown	Allentown Queen City Muni.	5/1667	12/29/15	VOR–B, Amdt 8B.
3–Mar–16	MA	Beverly	Beverly Muni	5/2048	12/29/15	RNAV (GPS) RWY 34, Orig–A.
3–Mar–16	MA	Beverly	Beverly Muni	5/2049	12/29/15	RNAV (GPS) RWY 27, Orig–B.
3–Mar–16	MA	Beverly	Beverly Muni	5/2050	12/29/15	RNAV (GPS) RWY 16, Amdt 1B.
3–Mar–16	MA	Beverly	Beverly Muni	5/2051	12/29/15	VOR RWY 16, Amdt 5A.
3–Mar–16	MA	Beverly	Beverly Muni	5/2052	12/29/15	LOC RWY 16, Amdt 7A.
3–Mar–16	CA	Arcata/Eureka	Arcata	5/2180	12/29/15	RNAV (GPS) RWY 32, Amdt 1C.
3–Mar–16	AR	El Dorado	South Arkansas Rgnl at Goodwin Field.	5/3578	12/29/15	RNAV (GPS) RWY 22, Orig.
3–Mar–16	AR	El Dorado	South Arkansas Rgnl at Goodwin Field.	5/3581	12/29/15	RNAV (GPS) RWY 4, Orig.
3–Mar–16	AR	El Dorado	South Arkansas Rgnl at Goodwin Field.	5/3583	12/29/15	ILS OR LOC RWY 22, Amdt 2B.
3–Mar–16	AR	El Dorado	South Arkansas Rgnl at Goodwin Field.	5/3585	12/29/15	VOR/DME RWY 4, Amdt 10.
3–Mar–16	SC	Saluda	Saluda County	5/4040	12/29/15	RNAV (GPS) RWY 1, Orig.
3–Mar–16	NJ	Somerville	Somerset	5/4357	12/29/15	RNAV (GPS) RWY 12, Orig–A.
3–Mar–16	MS	Pascagoula	Trent Lott Intl	5/5273	12/29/15	VOR–A, Amdt 1A.
3–Mar–16	MA	Westfield/Springfield	Westfield-Barnes Rgnl	5/5620	12/29/15	RNAV (GPS) RWY 20, Amdt 1C.
3–Mar–16	MA	Westfield/Springfield	Westfield-Barnes Rgnl	5/5623	12/29/15	ILS OR LOC RWY 20, Amdt 8A.
3–Mar–16	MA	Westfield/Springfield	Westfield-Barnes Rgnl	5/5625	12/29/15	RNAV (GPS) RWY 2, Orig–B.
3–Mar–16	MA	Westfield/Springfield	Westfield-Barnes Rgnl	5/5626	12/29/15	VOR RWY 20, Amdt 20E.
3–Mar–16	MA	Westfield/Springfield	Westfield-Barnes Rgnl	5/5636	12/29/15	VOR OR TACAN RWY 2, Amdt 4F.
3–Mar–16	PA	Quakertown	Quakertown	5/5882	12/29/15	RNAV (GPS) RWY 11, Orig.
3–Mar–16	PA	Quakertown	Quakertown	5/5883	12/29/15	RNAV (GPS) RWY 29, Amdt 1.
3–Mar–16	ME	Old Town	Dewitt Fld, Old Town Muni	5/6693	12/29/15	RNAV (GPS) RWY 12, Orig–A.
3–Mar–16	ME	Old Town	Dewitt Fld, Old Town Muni	5/6694	12/29/15	RNAV (GPS) RWY 30, Orig–A.
3–Mar–16	AZ	Show Low	Show Low Rgnl	5/8467	12/29/15	NDB–A, Amdt 1.
3–Mar–16	CA	Ramona	Ramona	5/8580	12/29/15	RNAV (GPS) RWY 9, Amdt 1.
3–Mar–16	NJ	Berlin	Camden County	5/9351	1/7/16	RNAV (GPS) RWY 5, Orig–C.
3–Mar–16	CA	California City	California City Muni	6/0811	1/7/16	RNAV (GPS) RWY 24, Orig–A.
3–Mar–16	CA	California City	California City Muni	6/0812	1/7/16	RNAV (GPS) RWY 6, Orig.

[FR Doc. 2016–03360 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31058; Amdt. No. 3679]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 19, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 19, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 15, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 3 MARCH 2016

Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24L, Amdt 3A
Greenville, MS, Greenville Mid-Delta, VOR/DME RWY 18L, Amdt 13A, CANCELED
Imperial, NE., Imperial Muni, Takeoff Minimums and Obstacle DP, Amdt 2A
Berlin, NJ, Camden County, RNAV (GPS) RWY 23, Orig–B
Rochester, NY, Greater Rochester Intl, VOR/DME RWY 4, Amdt 4A, CANCELED
Alliance, OH, Miller, VOR OR GPS–A, Amdt 8C, CANCELED
Aiken, SC, Aiken Muni, VOR/DME–A, Amdt 1A, CANCELED
Eastsound, WA, Orcas Island, RNAV (GPS) RWY 34, Orig

Effective 31 MARCH 2016

Emmonak, AK, Emmonak, VOR RWY 34, Amdt 1A, CANCELED
Kotzebue, AK, Ralph Wien Memorial, VOR RWY 9, Orig–A, CANCELED

Kotzebue, AK, Ralph Wien Memorial, VOR RWY 27, Orig, CANCELED
Sand Point, AK, Sand Point, NDB/DME RWY 13, Orig, CANCELED
Shishmaref, AK, Shishmaref, NDB RWY 23, Amdt 1A, CANCELED
Yakutat, AK, Yakutat, LOC/DME BC RWY 29, Amdt 8
Yakutat, AK, Yakutat, VOR/DME RWY 29, Amdt 5
Auburn, AL, Auburn University Rgnl, VOR RWY 29, Amdt 11A, CANCELED
Fayetteville, AR, Drake Field, VOR–A, Amdt 25, CANCELED
Helena/West Helena, AR, Thompson-Robbins, VOR RWY 17, Orig, CANCELED
Pine Bluff, AR, Grider Field, VOR RWY 18, Amdt 20A, CANCELED
Sacramento, CA, Sacramento Mather, VOR/DME RWY 22L, Orig-F, CANCELED
Daytona Beach, FL, Daytona Beach Intl, RADAR–1, Amdt 8D, CANCELED
Jacksonville, FL, Cecil, RNAV (GPS) RWY 18R, Orig–A, CANCELED
Jacksonville, FL, Cecil, RNAV (GPS) RWY 36L, Orig–B, CANCELED
New Smyrna Beach, FL, New Smyrna Beach Muni, RADAR–1, Amdt 3B, CANCELED
Decatur, IL, Decatur, RNAV (GPS) RWY 18, Amdt 1
Decatur, IL, Decatur, RNAV (GPS) RWY 24, Amdt 1
Decatur, IL, Decatur, RNAV (GPS) RWY 36, Amdt 1
Phillipsburg, KS, Phillipsburg Muni, RNAV (GPS) RWY 13, Amdt 2
Phillipsburg, KS, Phillipsburg Muni, RNAV (GPS) RWY 31, Amdt 2
Phillipsburg, KS, Phillipsburg Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Frankfort, KY, Capital City, VOR RWY 25, Amdt 3B
Mansfield, MA, Mansfield Muni, NDB RWY 32, Amdt 7, CANCELED
International Falls, MN, Falls Intl-Einarson Field, NDB RWY 31, Amdt 9A, CANCELED
International Falls, MN, Falls Intl-Einarson Field, VOR/DME RWY 31, Amdt 5A, CANCELED
Bloomsburg, PA, Bloomsburg Muni, RNAV (GPS)-B, Amdt 1
Bloomsburg, PA, Bloomsburg Muni, VOR–A, Amdt 1
Connellsville, PA, Joseph A Hardy Connellsville, RNAV (GPS) RWY 14, Orig, CANCELED
Lawrenceburg, TN, Lawrenceburg-Lawrence County, NDB RWY 17, Amdt 4, CANCELED
Lamesa, TX, Lamesa Muni, RNAV (GPS) RWY 34, Amdt 1
St George, UT, St George Rgnl, JITKA TWO, Graphic DP
Wendover, UT, Wendover, Takeoff Minimums and Obstacle DP, Amdt 7
Wendover, UT, Wendover, VOR/DME–B, Amdt 2
Wendover, UT, Wendover, VOR/DME OR TACAN RWY 26, Amdt 2
Spokane, WA, Spokane Intl, RNAV (GPS) Y RWY 7, Amdt 2

[FR Doc. 2016–03354 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31060; Amdt. No. 3681]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 19, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff

Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 29, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 3 MARCH 2016

Benton Harbor, MI, Southwest Michigan Rgnl, VOR RWY 10, Amdt 10B, CANCELED
East Hampton, NY, East Hampton, Takeoff Minimums and Obstacle DP, Amdt 3A
Lebanon, OH, Warren County/John Lane Field, RNAV (GPS) RWY 19, Amdt 4
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 13, Amdt 3A
Walterboro, SC, Lowcountry Rgnl, ILS Y OR LOC Y RWY 23, Amdt 2
Walterboro, SC, Lowcountry Rgnl, ILS Z OR LOC Z RWY 23, Orig
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 17, Orig–A
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 23, Amdt 2
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 35, Orig–A
Baraboo, WI, Baraboo Wisconsin Dells, LOC/DME RWY 1, Amdt 2
Baraboo, WI, Baraboo Wisconsin Dells, RNAV (GPS) RWY 19, Amdt 2
Hayward, WI, Sawyer County, RNAV (GPS) RWY 3, Orig–C
Hayward, WI, Sawyer County, RNAV (GPS) RWY 21, Amdt 1A

Effective 31 MARCH 2016

McGrath, AK, McGrath, VOR–A, Amdt 8, CANCELED
Quinhagak, AK, Quinhagak, RNAV (GPS) RWY 12, Amdt 1
Quinhagak, AK, Quinhagak, RNAV (GPS) RWY 30, Amdt 1
Quinhagak, AK, Quinhagak, Takeoff Minimums and Obstacle DP, Amdt 1
Stuttgart, AR, Stuttgart Muni, VOR/DME–A, Amdt 1B, CANCELED
Bakersfield, CA, Meadows Field, VOR/DME RWY 30R, Amdt 9, CANCELED
San Francisco, CA, San Francisco Intl, VOR RWY 19L, Amdt 11, CANCELED
Santa Rosa, CA, Charles M Schulz—Sonoma County, VOR/DME RWY 32, Amdt 20, CANCELED
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR RWY 28R, Amdt 13A, CANCELED
Orlando, FL, Orlando Intl, VOR/DME RWY 36L, Amdt 5A, CANCELED
Orlando, FL, Orlando Intl, VOR/DME RWY 36R, Amdt 10A, CANCELED
Albany, GA, Southwest Georgia Rgnl, NDB RWY 4, Amdt 13B, CANCELED
Atlanta, GA, Fulton County Airport-Brown Field, RNAV (GPS) Y RWY 8, Amdt 1A
Clinton, IA, Clinton Muni, VOR RWY 3, Amdt 15A, CANCELED
Newton, IA, Newton Muni-Earl Johnson Field, VOR RWY 32, Amdt 9A, CANCELED
Ottumwa, IA, Ottumwa Rgnl, VOR RWY 31, Amdt 15, CANCELED
Sioux City, IA, Sioux Gateway/Col Bud Day Field, VOR OR TACAN RWY 31, Amdt 26D, CANCELED
Waterloo, IA, Waterloo Rgnl, VOR RWY 36, Amdt 17A, CANCELED
Coeur D'Alene, ID, Coeur D'Alene—Pappy Boyington Field, VOR RWY 6, Orig–D, CANCELED
Idaho Falls, ID, Idaho Falls Rgnl, NDB RWY 20, Amdt 10D, CANCELED
Lewiston, ID, Lewiston-Nez Perce County, VOR RWY 26, Amdt 13, CANCELED
Salmon, ID, Lemhi County, Takeoff Minimums and Obstacle DP, Amdt 3
Chicago/Romeoville, IL, Lewis University, VOR RWY 9, Amdt 3, CANCELED
Chicago/West Chicago, IL, Dupage, VOR RWY 2L, Amdt 1B, CANCELED
Danville, IL, Vermilion Regional, VOR RWY 21, Amdt 14A, CANCELED
Galesburg, IL, Galesburg Muni, VOR RWY 3, Amdt 7A, CANCELED
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR RWY 18, Amdt 1A, CANCELED
Mattoon/Charleston, IL, Coles County Memorial, ILS OR LOC RWY 29, Amdt 6C
Mattoon/Charleston, IL, Coles County Memorial, NDB RWY 29, Amdt 5B
Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 6, Orig
Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 11, Orig
Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 24, Amdt 1
Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 29, Amdt 1
Quincy, IL, Quincy Rgnl-Baldwin Field, VOR RWY 4, Amdt 12, CANCELED
Auburn, IN, De Kalb County, VOR RWY 9, Amdt 7D, CANCELED
Goshen, IN, Goshen Muni, VOR RWY 27, Amdt 7A, CANCELED
Muncie, IN, Delaware County Rgnl, VOR RWY 32, Amdt 15, CANCELED
Richmond, IN, Richmond Muni, VOR RWY 24, Amdt 13, CANCELED
Richmond, IN, Richmond Muni, VOR RWY 33, Amdt 2, CANCELED
Liberal, KS, Liberal Mid-America Rgnl, VOR RWY 35, Amdt 12, CANCELED
Ashland, KY, Ashland Rgnl, VOR/DME RWY 10, Amdt 12
Hopkinsville, KY, Hopkinsville-Christian County, RNAV (GPS) RWY 26, Amdt 2
Tompkinsville, KY, Tompkinsville-Monroe County, RNAV (GPS) RWY 4, Amdt 1B

Tompkinsville, KY, Tompkinsville-Monroe County, RNAV (GPS) RWY 22, Amdt 1B
Orange, MA, Orange Muni, NDB RWY 1, Amdt 1A, CANCELED
Orange, MA, Orange Muni, NDB RWY 32, Amdt 1A, CANCELED
Vineyard Haven, MA, Martha's Vineyard, VOR RWY 24, Amdt 2A, CANCELED
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, VOR RWY 10, Amdt 17B, CANCELED
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, VOR/DME RWY 33L, Amdt 3A, CANCELED
Eliot, ME, Littlebrook Air Park, NDB–B, Amdt 1, CANCELED
Sanford, ME, Sanford Seacoast Rgnl, VOR RWY 7, Amdt 4C, CANCELED
Alpena, MI, Alpena County Rgnl, VOR RWY 1, Amdt 14D, CANCELED
Hancock, MI, Houghton County Memorial, VOR RWY 13, Amdt 16, CANCELED
Fairmont, MN, Fairmont Muni, VOR RWY 13, Amdt 5, CANCELED
Fairmont, MN, Fairmont Muni, VOR RWY 31, Amdt 8, CANCELED
Hibbing, MN, Range Rgnl, VOR RWY 13, Amdt 13A, CANCELED
Hibbing, MN, Range Rgnl, VOR RWY 31, Amdt 17, CANCELED
Willmar, MN, Willmar Muni-John L Rice Field, VOR RWY 13, Orig, CANCELED
Glasgow, MT, Wokal Field/Glasgow Intl, NDB RWY 30, Amdt 2A, CANCELED
Beaufort, NC, Michael J Smith Field, NDB RWY 21, Amdt 2, CANCELED
Tarboro, NC, Tarboro-Edgecombe, NDB RWY 27, Orig, CANCELED
Berlin, NH, Berlin Rgnl, VOR–B, AMDT 3A, CANCELED
Manchester, NH, Manchester, VOR RWY 35, Amdt 15E, CANCELED
Portsmouth, NH, Portsmouth Intl at Pease, VOR RWY 16, Amdt 5B, CANCELED
Portsmouth, NH, Portsmouth Intl at Pease, VOR RWY 34, Orig–D, CANCELED
Newark, NJ, Newark Liberty Intl, VOR/DME RWY 22L, Orig–D, CANCELED
Newark, NJ, Newark Liberty Intl, VOR/DME RWY 22R, Amdt 4D, CANCELED
Hudson, NY, Columbia County, Takeoff Minimums and Obstacle DP, Amdt 1
White Plains, NY, Westchester County, VOR/DME–A, Amdt 4B, CANCELED
Knoxville, TN, Mc Ghee Tyson, Takeoff Minimums and Obstacle DP, Amdt 8

RESCINDED: On December 7, 2015 (80 FR 75923), the FAA published an Amendment in Docket No. 31049, Amdt No. 3671, to Part 97 of the Federal Aviation Regulations, under section 97.20. The following entry for Port Angeles, WA, effective February 4, 2016, is hereby rescinded in its entirety:

Port Angeles, WA, William R Fairchild Intl, WATTR SIX, Graphic DP

RESCINDED: On January 26, 2016 (81 FR 4174), the FAA published an Amendment in Docket No. 31051, Amdt No. 3673, to Part 97 of the Federal Aviation Regulations, under sections 97.29 and 97.33. The following entries for Port Angeles, WA, effective February 4, 2016, are hereby rescinded in their entirety:

Port Angeles, WA, William R Fairchild Intl, ILS OR LOC RWY 8, Amdt 3
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 8, Amdt 1
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 26, Amdt 1

[FR Doc. 2016–03368 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9751]

RIN 1545–BN22

PATH Act Changes to Section 1445

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the taxation of, and withholding on, foreign persons upon certain dispositions of, and distributions with respect to, United States real property interests (USRPIs). The regulations reflect changes made by the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act). In addition, the regulations update certain mailing addresses listed in regulations under sections 897 and 1445. These regulations affect certain holders of USRPIs and withholding agents that are required to withhold tax on certain dispositions of, and distributions with respect to, USRPIs. This document also requests comments on certain other aspects of the PATH Act that apply to dispositions of, and distributions with respect to, USRPIs.

DATES:

Effective date: These regulations are effective on February 19, 2016.

Applicability date: For dates of applicability, see §§ 1.1445–1(h), 1.1445–2(e), and 1.1445–5(h).

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101329–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101329–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–101329–16).

FOR FURTHER INFORMATION CONTACT: Milton M. Cahn or David A. Levine, (202) 317–6937; concerning submissions of comments, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers 1545–0123, 1545–0902, and 1545–1797 in conjunction with Treasury decisions 7999 (49 FR 50689, Dec. 31, 1984), 8113 (51 FR 46620, Dec. 24, 1986), and 9082 (68 FR 46081, Aug. 5, 2003), respectively. There are no proposals for substantive changes to these collections of information.

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 control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 897(a)(1) provides, in general, that gain or loss of a nonresident alien individual or foreign corporation from the disposition of a United States real property interest (USRPI) shall be taken into account under section 871(b)(1) or 882(a)(1), as applicable, as if the nonresident alien individual or foreign corporation were engaged in a trade or business within the United States during the taxable year and such gain or loss were effectively connected with that trade or business.

Section 897(c)(1)(A) defines a USRPI to include any interest (other than solely as a creditor) in any domestic corporation unless the taxpayer establishes that such corporation was at no time a United States real property holding corporation (USRPHC) during the applicable testing period (generally, the five-year period ending on the date of the disposition of the USRPHC). Under section 897(c)(2), a USRPHC means any corporation if the fair market value of its USRPIs equals or exceeds 50 percent of the total fair market value of its USRPIs, its interests in real property located outside the United States, and any other assets that are used or held for use in a trade or business. However, section 897(c)(1)(B) generally provides

that an interest in a corporation is not a USRPI if the corporation does not hold USRPIs as of the date its stock is sold and the corporation disposed of all of the USRPIs that it held during the applicable testing period in transactions in which the full amount of gain, if any, was recognized (the cleansing exception).

Section 1445(a) generally imposes a withholding tax obligation on the transferee when a foreign person disposes of a USRPI. Section 1445(f)(3) provides that a foreign person is any person other than a United States person. Section 1445(e)(3) generally imposes a withholding obligation on a domestic corporation that is a USRPHC on distributions to foreign persons to which section 302 or sections 331 through 346 apply. Section 1445(e)(3) also provides that similar rules are applicable to distributions to foreign persons under section 301 that are not made out of the earnings and profits of the domestic corporation. Section 1445(e)(4) generally requires a domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate to withhold on the distribution of any USRPI to a partner or beneficiary who is a foreign person. Under section 1445(e)(5), the transferee of a partnership interest or of a beneficial interest in a trust or estate is required to deduct and withhold tax to the extent provided in regulations. Any amounts withheld under section 1445 are credited against the foreign transferor's U.S. tax liability. § 1.1445–1(f)(1).

Before the enactment of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (the PATH Act), the withholding rate under sections 1445(a), 1445(e)(3), 1445(e)(4), and 1445(e)(5) was 10 percent of either the amount realized or the fair market value of the interest, as applicable. Section 324(a) of the PATH Act increased the withholding rate under these sections from 10 percent to 15 percent. This new rate applies to dispositions after February 16, 2016. Section 324(b) of the PATH Act, however, retained the 10-percent withholding rate in the case of a disposition of property that is acquired by the transferee for his or her use as a residence with respect to which the amount realized is greater than $300,000 but does not exceed $1 million.

Section 325 of the PATH Act provides that the cleansing exception will not apply to dispositions on or after December 18, 2015, if the corporation or its predecessor was a real estate investment trust or a regulated investment company at any time during the shorter of the period that the shareholder held the interest or the five-year period ending on the date of the disposition of the shareholder's interest in the corporation.

Section 323(a) of the PATH Act added section 897(l), which provides that section 897 does not apply (i) to USRPIs held directly (or indirectly through one or more partnerships) by, or (ii) to distributions received from a real estate investment trust by, a qualified foreign pension fund or an entity wholly owned by a qualified foreign pension fund. Section 897(l)(2) defines a qualified foreign pension fund for purposes of section 897(l), and section 897(l)(3) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 897(l). In addition, section 323(b) of the PATH Act amended the definition of foreign person in section 1445(f)(3) to provide that entities described in section 897(l) are not treated as foreign persons for purposes of section 1445, except as otherwise provided by the Secretary. The amendments in section 323 of the PATH Act are applicable to dispositions and distributions after December 18, 2015.

Explanation of Provisions

These regulations update § 1.897–2 and §§ 1.1445–1 through 1.1445–5, and append an informational footnote to § 1.1445–11T(d)(2)(iii), to reflect changes made by the PATH Act.

Additionally, for certain filings that are described in regulations under sections 897 and 1445, these regulations provide that the mailing address is the address specified in the Instructions for Form 8288 under the heading ''Where To File.''

Applicability Dates

Consistent with the PATH Act, the revisions to § 1.1445–2 to incorporate the exemption under section 1445(f)(3) for entities described in section 897(l) apply to dispositions and distributions after December 18, 2015, and the revisions to § 1.897–2 regarding the cleansing exception apply to dispositions on or after December 18, 2015. The new withholding rates described in these regulations apply to dispositions of, and distributions with respect to, USRPIs that occur after February 16, 2016.

Beginning after February 19, 2016, taxpayers are required to use the revised mailing address provided in these regulations. However, the IRS will not assert penalties against taxpayers that use the mailing address previously specified in the regulations on or before June 20, 2016. Any prior timely filings made pursuant to the regulations under sections 897 and 1445 that were mailed to the address specified in the Instructions for Form 8288 under the heading ''Where To File,'' instead of the address previously specified in the regulations, have been accepted by the IRS.

Request for Comments

The Treasury Department and the IRS request comments regarding what regulations, if any, should be issued pursuant to section 897(l)(3). All comments that are submitted as prescribed in this preamble under the **ADDRESSES** heading will be available at *www.regulations.gov* or upon request.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because no notice of proposed rulemaking is required, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

The Treasury Department and the IRS have determined that section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. chapter 5) does not apply to these regulations, including because good cause exists under section 553(b)(B) of the APA. Section 553(b)(B) of the APA provides that an agency is not required to publish a notice of proposed rulemaking in the **Federal Register** when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These regulations are necessary to ensure that existing regulations for transferees and other parties properly reflect the changes implemented by the PATH Act. Because these regulations merely conform the regulations to certain changes made by the PATH Act, and update certain mailing addresses, prior notice and public comment is unnecessary. Accordingly, good cause exists for dispensing with notice and public comment pursuant to section 553(b) of the APA. For the same reasons that section 553(b) of the APA does not apply, including because good cause exists under section 553(d)(3) of the APA, the requirements in section 553(d) of the APA for a delayed effective date are inapplicable.

Drafting Information

The principal authors of these regulations are Milton M. Cahn and

David A. Levine of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.897–2 is amended as follows:

■ 1. By removing ‘‘, and’’ at the end of paragraph (f)(2)(i) and adding a semicolon in its place.

■ 2. By removing the period at the end of paragraph (f)(2)(ii) and adding ‘‘; and’’ in its place.

■ 1. By adding paragraph (f)(2)(iii) before the existing undesignated paragraph.

■ 2. In each of the paragraphs listed in the first column by removing the language in the ‘‘Remove’’ column and adding in its place the language in the ‘‘Add’’ column.

Paragraph	Remove	Add
(h)(2)(v), third sentence	the Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.	the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.
(h)(4)(ii), first sentence	the Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.	the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.

The revision and addition reads as follows:

§ 1.897–2 United States real property holding corporations.

* * * * *

(f) * * *

(2) * * * (iii) If the disposition occurs on or after December 18, 2015, neither the corporation nor any predecessor of the corporation was a regulated investment company or a real estate investment trust at any time during the shorter of the periods described in section 897(c)(1)(A)(ii).

* * * * *

§ 1.897–3 [Amended]

■ **Par. 3.** Section 1.897–3 is amended in each of the paragraphs listed in the first column by removing the language in the ‘‘Remove’’ column and adding in its place the language in the ‘‘Add’’ column.

Paragraph	Remove	Add
(c) introductory text, first sentence	with the Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.	at the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.
(d)(1), fourth sentence	the Philadelphia Service Center	the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.
(f)(1), second sentence	addressed to the Director, Philadelphia Service Center, P.O. Box 21086, Drop Point 8731, FIRPTA Unit, Philadelphia, PA 19114–0586.	delivered to the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.
(f)(1), fifth sentence	the Director, Philadelphia Service Center	the address specified in the Instructions for Form 8288 under the heading ‘‘Where To File’’.

■ **Par. 4.** Section 1.1445–1 is amended as follows:

■ 1. By revising the first sentence and removing the last sentence of paragraph (b)(1).

■ 2. By redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5) respectively.

■ 3. By adding a new paragraph (b)(2).

■ 4. By revising paragraph (g)(10).

■ 5. By revising the heading and adding two sentences after the first sentence in paragraph (h).

■ 6. In each of the paragraphs listed in the first column by removing the language in the ‘‘Remove’’ column and adding in its place the language in the ‘‘Add’’ column.

Paragraph	Remove	Add
(a), second sentence	10 percent	15 percent (10 percent in the case of dispositions described in paragraph (b)(2) of this section).
newly designated (b)(4)(iii), first sentence	10 percent	15 percent.
newly designated (b)(4)(iii), second sentence	§ 1.1445–1(b)(3)(iii)	paragraph (b)(4)(iii).
(c)(2)(i)(A), first sentence	10 percent	15 percent (10 percent in the case of dispositions described in paragraph (b)(2) of this section).
(c)(2)(i)(B), third sentence	10 percent	15 percent (10 percent in the case of dispositions described in paragraph (b)(2) of this section).

The additions and revisions read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(b) *Duty to withhold*—(1) *In general.* Except as provided in paragraph (b)(2) and §§ 1.1445–2 and 1.1445–3, transferees of U.S. real property interests are required to deduct and withhold a tax equal to 15 percent of the amount realized by the transferor if the transferor is a foreign person.* * *

(2) *Reduced rate for certain residences.* Transferees of U.S. real property interests are required to deduct and withhold a tax equal to 10 percent of the amount realized by the transferor if the transferor is a foreign person and the following requirements are satisfied:

(i) The property is acquired by the transferee for use by the transferee as a residence;

(ii) the amount realized for the property does not exceed $1,000,000; and

(iii) section 1445(b)(5) does not apply to the disposition. See § 1.1445–2(d)(1).

* * * * *

(g) * * *

(10) *Address for correspondence.* Any written communication to the Internal Revenue Service described in this section is to be mailed to the address specified in the Instructions for Form 8288 under the heading ''Where To File.''

(h) *Applicability dates.* * * * The withholding rates set forth in paragraphs (a), (b)(1), (b)(2), (b)(4)(iii), (c)(2)(i)(A), and (c)(2)(i)(B) of this section apply to dispositions after February 16, 2016. For dispositions on or before February 16, 2016, see paragraphs (a), (b)(1), (b)(3)(iii), (c)(2)(i)(A), and (c)(2)(i)(B) of this section as contained in 26 CFR part 1 revised as of April 1, 2015.

■ **Par. 5.** Section 1.1445–2 is amended as follows:

■ 1. By revising the first sentence in the undesignated paragraph following paragraph (b)(2)(i)(C).

■ 2. In paragraph (b)(4)(iv), by adding a sentence after the last sentence.

■ 3. In paragraph (e), by revising the heading and adding two sentences after the first sentence.

■ 4. In each of the paragraphs listed in the first colum by removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(b)(4)(iv), second sentence	10 percent	15 percent.
(b)(4)(iv), third sentence	10 percent	15 percent.
(b)(4)(iv), fourth sentence	10 percent	15 percent.
(c)(3)(iii), second sentence	10 percent	15 percent.
(c)(3)(iii), third sentence	10 percent	15 percent.
(c)(3)(iii), fourth sentence	10 percent	15 percent.
(d)(2)(i)(B), first sentence	provides a copy of the transferor's notice to the Director, Philadelphia Service Center.	mails a copy of the transferor's notice to the Internal Revenue Service.
(d)(3)(i)(A) introductory text, first sentence	10 percent	15 percent (10 percent in the case of dispositions described in § 1.1445–1(b)(2)).
(d)(3)(i)(B) introductory text, first sentence	10 percent	15 percent (10 percent in the case of dispositions described in § 1.1445–1(b)(2)).

The additions and revision read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) * * *

In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a qualified foreign pension fund (as defined in section 897(l)) or an entity all of the interests of which are held by a qualified foreign pension fund. * * *

(4) * * *

(iv) * * * For dispositions described in § 1.1445–1(b)(2), this paragraph shall be applied by replacing ''15 percent'' with ''10 percent'' each time it appears.

* * * * *

(e) *Applicability dates.* * * * The exclusion of entities described in section 897(l) from the definition of foreign person in paragraph (b)(2)(i) of this section applies to dispositions and distributions after December 18, 2015, and the withholding rates set forth in paragraphs (b)(4)(iv), (c)(3)(iii), and (d)(3)(i) of this section apply to dispositions after February 16, 2016. For dispositions on or before February 16, 2016, see paragraphs (b)(4)(iv), (c)(3)(iii), and (d)(3)(i) of this section as contained in 26 CFR part 1 revised as of April 1, 2015.

§ 1.1445–3 [Amended]

■ **Par. 6.** Section 1.1445–3 is amended in each of the paragraphs listed in the first column by removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(b)(1), first sentence	to the Director, Philadelphia Service Center, at.	to.
(f)(1), first sentence	to the Director, Philadelphia Service Center, at.	to.
(f)(2)(iii), heading	by the Director, Philadelphia Service Center,	on behalf of the Service.
(f)(2)(iii), first sentence	by the Director, Philadelphia Service Center or his delegate.	on behalf of the Service.
(g) introductory text, third sentence	addressed to the Director, Philadelphia Service Center, at.	delivered to.

§ 1.1445–4 [Amended]

■ **Par. 7.** Section 1.1445–4 is amended in each of the paragraphs listed in the first column by removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(c)(1), tenth sentence	from a foreign person must withhold a tax equal to 10 percent.	from a foreign person after February 16, 2016, must withhold a tax equal to 15 percent (10 percent in the case of dispositions described in § 1.1445–1(b)(2)).
(c)(1), thirteenth sentence	10 percent tax	15 percent tax (10 percent tax in the case of dispositions described in § 1.1445–1(b)(2)).
(c)(2), second sentence	to the Director, Philadelphia Service Center, at.	to.

■ **Par. 8.** Section 1.1445–5 is amended as follows:

■ 1. In each of the paragraphs listed in the first column, by removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(b)(2)(ii) introductory text, first sentence	to the Director, Philadelphia Service Center, at.	to.
(c)(3)(iv) introductory text, second sentence	10 percent	15 percent.
(c)(3)(v), first sentence	with the Director, Philadelphia Service Center, at.	at.
(c)(3)(v), fifth sentence	with the Director, Philadelphia Service Center, at.	at.
(e)(1) introductory text, first sentence	10 percent	15 percent.

■ 2. In paragraph (h), by revising the heading and adding two sentences after the first sentence.

The revision and additions read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(h) *Applicability dates.* * * * The withholding rates set forth in paragraphs (c)(3)(iv) and (e)(1) of this section apply to distributions after February 16, 2016. For distributions on or before February 16, 2016, see paragraphs (c)(3)(iv) and (e)(1) of this section as contained in 26 CFR part 1 revised as of April 1, 2015.

§ 1.1445–6 [Amended]

■ **Par. 9.** Section 1.1445–6 is amended in each of the paragraphs listed in the first column by removing the language in the ''Remove'' column and adding in its place the language in the ''Add'' column.

Paragraph	Remove	Add
(f)(1), first sentence	to the Director, Philadelphia Service Center, at.	to.
(f)(2)(iii), heading	by the Director, Philadelphia Service Center	on behalf of the Service.
(f)(2)(iii), first sentence	by the Director, Philadelphia Service Center, or his delegate.	on behalf of the Service.
(g) introductory text, second sentence	addressed to the Director, Philadelphia Service Center, at.	delivered to.

§ 1.1445–11T [Amended]

■ **Par. 10.** Section 1.1445–11T is amended in paragraph (d)(2)(iii) by adding footnote ''1'' after the last sentence to read as follows:

§ 1.1445–11T Special rules requiring withholding under § 1.1445–5 (temporary).

* * * * *

(d) * * *

(2) * * *

(iii) * * *

[1] Section 324(a) of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. 114–113) increased the withholding rate under section 1445(e)(5) to 15 percent, applicable to dispositions after February 16, 2016.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: February 12, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–03421 Filed 2–17–16; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Department of the Treasury Employee Rules of Conduct

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury (the ''Department'' or ''Treasury'') is updating its Employee Rules of Conduct, which prescribe uniform rules of conduct and procedure

for all employees and officials in the Department.

DATES: *Effective date:* February 19, 2016. *Comment due date:* April 19, 2016.

ADDRESSES: Treasury invites comments on the topics addressed in this Interim Final Rule. Comments may be submitted through one of these methods:

• *Electronic Submission of Comments:* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

• *Mail:* Send to Department of the Treasury, Attention: Brian Sonfield, Room 2020, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to Brian Sonfield at *brian.sonfield@treasury.gov* or by phone on 202–622–0450.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1995, the Department issued Employee Rules of Conduct prescribing uniform rules of conduct and procedure for all employees and officials in the Department. Treasury is now amending the Employee Rules of Conduct to account for current Department structure resulting from organizational changes that established new bureaus within Treasury and transferred certain functions and/or bureaus from the Department. This rule also amends the Rules of Conduct to remove provisions that pertain solely to standards of ethical conduct. The standards of ethical conduct governing employees of the Department are contained in uniform standards of ethical conduct promulgated by the Office of Government Ethics that apply to all executive branch personnel, codified at 5 CFR part 2635 (Executive Branch-wide Standards), and in the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, codified at 5 CFR part 3101 (Treasury Supplemental Standards). Finally, this rule amends the Rules of Conduct to ensure the efficient functioning of the Department and to conform to changes in the law or Department policy. This rulemaking revises part 0 in its entirety.

II. Analysis of the Regulations

Subpart A—General Provisions

The provisions contained in subpart A state the purpose and applicability of the Rules of Conduct, as well as the responsibilities of the Department's employees and managers in implementing and complying with the included regulations. Subpart A also identifies other rules of conduct applicable to Department employees, and it includes a definitional section. Omitted from the definition of ''Bureau'' because they are no longer bureaus of the Department are the Bureaus of Alcohol, Tobacco and Firearms (ATF), Federal Law Enforcement Training Center (FLETC), the United States Customs Service (USCS), and the United States Secret Service (USSS). New bureaus or offices include the Alcohol and Tobacco Tax and Trade Bureau (TTB), the Office of the Treasury Inspector General for Tax Administration (TIGTA), the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), and the Financial Crimes Enforcement Network (FinCEN). Additionally, the Office of Thrift Supervision (OTS) was abolished by statute and certain functions of OTS have been integrated into the Office of the Comptroller of the Currency (OCC). The Department also consolidated the Bureau of Public Debt (BPD) and the Financial Management Service (FMS) into a new Bureau of the Fiscal Service (BFS).

Subpart B—Rules of Conduct

Subpart B sets out the conduct regulations that all Department employees and officials are required to follow. Generally, the rules regulate employee conduct, including, for example, the use of government issued charge cards, the care of documents and data, the use of government property, and the use of controlled substances and intoxicants.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management and personnel are exempt from the rulemaking requirements of the Administrative Procedure Act (APA). As set forth in the description of the interim final rule, this rule affects only the Department and its personnel; therefore, the APA requirements for prior notice and opportunity to comment and a delayed effective date are inapplicable. Even if this rulemaking were subject to APA procedures, the Department finds that good cause exists, pursuant to 5 U.S.C. 553(b) and (d), that the requirements for prior notice and comment are unnecessary because the rule affects only Treasury employees.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This rule generally sets out the conduct regulations that all Department employees and officials are required to follow. The Department therefore has determined that the rule will not result in expenditures by state, local or tribal governments or by the private sector of $100 million or more. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 31 CFR Part 0

Government employees.

■ For the reasons set forth in the preamble, 31 CFR part 0 is revised to read as follows:

PART 0—DEPARTMENT OF THE TREASURY EMPLOYEE RULES OF CONDUCT

Subpart A—General Provisions

Sec.
0.101 Purpose.
0.102 Applicability.
0.103 Other rules of conduct applicable to Department employees.
0.104 Definitions.
0.105 Responsibilities of employees and supervisors.
0.106 Corrective action.

Subpart B—Rules of Conduct

0.201 Acting within scope of authority.
0.202 Conformance with policy and subordination to authority.
0.203 Reporting suspected misconduct.
0.204 Prohibition of reprisal for reporting suspected misconduct.
0.205 Controlled substances and intoxicants.
0.206 Strikes.
0.207 Possession of weapons or explosives.
0.208 Care of agency records.
0.209 Disclosure of records or information.
0.210 Cooperation with official inquiries.
0.211 Falsification of official records.
0.212 Use of government property.
0.213 Government issued charge cards.
0.214 Conduct while on government property.
0.215 Recording government business.
0.216 Influencing legislation or petitioning Congress.
0.217 Nondiscrimination.
0.218 General conduct prejudicial to the government.

Authority: 5 U.S.C. 301.

Subpart A—General Provisions

§ 0.101 Purpose.

The regulations in this part prescribe procedures and standards of conduct that are appropriate to the particular functions and activities of the Department of the Treasury (Department).

§ 0.102 Applicability.

(a) Unless otherwise specified, the regulations in this part apply to all employees of the Department at all times, regardless of whether they are on duty or on leave, including leave without pay.

(b) The regulations in this part may be supplemented by regulations, interpretive guidelines and procedures issued by the Department's offices and bureaus. The absence of a specific published rule of conduct covering an action or omission does not validate that action or omission nor indicate that the action or omission would not result in corrective or disciplinary action.

§ 0.103 Other rules of conduct applicable to Department employees.

In addition to the regulations in this part, employees of the Department are subject to other applicable statutes and regulations, including the following:

(a) The Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(b) The Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury at 5 CFR part 3101;

(c) Political Activities of Federal Employees regulations at 5 CFR part 734;

(d) The Employee Responsibilities and Conduct regulations at 5 CFR part 735; and

(e) Department of the Treasury Disclosure of Records regulations at 31 CFR part 1.

§ 0.104 Definitions.

The following definitions are used throughout this part:

(a) *Bureau* means:

(1) Alcohol and Tobacco Tax and Trade Bureau;

(2) Bureau of Engraving and Printing;

(3) Bureau of the Fiscal Service;

(4) Departmental Offices;

(5) Financial Crimes Enforcement Network;

(6) Internal Revenue Service;

(7) Office of the Comptroller of the Currency;

(8) Office of the Inspector General;

(9) Office of the Special Inspector General for the Troubled Asset Relief Program;

(10) Office of the Treasury Inspector General for Tax Administration;

(11) United States Mint; and

(12) Any other organization designated as a bureau by the Secretary of the Treasury pursuant to appropriate authority.

(b) *Person* means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, organization, or institution.

(c) *Employee* means an officer or employee of the Department regardless of grade, status or place of employment, including an employee on leave with pay or on leave without pay. Unless stated otherwise, employee shall include a special government employee.

(d) *Special government employee* means an officer or employee of the Department who is retained, designated, appointed, or employed, regardless of type of appointment, to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365-consecutive days. 18 U.S.C. 202(a).

(e) *On Department property* means present in a building, on property, or in space owned by, leased by, occupied by, or under the control of the Department.

§ 0.105 Responsibilities of employees and supervisors.

(a) Employees shall comply with all generally accepted rules of conduct, the specific provisions of this part, and other applicable regulations. An employee with questions about generally accepted rules of conduct, the specific provisions of this part, and other applicable regulations should consult his or her supervisor, a human resources specialist, or Bureau counsel.

(b) Supervisors, because of their day-to-day relationships with their employees, are responsible for ensuring that their employees maintain high standards of conduct. Supervisors must be familiar with this part and other applicable regulations and must apply generally accepted rules of conduct, the standards in this part, and the standards in other applicable regulations to the work they do and supervise. Supervisors shall take appropriate action, including disciplinary action, when violations of this part or other applicable regulations occur.

§ 0.106 Corrective action.

An employee's violation of generally accepted rules of conduct, the standards in this part, or the standards in other applicable regulations may result in appropriate corrective or disciplinary action, in addition to any penalty prescribed by law.

Subpart B—Rules of Conduct

§ 0.201 Acting within scope of authority.

An employee shall not engage in any conduct or activity that is in excess of his or her authority or is otherwise contrary to any law, regulation, or Department policy.

§ 0.202 Conformance with policy and subordination to authority.

(a) Employees are required to comply with the lawful directives of their supervisor and other management officials.

(b) Employees shall be familiar and comply with regulations and published instructions that relate to their official duties and responsibilities.

§ 0.203 Reporting suspected misconduct.

(a) An employee shall immediately report to his or her supervisor, to any management official, or to the applicable Office of Inspector General:

(1) Any information that the employee reasonably believes indicates a possible offense against the United States by an

employee of the Department or any other individual working on behalf of the Department, including, but not limited to, bribery; fraud; perjury; conflict of interest; misuse of funds, government purchase or employee travel credit cards, equipment, or facilities; and other conduct which is prohibited by title 18 of the United States Code;

(2) Any suspected violation of a statute, rule, or regulation, including this part and the regulations referenced in section 0.103 of this part;

(3) Any instance in which another person inside or outside the federal government uses or attempts to use undue influence to induce an employee to do or omit to do any official act in derogation of his official duty; and,

(4) Any information that the employee reasonably believes indicates the existence of an activity constituting:

(i) Mismanagement, a gross waste of funds, or abuse of authority;

(ii) A substantial and specific danger to the public health and safety;

(iii) A threat to the integrity of programs and operations relating to the Department; or

(iv) A violation of merit systems principles or a prohibited personnel practice as described in 5 U.S.C. 2301 and 2302.

(b) Bureau counsel who, during the course of providing advice to or representation of a bureau, acquire information of the type described in paragraph (a) of this section, shall report the information to the reporting employee's supervisor, the Chief or Legal Counsel, or the Deputy General Counsel, who shall report such information to the relevant Inspector General.

(c) This section does not cover matters addressed through employee grievances, equal employment opportunity complaints, Merit Systems Protection Board appeals, classification appeals, or other matters for which separate, formal systems have been established.

§ 0.204 Prohibition of reprisal for reporting suspected misconduct.

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for providing any information in accordance with § 0.203 of this part or through other processes established by law. However, if an employee makes a complaint or discloses information with the knowledge that it was false, or with willful disregard of its truth or falsity, such conduct may be grounds for disciplinary action, and such action shall not constitute reprisal.

§ 0.205 Controlled substances and intoxicants.

Employees shall not sell, offer to sell, buy, offer to buy, use, or possess, controlled substances in violation of federal law. Employees shall not use or be under the influence of alcohol in a manner that adversely affects their work performance. Employees may consume alcohol on Department property only when authorized in accordance with Department or bureau policies and directives.

§ 0.206 Strikes.

Employees shall not participate in a labor strike, work stoppage, or work slowdown against the government.

§ 0.207 Possession of weapons or explosives.

(a) Employees shall not possess firearms, explosives, or other dangerous weapons, as defined at 40 U.S.C. 5104(a), either openly or concealed, while on Department property or while on official duty.

(b) The prohibition of paragraph (a) of this section does not apply to the possession of authorized weapons or explosives by employees who are required to possess such authorized weapons or explosives in the performance of their official duties.

§ 0.208 Care of agency records.

(a) Employees shall not remove, alter, destroy, mutilate, access, copy, or retain documents or data in the custody of the federal government or provided to them in the course of their employment, without proper authorization.

(b) The term ''documents'' includes, but is not limited to, any written, printed, typed or other graphic material, recording, computer tape, disk or hard drive, storage medium, blueprint, photograph, or other physical object on which information is recorded, including all copies of the foregoing by whatever means made, and any electronic file, data, or information stored on or created on a government computer, database, application, program, network, or storage medium.

§ 0.209 Disclosure of records or information.

(a) Employees shall not disclose or use official information without proper authority. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law.

(b) Employees who have access to information that is classified for security reasons in accordance with Executive Order 13526, or any successor Executive Order governing Classified National Security Information, are responsible for its custody and safekeeping, and for assuring that it is not disclosed to unauthorized persons. *See* 18 U.S.C. 798; 50 U.S.C. 783(a); 31 CFR part 2.

§ 0.210 Cooperation with official inquiries.

Employees directed by competent Department or other federal authority to provide oral or written responses to questions, or to provide documents and other materials concerning matters of official interest, shall timely respond fully, truthfully, and, when required, under oath.

§ 0.211 Falsification of official records.

Employees shall not intentionally or with willful disregard make false or misleading statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include, but are not limited to, the following: Official reports and any other official information upon which the Department, the Congress, other government agencies, or the public may act or rely; transactions with the public, government agencies or other government employees; application forms and other forms that serve as a basis for any personnel action; vouchers; time and attendance records, including leave records; work reports of any nature or accounts of any kind; affidavits; record of or data concerning any matter relating to or connected with an employee's duties; personnel records; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

§ 0.212 Use of government property.

(a) An employee shall not directly or indirectly use, or allow the use of, government property of any kind, including property leased to the government, for other than officially approved activities. This includes the use of government-provided information technology equipment, internet access, cellular telephones, personal digital assistants, and other devices in a manner that is inconsistent with the Department's policy permitting reasonable personal use. An employee has a positive duty to protect and conserve government property including equipment, supplies, intellectual property, and other property made available, entrusted, or issued to the employee for official use.

(b) Employees shall not use government vehicles for unofficial purposes, including to transport unauthorized passengers. The use of

government vehicles for transporting employees between their domiciles and places of employment is prohibited except when authorized by the Secretary pursuant to 31 U.S.C. 1344 or other statute.

§ 0.213 Government issued charge cards.

(a) Employees shall not make improper purchases with government contractor-issued charge cards.

(b) Employees shall timely pay undisputed amounts owed on government contractor-issued travel charge cards.

§ 0.214 Conduct while on government property.

(a) Employees must adhere to the regulations that govern the conduct of individuals who are in the buildings or space occupied by, or on grounds of, particular government property.

(b) Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising on Department property without appropriate authorization.

§ 0.215 Recording government business.

An employee shall not electronically transmit, or create audio or video recordings of, conversations, meetings, or conferences in the workplace or while conducting business on behalf of the Department, except where doing so is part of the employee's official duties.

§ 0.216 Influencing legislation or petitioning Congress.

Except for the official handling, through the proper channels, of matters relating to legislation in which the Department has an interest, employees shall not use government time, money, or property to petition a Member of Congress to favor or oppose any legislation or proposed legislation, or to encourage others to do so.

§ 0.217 Nondiscrimination.

(a) Employees shall not discriminate against or harass any other employee, applicant for employment, contractor, or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, disability, political affiliation, marital status, parental status, veterans status, or genetic information.

(b) Supervisors shall not retaliate against an employee for complaining about suspected unlawful discrimination or harassment, seeking accommodation for a disability, or otherwise exercising their right to be free from unlawful discrimination.

(c) An employee who engages in discriminatory or retaliatory conduct may be disciplined under these regulations, as well as other applicable laws. However, this section does not create any enforceable legal rights in any person.

§ 0.218 General conduct prejudicial to the government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the government.

Dated: February 12, 2016.

Brodi Fontenot,

Assistant Secretary for Management.

[FR Doc. 2016–03410 Filed 2–18–16; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0750; FRL–9942–58–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Interstate Pollution Transport Requirements for the 2010 Nitrogen Dioxide Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia (the District). This revision pertains to the infrastructure requirement of interstate transport pollution with respect to the 2010 nitrogen dioxide (NO_2) National Ambient Air Quality Standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on March 21, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0750. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, 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 through *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements and are specified in section 110(a)(2) of the CAA. Particularly, section 110(a)(2)(D)(i)(I) of the CAA requires state SIPs to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the ''good neighbor'' provision of the CAA.

On December 4, 2015 (80 FR 75845), EPA published a notice of proposed rulemaking (NPR) for the District. In the NPR, EPA proposed approval of a SIP revision by the District addressing section 110(a)(2)(D)(i)(I) with respect to the 2010 NO_2 NAAQS. The formal SIP revision was submitted by the District on June 6, 2014.

II. Summary of SIP Revision

The District submitted on June 6, 2014 a SIP revision to satisfy the infrastructure requirements of section 110(a)(2) of the CAA for the 2010 NO_2 NAAQS, including section 110(a)(2)(D)(i)(I) that pertains to interstate transport. This rulemaking action is addressing the portions of the District's June 6, 2014 infrastructure submittal for the 2010 NO_2 NAAQS that pertain to transport requirements.[1]

[1] EPA has previously taken rulemaking action on the June 6, 2014 SIP revision to address all other applicable infrastructure requirements for the 2010

The District's June 6, 2014 transport submittal concludes that the District does not have sources that can contribute to nonattainment in, or interfere with maintenance by, any other state with respect to the 2010 NO_2 NAAQS. A detailed summary of EPA's review and rationale for proposing approval of this SIP revision as meeting section 110(a)(2)(D)(i)(I) of the CAA for the 2010 NO_2 NAAQS may be found in the NPR and the Technical Support Document (TSD) for this rulemaking action and will not be restated here. Both the NPR and TSD are available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2015–0750. No public adverse comments were received on the NPR.

III. Final Action

EPA is approving the portions of the District's June 6, 2014 SIP revision submittal addressing interstate transport for the 2010 NO_2 NAAQS as a revision to the District SIP for purposes of meeting section 110(a)(2)(D)(i)(I) requirements with respect to this NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Publ. 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).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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 April 19, 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, addressing the District's interstate transport requirements under the CAA for the 2010 NO_2 NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide.

Dated: February 4, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry for ''Interstate Pollution Transport Requirements for the 2010 NO_2 NAAQS'' to the end of the table to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

NO_2 NAAQS, with the exception of the transport elements in 110(a)(2)(D)(i)(I). *See* 80 FR 19538 (April 13, 2015).

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Interstate Pollution Transport Requirements for the 2010 NO_2 NAAQS.	Statewide	6/6/14	2/19/16 *[Insert **Federal Register** citation]*.	This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I), or the good neighbor provision, for the 2010 NO_2 NAAQS.

[FR Doc. 2016–03394 Filed 2–18–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0092; 4500030113]

RIN 1018–AY77

Endangered and Threatened Wildlife and Plants; Reclassifying Hesperocyparis abramsiana (=Cupressus abramsiana) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for *Hesperocyparis abramsiana* (=*Cupressus abramsiana*) (Santa Cruz cypress), a plant species found in Santa Cruz and San Mateo Counties in west-central California. We also finalize the correction to the scientific name of Santa Cruz cypress on the List of Endangered and Threatened Plants. The effect of this regulation will be to change the listing status of Santa Cruz cypress from an endangered species to a threatened species on the List of Endangered and Threatened Plants.

DATES: This rule becomes effective March 21, 2016.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0092 and at *http://www.fws.gov/ventura/*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003; telephone 805–644–1766; facsimile 805–644–3958.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Action

On September 3, 2013, we proposed to reclassify the Santa Cruz cypress from an endangered species to a threatened species (78 FR 54221) on the List of Endangered and Threatened Plants in part 17 of title 50 of the Code of Federal Regulations (CFR). Please refer to the proposed reclassification rule for the Santa Cruz cypress (78 FR 54221; September 3, 2013) for a detailed description of the previous Federal actions concerning this species. This final rule constitutes our final action regarding the petition to reclassify the Santa Cruz cypress from endangered to threatened (Pacific Legal Foundation 2011, pp. 1–11).

Background

For a detailed discussion of Santa Cruz cypress's description, taxonomy, life history, habitat, soils, distribution, abundance, age and size distribution, and role of fire in regeneration, please see the Santa Cruz Cypress *Hesperocyparis [Cupressus] abramsiana* Species Report (Service 2015, pp. 1–57) (Species Report), which is available for review under Docket No. FWS–R8–ES–2013–0092 at *http://www.regulations.gov*. Please refer to the proposed reclassification rule for the Santa Cruz cypress (78 FR 54221; September 3, 2013) (Service 2013b) for a summary of information about the species and the proposed change in taxonomy: In this final rule, we replace the entry for *Cupressus abramsiana* from 50 CFR 17.12(h) with an entry for *Hesperocyparis abramsiana*.

Summary of Biological Status and Factors Affecting the Species

This section introduces and summarizes the biological status and factors affecting Santa Cruz cypress identified at each period of the species' review history. We have described the level of threats using a scale of low, moderate, and high (as discussed in Appendix 1 of the Species Report). A low-level threat indicates a threat that has the potential to occur at any time, although the possibility is unlikely that this threat will affect the species across its range or interrupt the species' persistence into the future. A moderate-level threat indicates a threat that is currently affecting the long-term persistence of the species in a particular population or across its range, but does not pose an imminent threat to the persistence of the species. A high-level threat indicates a well-documented, imminent threat to a large number of individuals that has the potential to disrupt the long-term persistence of the species in a particular population or across its range.

At the time of listing, the primary threats to Santa Cruz cypress were residential development, agricultural conversion, logging, oil and gas drilling, genetic introgression, and alteration of the natural frequency of fires that threatened to destroy portions of each population (52 FR 675; January 8, 1987). Other (secondary) threats in 1987 included vandalism, disease, and inadequate regulatory mechanisms (52 FR 675). Of the primary threats in 1987, residential development, agricultural conversion, and logging threatened individual Santa Cruz cypress trees and stands with imminent destruction. Other threats identified in the Recovery Plan for the Santa Cruz Cypress (Service 1998) also included oil and gas development, reproductive isolation, introgression, and competition from nonnative species.

On May 21, 2010, we notified the public in the **Federal Register** of the availability of the 5-year review for Santa Cruz cypress (75 FR 28636). The 5-year review was completed on August 17, 2009 (Service 2009, entire), and resulted in a recommendation to change the status of the species from an endangered species to a threatened species. At the time of the 2009 5-year review, we reported that the threats to Santa Cruz cypress from residential development, agricultural conversion, and logging had decreased since the time of listing. This decrease was achieved primarily through the acquisition of lands for conservation by the California Department of Pesticide Regulation (CDPR) and the California Department of Fish and Wildlife (CDFW) and through other private land transfers. No evidence existed that oil and gas drilling was a threat to the species. The 5-year review also found information that the population size (number of individuals at each site) of the species was greater than known at the time of listing. The threats from alteration of fire frequencies, disease or predation, reproductive isolation, genetic introgression, vandalism, and competition with nonnative species remained at the same level as identified during the development of the Recovery Plan (Service 1998).

The 5-year review identified low levels of regeneration (new recruitment of seedlings and young plants) and the effects of climate change as concerns for the long-term persistence of the Santa Cruz cypress (Service 2009, pp. 9–13). Climate change was classified as a moderate-level threat because projections indicated that the regional Santa Cruz climate will become warmer and drier, which would directly affect Santa Cruz cypress across its range over the next century (Service 2009, pp. 10–11).

In accordance with section 4(a)(1) of the Act, our assessment of the current status of a species is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Current or potential future threats to Santa Cruz cypress include alteration of the fire regime (Factors A and E), competition with nonnative species (Factors A and E), climate change (Factor A), genetic introgression (Factor E), and vandalism and unauthorized recreational activities (Factors A and E). The acquisition of lands for conservation by State agencies and designation of lands as sensitive areas by Santa Cruz County have resulted in protection of all or large portions of each population, but currently do not provide protections from the threats listed above (Factor D). Other potential impacts evaluated and found either to be of no concern, insignificant concern, or negligible at this time include residential development, agricultural conversion, logging, and oil and gas drilling (Factor A); overutilization (Factor B); disease or predation (Factor C); and reproductive isolation (Factor E). Please see Table 1, Table 4, and the ''Discussion of Threats to the Species'' section of the Species Report for a thorough discussion of all potential and current threats (Service 2015, pp. 3, 22–40).

We note, however, that, although the threats of residential development and agricultural conversion to Santa Cruz cypress have been ameliorated considerably compared to the time of listing (to the point that we consider them insignificant at this time), they may still occur at two of the populations (*i.e.,* the Bracken Brae and Bonny Doon populations), although the likelihood is less than previously identified in the Recovery Plan. Specifically, while these lands are not in permanent conservation ownership, the likelihood of potential residential development is reduced at the Bracken Brae population because the land is owned by a conservation-oriented landowner (Service 2015, p. 45) and Santa Cruz County designation of these lands as a sensitive area places a restriction on certain kinds of development. We do not expect this county designation as a sensitive area to change in the future, even when the species is reclassified to threatened or if it is eventually delisted. Additionally, potential impacts of agricultural conversion is currently reduced (to an insignificant level) at the Bonny Doon population as a result of a large proportion of the population (*i.e.,* approximately 70 percent) now occurring on lands designated as a reserve (Service 2015, pp. 15, 16, 45). The portion that is not part of the reserve (*i.e.,* approximately 30 percent) is still subject to potential agricultural conversion, although potential loss of this area outside the reserve is relatively unlikely due to the county's designation of these lands as a sensitive area, thus agricultural conversion is a low-magnitude threat overall for the population and the species as a whole.

The following sections provide a summary of the current threats impacting the Santa Cruz cypress. As identified above, these threats include alteration of the fire regime (Factors A and E), competition with nonnative species (Factors A and E), climate change (Factor A), genetic introgression (Factor E), vandalism and unauthorized recreational activities (Factors A and E), and the inadequacy of existing regulatory mechanisms (Factor D). As identified above some of the same potential activities that affect the habitat (Factor A) of Santa Cruz cypress can also affect individuals (Factor E). Where appropriate, we discuss impacts to both the habitat and to individuals of Santa Cruz cypress together for ease of discussion and analysis.

Alteration of Fire Regime

The long-term persistence of Santa Cruz cypress populations can be affected by the disruption of the natural fire frequency because Santa Cruz cypress requires fire (or potentially mechanical disturbance in lieu of, or in combination with, fire) to reproduce. Most Santa Cruz cypress populations are located close to residential areas, where natural fires from surrounding wildland areas are excluded by the creation of fire breaks and fuels reduction projects. Both fire exclusion and fire suppression lengthen the interval between fires, thus altering the natural fire regime and increasing the risk of extirpation from senescence (growth phase from full maturity to death). Conversely, human ignitions contribute to fire intervals that are too short, which in turn can inhibit Santa Cruz cypress from reaching its reproductive potential if stands burn prior to trees reaching reproductive age. With prevalent fire exclusion on lands surrounding Santa Cruz cypress occurring, other techniques such as mechanical disturbance of the ground, removal of litter and nonnative invasive species, and clearing the canopy to allow sunlight to reach the ground may need to be utilized to achieve regeneration of the species. Currently, mechanical disturbance and litter removal at the Bonny Doon Ecological Reserve are being implemented on a limited basis following the Draft Management Plan developed for the Bonny Doon Ecological Reserve (Service 2015, pp. 37, 41, 42). Additionally in 2005, CAL FIRE developed a vegetation management plan for the Bonny Doon Ecological Reserve that included enhancing sensitive habitat for listed species and improving forest health

(CAL FIRE 2005, p. 3). This plan has not been fully implemented and is currently delayed (Service 2015, p. 42).

The altered fire regime presents a high-level threat to the long-term persistence of all of the Santa Cruz cypress populations and their habitat. Santa Cruz cypress depends on fire to maintain appropriate habitat conditions and to release many of the seeds stored in cones in the canopy. As adult trees senesce and die, seed production decreases, such that there is insufficient seed available to regenerate the stand (McGraw 2007, p. 24; Service 2015, p. 25). In the absence of fire, recruitment still occurs, but at a low level that is likely not sufficient for stand replacement (McGraw 2011, p. 2; Service 2015, p. 25). To germinate in large numbers, the species requires open ground and canopy conditions created by fires intense enough to kill the parent tree. In the absence of fire the species is only able to germinate opportunistically in rock outcroppings or small areas that have been disturbed. Without appropriate disturbance from fire, the stands could eventually senesce, resulting in minimal reproduction in small rock outcrops that may be inadequate to maintain population viability.

Within the range of the Santa Cruz cypress, recent and past fires have been documented at the Bonny Doon (2008) and Eagle Rock populations (Service 2015, pp. 23–24), although even-aged stands at the Butano Ridge, Bracken Brae, and Majors Creek populations suggest that past fires have occurred in these areas as well. We estimate that approximately 50 percent (1,500 Santa Cruz cypress individuals) of the Bonny Doon population was killed within the severely burned areas (Service 2012, unpubl. data). This is based on visual inspection of the burn intensity map and our knowledge of the distribution of this population. In 1905, a severe fire also destroyed a large portion of the Eagle Rock population (Wolf and Wagener 1948, p. 218). Prior to the fire, there was a ''considerable stand'' of Santa Cruz cypresses, which were used by the landowner for timber to build barns and other buildings (Wolf and Wagener 1948, p. 218). According to Lyons (1988, pp. 19–20), another fire burned through a majority of the Eagle Rock population in 1942, killing most of the cypresses. Lyons (1988, p. 19) noted that some larger individuals at the Eagle Rock site, estimated to be 40–60 years old, appeared to have survived the fire.

Despite fire occurring within the known range of Santa Cruz cypress, McGraw (2011, p. 2) states that the current demographics and natural recruitment rates observed in the Majors Creek, Eagle Rock, and Butano Ridge populations appear to be insufficient to maintain the populations in the absence of fire (Service 2015, p. 22). Additionally, active management to address this concern is not occurring at this time. The altered fire regime presents a threat to the long-term persistence of all of the Santa Cruz cypress populations, and we consider altered fire regime to be a high-level threat to the species (Service 2015 p. 24). See additional discussion in the ''Alteration of Fire Regime'' section of the Species Report (Service 2015, pp. 23–25).

Most stands of Santa Cruz cypress contain reproductive individuals, so most stands are currently facing a senescence risk from the absence of fire. Recruitment in at least four populations (the portion of Bonny Doon population that burned in the 2008 Martin Fire, and the Eagle Rock, Butano Ridge, and Majors Creek populations) is evident; however, the current level of recruitment is not sufficient to maintain the populations in the absence of fire (Service 2015, p. 26). This is likely also the case with the Bracken Brae population and the portion of the Bonny Doon population that did not burn. Under these conditions most trees would become senescent (post-reproductive) prior to a return fire, resulting in lower stand vitality, reduced cone production, and reduced seedling establishment. The risk of extirpation exists if cypresses senesce and their seeds are no longer viable by the time fire returns to a stand. This may occur if the fire interval is longer than the lifespan of trees (Ne'eman *et al.* 1999, p. 240). For the purposes of this discussion, we estimate the potential lifespan of individual Santa Cruz cypress trees to be about 100 years based on Lyons' (1988, pp. 2–39) estimate (see the ''Life History'' discussion in the Species Report (Service 2015, pp. 8–9) for additional discussion).

As discussed above, without fire or other appropriate disturbance, we expect low recruitment and decreasing reproduction as existing trees become senescent. This scenario would most likely result in population declines as a result of mortality of currently existing trees, and lack of replacement due to low recruitment and declining reproduction. The frequency, location, and intensity of fire in an area is variable and difficult to predict, and depends on many factors including environmental and human-caused factors, management, and suppression efforts. For the Santa Cruz cypress there have only been one or two recorded fires over the past 100 years within the areas occupied by the species, and we do not expect the fire conditions, frequency, or management to change significantly in the near future. As a result, we do not currently consider the fire interval to be adequate to maintain populations of the species over the long term and consider the extended fire interval to be a threat that is likely to put the species at risk of extinction in the future.

Competition With Nonnative Species

The presence of nonnative, invasive species impacts the long-term persistence of Santa Cruz cypress and its habitat both currently and in the future through competition and habitat modification. Many nonnative species have been introduced into Santa Cruz cypress habitat through a variety of past impacts (*e.g.,* development, infrastructure). Significant impacts result from *Acacia dealbata* (silver wattle) and *Genista monspessulana* (French broom). Silver wattle and French broom are currently impacting two populations (*i.e.,* Majors Creek and Bonny Doon) and are likely to impact, at minimum, two additional populations (*i.e.,* Eagle Rock and Bracken Brae) due to the cypress's proximity to residential areas where ground disturbance activities promote nonnative plant invasions.

Silver wattle is significantly impacting the Majors Creek population and its habitat by creating dense canopies, which can inhibit germination and growth of seedlings by blocking sunlight needed for cypress growth (McGraw 2007, p. 23; Service 2015, pp. 31–32). French broom is one of the most prevalent invasive species in Santa Cruz County, distributed at elevations where all but a portion of one Santa Cruz cypress population occurs (Moore 2002, p. 6; Service 2015, p. 32). French broom is impacting the Bonny Doon population and its habitat by inhibiting Santa Cruz cypress seedling establishment through competition for open, recently disturbed soils that have access to abundant sunlight. Additionally, but to a lesser degree, European annual grasses (present at all populations) are known to impact Santa Cruz cypress by precluding the establishment of seedlings. These nonnative shrubs and annual grasses are impacting most of the populations of Santa Cruz cypress and are expected to continue to do so over the long term. We consider competition with nonnative species to be a moderate-level threat to the Santa Cruz cypress. See additional discussion in the ''Competition With

Nonnative Plant Species'' section of the Species Report (Service 2015, pp. 31–33).

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements (IPCC 2013, p. 1450). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, whether the change is due to natural variability or human activity (IPCC 2013, p. 1450). Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as threats in combination and interactions of climate with other variables (for example, habitat fragmentation) (IPCC 2014, pp. 4–11). Within central-western California (*i.e.,* California coastal counties from San Francisco south to Santa Barbara, including the range of the Santa Cruz cypress), predictions indicate warmer winter temperatures, earlier warming in the spring, and increased summer temperatures (Point Reyes Bird Observatory (PRBO) Conservation Science 2011, p. 35), all of which will likely result in shifts in vegetation types. This can, for example, result in increased competition between species like Santa Cruz cypress and other native and nonnative species (Loarie *et al.* 2008, pp. 1–10), or result in habitat changes resulting from altered fire frequency and water availability (Service 2015, pp. 28–29). Drier conditions and increased fire frequency that may result from climate change could also make conditions somewhat more favorable for Santa Cruz cypress. However, we anticipate continuing fire suppression and fire exclusion practices would outweigh any potential favorable effects. Thus, while impacts of climate change could potentially have either positive or negative effects to Santa Cruz cypress, the altered fire regime as a result of fire exclusion and fire suppression practices remains a primary threat to the species. We therefore consider climate change to be a moderate-level threat to the Santa Cruz cypress. See additional discussion in the ''Climate Change'' section of the Species Report (Service 2015, pp. 26–29).

Genetic Introgression

If individuals of different cypress species are planted in close proximity, they can exchange pollen and may produce fertile hybrid offspring, as has been documented in a number of plant species (Rhymer and Simberloff 1996, pp. 98–99). By this means, genes from one species can infiltrate into another, a process called genetic introgression. Santa Cruz cypress may be affected by introgression from residential plantings of *Hesperocyparis macrocarpa* (Monterey cypress) near the Bonny Doon population (V. Haley 1993, pers. obs.), plantings of *Cupressus glabra* (Arizona cypress) near the Eagle Rock population, and potentially by plantings near other populations due to their close proximity to residential areas where plantings of other cypress species could occur. Examination of genetic variation among Santa Cruz cypress populations and between Santa Cruz cypress and neighboring species (Millar and Westfall 1992, p. 350) indicates the potential that hybridization may occur between Santa Cruz cypress and the neighboring species. The main harmful genetic effect of such hybridization on native species is the loss of both genetic diversity and the ability of native populations to continue to persist due to potential loss of locally adapted characteristics. The resulting hybrid taxa can also reduce the growth of, or replace, native species and compete for resources otherwise available (Vila *et al.* 2000, pp. 207–217).

We consider genetic introgression to be a low-level threat to the Santa Cruz cypress because it is probably a concern for only two populations. Genetic introgression has not been documented for Santa Cruz cypress, but is a potential threat given the proximity of non-native cypress and the ease with which cypress species hybridize. However, introgression is a long-term process in itself, generally taking many generations for significant population-level impacts to occur. Given the long generation time of the species, genetic introgression is currently considered a potential threat rather than an imminent threat. See additional discussion in the ''Genetic Introgression'' section of the Species Report (Service 2015, pp. 30–31).

Vandalism and Unauthorized Recreational Activities

Vandalism and unauthorized recreational activities have been documented to impact multiple Santa Cruz cypress populations and their habitat. These activities result in construction of unauthorized trails (such as those within the Majors Creek population at Wilder Creek State Park) (CDPR 2000; K. Barry, Service, 2012, pers. obs.), which in turn result in erosion (McGraw 2007, p. 22) and potentially prevention of seedling establishment. Additionally, trails wear away substrate from the base of mature cypress trees. Although vandalism and unauthorized recreational activities are not considered to impact the populations significantly at this time (considered a low-level threat because only a small proportion of trees and habitat across the species' range are affected by these activities), they remain a concern due to the likelihood of increased inhabitants in the urban-wildland interface where Santa Cruz cypress occurs. See additional discussion in the ''Vandalism and Unauthorized Recreational Activities'' section of the Species Report (Service 2015, p. 33).

Existing Regulatory Mechanisms

Reclassifying Santa Cruz cypress from endangered to threatened would not significantly change the protections afforded to this species under the Act. Santa Cruz cypress conservation has been addressed in some local, State, and Federal plans, laws, regulations, and policies. Now that most of the trees reside in fully protected areas on State or County park lands, the inadequacy of existing regulatory mechanisms is considered a low-level threat to Santa Cruz cypress. The threat of habitat alteration has been substantially reduced, and, therefore, the concern regarding inadequate legal protections on the landscape scale has been reduced. Although existing regulations have resulted in conservation of Santa Cruz cypress habitat, inadequacy of existing regulatory mechanisms is still considered a low-level threat because the potential remains for destruction or alteration of Santa Cruz cypresses and their habitat on private lands. However, the main concern currently and into the future is the lack of ongoing management to prevent senescence and ensure population persistence. If current Santa Cruz cypress habitat becomes unfavorable to the species due to lack of adequate management, Santa Cruz cypress may not persist even if the land is sufficiently conserved. See additional discussion in the ''Legal Protection'' section of the Species Report (Service 2015, pp. 34–37).

Combination of Threats

The threat to the long-term persistence of Santa Cruz cypress is compounded by multiple interacting factors, specifically: (1) The alteration of

fire regimes and lack of species management; and (2) human activities, nonnative species, and fire. With the prevalence of fire exclusion and suppression near residential communities within the range of the species, the opportunity for Santa Cruz cypress to regenerate in large pulses following fire is reduced. This fire suppression coupled with the lack of species-specific management is resulting in minimal regeneration for the species as a whole, which could be exacerbated if this situation continues into the future. The ability of land managers to adequately maintain cypress populations on public lands is subject to constraints and physical barriers, such as the difficulty or inability of using fire as a management tool due to proximity to development or because of air quality standards.

Additionally, human intrusion into previously undisturbed areas contributes to colonization of nonnative plant species in the remote areas of Santa Cruz cypress forests (see the ''Competition with Nonnative Plant Species'' section of the Species Report (Service 2015, pp. 31–33)). This activity exacerbates the likelihood for the creation of open conditions (*e.g.,* bike trails, road cuts, and firebreaks), allowing nonnative plants to proliferate and compete with the cypress for soil, nutrients, and light. If a wildfire is then introduced into these new (open) conditions, nonnative species that compete with Santa Cruz cypress could then easily spread. The presence or increase in nonnative species can inhibit cypress seedlings by blocking the sunlight they need to grow (McGraw 2007, p. 23). See ''Compounding Threats'' section of the Species Report (Service 2015, pp. 37–38).

Overall Summary of Factors Affecting Santa Cruz Cypress

Impacts to the long-term persistence of Santa Cruz cypress populations from alteration of the fire regime (Factors A and E) remains a significant concern currently and in the future (*i.e.,* at least approximately 100 years, based on the potential lifespan of individual Santa Cruz cypress trees per Lyons' (1988, pp. 2–39) estimate and based on past fire interval (two to three documented fires in two populations over the past 110 years)). Because the germination and establishment of new seedlings depends either on natural fire or a managed substitute (*e.g.,* controlled burns or mechanical disturbance), appropriate fire or disturbance regimes are needed to manage the demographic profile of the five populations. Lack of fire or other disturbance to promote germination and seedling establishment poses a senescence risk to the stands and populations of Santa Cruz cypress (Service 2015, p. 30). Without recruitment of new individuals, trees in the current even-aged stands may become senescent (or no longer reproductive) and no longer produce cones and seeds necessary for long-term reproductive success and persistence of the populations (which has been observed in Santa Cruz cypress populations by McGraw (2007, pp. 20–21)). While most of the populations have been protected through acquisition of lands for conservation, no active management is currently occurring to manage the demographic profile of the populations. Research on suitable management methods has only begun recently at Bonny Doon Ecological Reserve (McGraw 2011, entire); future management of this population is expected to provide additional understanding of conditions that would promote regeneration, thus providing beneficial management recommendations that could be applied to all populations.

Although the altered fire regime is identified as a high-level impact to Santa Cruz cypress at this time, the level of impact does not currently place the species in danger of extinction because of the expected continued presence of the populations into the future based on the lifespan of individuals and the current age structure, and the recruitment (albeit minimal overall) that has been observed to date. Because the majority of individuals in the populations are reproductive, additional recruitment can be expected, although it likely will not be at a level sufficient to sustain the populations over the long term.

In addition to altered fire regime, other impacts to Santa Cruz cypress and its habitat are currently occurring or potentially occurring in the future, but to a lesser degree than the overall impact from an altered fire regime. These include competition with nonnative, invasive species (Factors A and E); climate change (Factor A); genetic introgression (Factor E); and vandalism or unauthorized recreational activities (Factors A and E). Nonnative plants are competing with Santa Cruz cypress by invading open areas where cypress seedlings could become established, thus competing for soil, nutrients, and light (Service 2015, pp. 31–33). Climate change may cause vegetation shifts and promote more frequent and larger stand removal wildfires under which the species has not evolved (Service 2015, pp. 26–29). Genetic introgression of Santa Cruz cypress with at least two different cypress species could result in hybridization and result in the loss of Santa Cruz cypress's competitive advantage in its preferred habitat (Service 2015, pp. 31–32). Vandalism and unauthorized recreational activities may inhibit seedling establishment and increase erosion (Service 2015, p. 33). Additionally, although substantial mechanisms are currently in place to protect Santa Cruz cypress and its habitat, the existing regulatory mechanisms are inadequate to fully protect the species from the threats described above (Factor D). Based on our current analysis and the current level of management being implemented, the remaining impacts are expected to influence Santa Cruz cypress's habitat suitability and its ability to reproduce and survive in the future.

In summary, impacts from development, agricultural conversion, logging, and oil and gas development, which were considered imminent at the time of listing, have been substantially reduced or ameliorated. Other impacts identified at or since listing (*i.e.,* alteration of fire regime; competition with nonnative, invasive species; climate change; genetic introgression; and vandalism, including unauthorized recreational activities) continue to impact Santa Cruz cypress or are expected to impact the species in the future. Although individually these impacts (with the exception of altered fire regime) are of low or moderate concern to the species, their cumulative impact can promote and accelerate unnatural conditions (Service 2015, pp. 37–38). For example, human intrusion into previously undisturbed areas contributes to colonization of nonnative plant species in the remote areas of Santa Cruz cypress forests, which in turn may result in increased wildfires and potentially increased community concern for wildfire suppression activities. These types of interactions could become a greater concern to Santa Cruz cypress in the future if there is increased human activity in cypress forests.

The high-level impact of an altered fire regime to Santa Cruz cypress and its habitat is of greatest concern at this time. The threat to long-term persistence of Santa Cruz cypress posed by this high-level impact is exacerbated by the lack of species management, resulting in continued effects to the age structure and demographic profile of the species. Although operating on the species currently, the impacts from an altered fire regime, either alone or in combination with the other impacts

identified above, do not place the species at immediate risk of extinction. Reproduction and recruitment is evident (although not at a level sufficient for long-term persistence) based on recent data in at least four populations (*i.e.,* the portion of the Bonny Doon population that burned in the 2008 Martin Fire, and at the Eagle Rock, Butano Ridge, and Majors Creek populations) (Service 2015, p. 46). However, if fire or other disturbance does not occur in the future to promote germination and seedling establishment (whether through a natural fire event or active management), senescence could result in a downward population trend that is likely to place the species in danger of extinction.

Distinguishing Threats for Both Cypress Varieties

As described in the proposed rule and Species Report (78 FR 54223; September 3, 2013; Service 2015, pp. 7–8), recent taxonomic evaluations of *Hesperocyparis abramsiana* identified two varieties: *H. a.* var. *butanoensis* (Butano Ridge population) and *H. a.* var. *abramsiana* (Eagle Rock, Bracken Brae, Bonny Doon, and Majors Creek populations) (Adams and Bartel 2009, pp. 287–299). Therefore, the threats analysis provided in the Species Report (Service 2015, entire) and summarized in this document includes a separate evaluation for each of the five populations, in part to distinguish the level of impact the current threats have on the two separate varieties. The information summarized below is evaluated and described in detail in the ''Discussion of Threats to the Two Separate Varieties'' section of the Species Report (Service 2015, pp. 38–40).

The Butano Ridge population (*Hesperocyparis abramsiana* var. *butanoensis*) is primarily threatened by changes in the historical fire regime and the impacts as a result of the changed fire regime (Factors A and E). The population is located away from developed areas, but because it is near a lumber operation, fire exclusion and suppression activities that alter the fire regime are likely in the vicinity. Other impacts identified at the time of listing are no longer impacting this population or are no longer considered significant (*e.g.,* logging, oil and gas drilling), in large part due to this population now being fully protected and managed within the boundaries of Pescadero Creek County Park. Although this variety is not considered a separate species, its status as a separate variety indicates its divergence from other populations of the species. Further divergence, and potentially the process of speciation, may continue through sustained reproductive isolation from other Santa Cruz cypress populations. Additionally, this is the only location for this variety, and it is composed of a single stand, thus making it vulnerable to an impact such as disease if exposed. However, at this time it is highly unlikely that potential impacts such as development, disease, predation, and others (as described in the Species Report (Service 2015, pp. 23–40)) would occur at the Butano Ridge population. An altered fire regime is the main concern present at this population, with potential concerns currently or in the future related to competition with nonnative species (Factors A and E) and climate change (Factor A).

Similar to the Butano Ridge population described above, the primary impact to the Eagle Rock, Bracken Brae, Bonny Doon, and Majors Creek populations (*Hesperocyparis abramsiana* var. *abramsiana*) is the alteration of the fire regime (Factors A and E), which was identified at the time of listing. This impact remains present at all populations of the Santa Cruz cypress, although management actions at the Bonny Doon Ecological Reserve have included some mechanical vegetation removal in an attempt to reduce this impact (Service 2015, pp. 39–40). Impacts from competition with nonnative species (Factors A and E) and climate change (Factor A) also threaten the long-term persistence of both varieties of Santa Cruz cypress (in addition to vandalism and unauthorized recreational activities (Factors A and E), and genetic introgression (Factor E) potentially impacting the *H. a.* var. *abramsiana* populations), and there are no management actions proposed to address these concerns. The existing regulatory mechanisms protect the species from development activities but are inadequate to fully protect the species from these other impacts (Factor D). Please see the ''Current Threats'' and ''Discussion of Threats to the Two Separate Varieties'' sections of the Species Report for additional discussion related to current or potential threats to these Santa Cruz cypress populations (Service 2015, pp. 23–40).

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. A recovery plan for the Santa Cruz cypress was developed in September 1998 (Service 1998, entire). Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: ''Objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.'' However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Therefore, recovery criteria should help indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) to result in a determination that the species is no longer an endangered species or threatened species because of any of the five statutory factors.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

The Recovery Plan states that Santa Cruz cypress can be reclassified to threatened status when protection is secured for all five populations and their habitat from the primary threats of logging, agricultural conversion, and development (Service 1998, p. 30). This criterion was intended to address the point at which imminent threats to the species had been ameliorated so that the populations were no longer in immediate risk of extirpation. Because of its limited range and distribution, we determined that essentially all of the known habitat is necessary to conserve the species. At the time the Recovery Plan was prepared, we estimated that areal extent totaled 356 ac (144 ha). After more accurate mapping (McGraw 2007, entire), we now estimate that areal

extent totals approximately 188 ac (76 ha) (Service 2015, p. 43). Additionally, estimated abundance of individuals in all populations has changed over time, from approximately 2,300 individuals at the time of listing in 1987, to a current range of 33,000 to 44,000 individuals (although the latter estimate is variable due to mortality and regeneration following the 2008 Martin Fire that burned 520 ac (210 ha) of land and a portion of the Bonny Doon population) (see Table 1 and the Bonny Doon population discussion under the ''Population Descriptions'' section of the Species Report (Service 2015, pp. 6, 15–17)). It is important to note that the updated estimates for species abundance and areal extent do not illustrate trends but rather improved information about the species over time.

As explained in more detail in the Species Report (Service 2015, p. 43), three of five populations occur primarily or entirely on lands that are being managed for conservation purposes, including the Butano Ridge population at Pescadero Creek County Park, the Bonny Doon population at Bonny Doon Ecological Reserve managed by the California Department of Fish and Wildlife (CDFW), and the Eagle Rock population at Big Basin State Park managed by the California Department of Parks and Recreation (CDPR). A fourth population (Majors Creek) is primarily on lands at Gray Whale Ranch State Park, with a small portion on privately owned land. The fifth population (Bracken Brae) is entirely on private lands owned by a conservation-oriented landowner; this land is also designated by the County of Santa Cruz as environmentally sensitive habitat, which places restrictions on most development. Because four of the five populations, either wholly or primarily, occur on park or reserve lands, most of the individuals in the Bonny Doon, Butano Ridge, Majors Creek, and Eagle Rock populations are protected against the threats identified as imminent (logging, agricultural conversion, and development) at the time of listing and in the Recovery Plan. Because the Bracken Brae population is being managed by a conservation-oriented landowner and county restrictions are in place that would restrict most development, development-related threats to this population appear negligible. Therefore, we conclude that the downlisting criterion has been substantially met.

The Recovery Plan also states that Santa Cruz cypress can be delisted when all five populations are assured of long-term reproductive success, with insurance against failure provided by the availability of banked seed (Service 1998, p. 45). This criterion was intended to address the point at which long-term threats to the species' persistence had been addressed and its persistence ensured. As explained in more detail in the Species Report (Service 2015, pp. 18–20), Santa Cruz cypress requires fire or other disturbance for germination of seeds and recruitment of new individuals into the populations. As detailed above in the Summary of Biological Status and Factors Affecting the Species section and in the Species Report (Service 2015, pp. 23–25), alteration of fire regime and lack of management are likely to significantly impact the long-term persistence of the species. Additionally, only seed for the Bonny Doon, Majors Creek, and Bracken Brae populations is stored in a conservation bank; no seed has been banked for the Eagle Rock or Butano Ridge populations. Therefore, based on our analysis of the best available information, we conclude that the delisting criterion for the species has not been met.

In addition to the significant protections now afforded to Santa Cruz cypress as outlined above, various studies have occurred since development of the Recovery Plan that aid in our understanding of the status of Santa Cruz cypress. For example:

- Recent surveys indicate that four of the five stands of Santa Cruz cypress contain a larger number of individuals than was estimated at the time of listing and in the Recovery Plan (Service 2015, p. 43).
- Although data indicate the majority of trees are reproductive, many trees (as indicated by surveys conducted specifically at Butano Ridge and Majors Creek populations) are even-aged (occur in stands or populations with individuals all of approximately the same age). Even-aged stands indicate that vigorous recruitment (survival of seedlings to reproductive age and into the adult population) is not evident (McGraw 2011, p. 26). In contrast, vigorous recruitment would be indicated by stands or populations including individuals of multiple sizes or age classes representing various life stages of the species.
- While seed production appears to be strong at each of the sampled populations, recruitment, which depends more on extrinsic factors such as the availability of appropriate habitat for seedling survival, is more variable among stands even within a population.

These and other data that we have analyzed indicate that most threats identified at listing and during the development of the Recovery Plan are reduced in areas occupied by Santa Cruz cypress and that the status of Santa Cruz cypress has improved, primarily due to the habitat protection provided by CDFW, CDPR, the County of San Mateo, and the County of Santa Cruz. However, threats associated with a lack of habitat management and alterations of the fire regime continue to impede the species' ability to recover.

Additional information on recovery and recovery plan implementation are described in the ''Progress Toward Recovery'' section of the Species Report (Service 2015, pp. 39–43).

Summary of Changes From the Proposed Rule

In the Species Report, we state ''Historical distribution of Santa Cruz cypress beyond the five currently recognized populations is unknown (Service 2015, p. 11).'' This should be corrected to say ''Historical distribution of Santa Cruz cypress beyond the range of five currently recognized populations is unknown.'' As stated in the Species Report, there are reports of a few scattered trees along Empire Grade Road (Service 2015, p. 13) that are not believed to be interbreeding with any of the five main populations. In addition to this occurrence, there is a California Natural Diversity Database (CNDDB 2014) record of a historical occurrence that was found near Mount Hermon in the Santa Cruz Mountains (CNDDB element occurrence index 72235). This record was not included in the previous report because the exact area of collection was unspecified, and this occurrence has never been reaffirmed after the initial collection was made in 1940. The inclusion of this historical occurrence falls within the currently recognized species range, and does not change the existing information we have on this species.

We have not made any substantive changes in this final rule based on the comments that were received during the comment period, but have added or corrected text to clarify the information that was presented. One peer reviewer provided new information stating that Santa Cruz cypress populations are most likely experiencing a net reduction in fire frequency relative to what they experienced prior to Euro-American settlement, and it is unknown if regeneration of the populations can be sustained in the absence of human intervention. This information was incorporated into the Species Report for the species (Service 2015, pp. 18–20, 25).

On July 1, 2014, we published a final policy interpreting the phrase ''significant portion of its range'' (79 FR

37578). We have revised our discussion of ''significant portion of its range'' as it relates to the Santa Cruz cypress in the Determination section below to be consistent with our new policy. Although the final policy's approach for determining whether a ''significant portion of its range'' analysis is required is different than that discussed in the proposed rule (78 FR 54221), applying the policy did not affect the outcome of the final status determination for the Santa Cruz cypress.

Summary of Comments and Recommendations

In the proposed rule published on September 3, 2013 (78 FR 54221), we requested that all interested parties submit written comments on the proposal by November 4, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the local Santa Cruz Sentinel and San Mateo County Times. We did not receive any requests for a public hearing.

During the comment period, we received four peer review comment letters and one other comment on the proposed reclassification of Santa Cruz cypress. All substantive information related to the reclassification of the species or the taxonomic change for Santa Cruz cypress provided during the comment period was fully considered in development of this final determination and is addressed in the responses to comments, below. All public and peer review comments are available at *www.regulations.gov* (Docket No. FWS–R8–ES–2013–0092) and from our Ventura Fish and Wildlife Office by request (see **FOR FURTHER INFORMATION CONTACT**).

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with Santa Cruz cypress and its habitat, the ecology of similar cypress species, and the role of fire in cypress ecology and the Santa Cruz mountains. We received responses from four of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the reclassification of Santa Cruz cypress. Two peer reviewers supported our finding that the Santa Cruz cypress warranted reclassification to threatened, and provided no additional comments. Two other peer reviewers replied with comments, and generally concurred with our methods, but disagreed about the appropriateness of reclassifying the species without meeting the recovery criteria identified in the Recovery Plan (Service 1998, p. 30). The two peer reviewers provided additional information, clarifications, and recommendations on how to manage for the conservation of Santa Cruz cypress and its habitat. All recommendations have been acknowledged and will be considered during the development of future management and recovery strategies.

Response to Peer Reviewer Comments

(1) *Comment:* Two peer reviewers stated that Santa Cruz cypress does not meet the criteria for reclassification from endangered to threatened found in the Recovery Plan for the Santa Cruz Cypress (Service 1998, p. 30). Specifically, one reviewer commented that protection has not been secured for all five populations and their habitat from the threat of development, as stated in the criteria for reclassification in the Recovery Plan. This reviewer identified the Bracken Brae population as unprotected because it is owned by a private landowner.

Our Response: In the Recovery and Recovery Plan Implementation section above and in the ''Progress Toward Recovery'' section of the Species Report (Service 2015, pp. 39–43), we acknowledge that all known habitat is important to the conservation of the Santa Cruz cypress, and that the Bracken Brae population is important for the recovery of the species, and explain our rationale for why the recovery criterion has been substantially met for downlisting. While the Bracken Brae population is not in conservation ownership, county restrictions are in place that would restrict development. As discussed above and further in the next response, we conclude that development-related threats appear negligible for this population. This situation, along with protection of all or the majority of the other four populations on State lands, leads us to conclude that the criterion to reclassify the species to threatened has been substantially met.

Additionally, since the Recovery Plan criteria were developed, we now know there are more individuals within all of the Santa Cruz cypress populations than was known at the time of listing. The greater number of individuals within each population, in combination with the conservation of much of the habitat on public lands, suggests that this species is no longer facing imminent destruction from the threats identified in the Recovery Plan (*i.e.,* logging, agricultural conversion, and development). Thus, while the Recovery Plan provides important guidance on the direction and strategy for recovery, and can indicate when a rulemaking process may be initiated, the determination to reclassify a species on the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of whether a species meets the definition of an endangered species or threatened species. Please see the ''Progress Toward Recovery'' section of the Species Report (Service 2015, pp. 39–43) and the Recovery and Recovery Plan Implementation section above and in the proposed rule (78 FR 54221) for more detailed discussions of the Recovery Plan criteria.

(2) *Comment:* One peer reviewer did not agree that the threat of land use conversion in the Bracken Brae population had been diminished since the time of listing to a ''minor concern.'' This peer reviewer specifically stated that the Bracken Brae population is not secured from the threat of development or conversion because legal constraints have not been placed on development of the land.

Our Response: The County of Santa Cruz has designated the area where the Bracken Brae population occurs as an environmentally sensitive habitat area which requires that this habitat be preserved through County ordinance as part of the County's General Plan (Chapter 16.32.090(C)(1)(a) and (C)(2)(b)) (County of Santa Cruz 2012, entire). Designated environmentally sensitive habitat, although not completely secure from development activities, has certain specific development restrictions that are intended to protect these areas and includes restrictions specifically related to protecting Santa Cruz cypress groves. In addition to the County restrictions, the species would still remain listed as endangered by the State, and threatened by the Federal Government, both of which offer protections for the species (when there is a Federal nexus) and its habitat that are discussed in the ''Legal Protection'' section of the Species Report (Service 2015, p. 34).

Although the Bracken Brae population does not have the same level of habitat conservation as other Santa Cruz cypress populations, the remaining County, State, and Federal protections will guide the future use of the private land for the continued protection of the species. Further, the land is currently owned by a conservation-oriented

landowner, and development is not anticipated. Therefore, we have determined that the threat of land conversion for the Bracken Brae population should still be classified as a minor concern compared to other potential impacts. We also conclude that the intent of the recovery criterion was to preserve the habitat from any imminent threats (see Service 1998, pp. iii, 1, 29) and has been met.

(3) *Comment:* One peer reviewer stated that all of the Santa Cruz cypress populations near developed areas were essentially unprotected because development has an indirect impact on the ability of the species to persist by altering the fire regime such that regeneration is no longer possible at levels necessary to sustain populations.

Our Response: We agree that adjacent developed areas can have indirect impacts on the alteration of the fire regime. In the Species Report (Service 2015, p. 25), we discuss how either a longer or shorter fire return interval can disrupt the ecology of the cypresses and be detrimental to their long-term survival, and that fire-return intervals are most likely to be disrupted near areas of residential or commercial development. While we acknowledge that the populations near developed areas are at a higher risk of a disrupted fire-return interval, we have determined that the habitat is still protected from imminent destruction and that the level of threat is commensurate to a threatened rather than an endangered species.

(4) *Comment:* One peer reviewer commented that Santa Cruz cypress populations are most likely experiencing a net reduction in fire frequency relative to what they experienced prior to Euro-American settlement, and it is unknown if regeneration of the populations can be sustained in the absence of human intervention. The reviewer provided a personal observation of how the absence of stand-replacing fires in a similar cypress species (MacNab cypress [*Hesperocyparis macnabiana*]) can lead to the gradual decline of the population.

Our Response: See our response to comment (3) above for a discussion and our evaluation of the impacts of fire ecology on Santa Cruz cypress. We appreciated this new information based on the peer reviewer's observation of a related species. Studies of closely related species with similar life-history characteristics can offer insight into the ecology of Santa Cruz cypress. Studies of similar species (*i.e.,* surrogate species) can bolster our knowledge of their life history. This information builds upon our previous knowledge and provides additional insight into the fire ecology necessary for Santa Cruz cypress persistence. We consider this complementary biological and ecological information and have included this information as an addendum to the Species Report.

Comments from the State and Counties

Section 4(b)(5)(A)(ii) of the Act states, ''the Secretary shall . . . give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon.'' We submitted the proposed regulation to the State of California but received no formal comments from the State regarding the proposal. Although formal comments were not received, we note that Santa Cruz cypress is listed by the State as an endangered species; therefore, the reclassification of the species from federally endangered to federally threatened would likely have little or no effect on existing State protections. We also provided notice to the Counties of San Mateo and Santa Cruz at the time of the proposed rulemaking. We did not receive any comments from the two counties.

Public Comments

We received one public comment letter during the comment period for this rule.

(5) *Comment:* The commenter stated that Santa Cruz cypress should remain at the highest level of protection ''because of climate change and habitat loss.'' The commenter did not include any supporting information or analyses regarding Santa Cruz cypress or the ecology of the Santa Cruz area.

Response: We discuss both the effects of climate change and habitat loss on Santa Cruz cypress in the Species Report (Service 2015, pp. 26–29, 38). With respect to both of these impacts, the commenter did not provide any new or additional supporting information that was specific to the effects on Santa Cruz cypress which we have not already evaluated. While we acknowledge that the effects of climate change and habitat loss are still a concern for the species, we have determined that the level of threat is commensurate to a threatened species rather than an endangered species.

(6) *Comment:* The commenter expressed concern with the peer review process, and questioned the bias of the peer review panel.

Response: In order to ensure the quality and credibility of the scientific information we use to make decisions, we have implemented a formal ''peer review'' process for listing and recovery documents, as required according to our guidelines for peer review, which published in the **Federal Register** on July 1, 1994 (59 FR 34270). We consult experts to ensure that our decisions are based on sound science. The selection of participants in a peer review is based on expertise, with due consideration given to independence and potential conflicts of interest. The peer reviewers for the Santa Cruz cypress were chosen based on their expertise demonstrated by published research on western hemisphere cypress taxonomy, population dynamics, serotiny (ecological relationships of cone-bearing plants to fire), California fire regimes, or the ecology of Santa Cruz area flora.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of this plant and assessed the five factors to evaluate whether Santa Cruz cypress is in danger of extinction or likely to become so in the foreseeable future throughout all of its range.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Santa Cruz cypress. We reviewed information presented in the 2011 petition, information available in our files and gathered through our 90-day finding (77 FR 32922; June 24, 2012) in response to this petition, and other available published and unpublished information. We also consulted with species experts and land management staff with CDFW, CDPR, the County of San Mateo, and the County of Santa Cruz, who are actively managing for the conservation of Santa Cruz cypress.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We find that the Santa Cruz cypress is not presently in danger of extinction throughout its entire range based on the severity and immediacy of threats currently impacting the species. As a result of recent information, we know that there are a significantly larger number of Santa Cruz cypress individuals than were known at the time of listing (Service 2009, p. 13; Service 2015, p. 45) and that there is significant conservation of lands that support the populations. Significant impacts at the time of listing that could have resulted in the extirpation of all or parts of populations have been eliminated or reduced since listing. We conclude that the previously recognized impacts to Santa Cruz cypress from present or threatened destruction, modification, or curtailment of its habitat or range (specifically, residential development, agricultural conversion, logging, and oil and gas drilling) (Factor A); overutilization for commercial, recreational, scientific, or educational purposes (Factor B); disease or predation (Factor C); and other natural or human-made factors affecting its continued existence (specifically, reproductive isolation) (Factor E) do not rise to a level of significance, either individually or in combination, such that the species is currently in danger of extinction.

However, alteration of the fire regime (Factors A and E) has the potential to disrupt the long-term persistence of the species across its entire range (resulting in the species potentially facing a senescence risk in the future) if fire continues to be excluded or suppressed near these populations. At least four populations of Santa Cruz cypress contain some proportion of reproductive individuals and also exhibit some level of recruitment (the portion of Bonny Doon population that burned in the 2008 Martin Fire, and the Eagle Rock, Butano Ridge, and Majors Creek populations). However, without fire or other appropriate disturbance to simulate fire, we expect the level of reproduction and recruitment to decrease as existing trees become senescent. Given the potential lifespan of the Santa Cruz cypress of approximately 100 years, we would expect to see population declines over this timeframe as a result of mortality of currently existing trees, and lack of replacement due to low recruitment and declining reproduction, leading eventually to the species becoming in danger of extinction in the future.

Santa Cruz cypress also will continue to be impacted by competition with nonnative, invasive species (Factors A and E); genetic introgression (Factor E); vandalism and unauthorized recreational activities (Factors A and E); and the effects of climate change (Factor A and E). Additionally, the existing regulatory mechanisms are inadequate to fully protect the species from the threats listed above (Factor D). However, the severity and magnitude of threats, both individually and in combination, and the likelihood that any one event would affect all populations is significantly reduced as a result of the removal of multiple threats, the reduced impact of most remaining threats, and the extensive amount of conservation occurring throughout the range of the species (including, but not limited to, the extensive preservation of occupied lands in perpetuity and development of management plans or guidance within at least one population (Bonny Doon)).

In conclusion, after review of the best available scientific and commercial information pertaining to the species and its habitat, we have determined that the ongoing threats are not of sufficient imminence, intensity, or magnitude to indicate that Santa Cruz cypress is presently in danger of extinction throughout all its range. Although threats to Santa Cruz cypress still exist and will continue into the foreseeable future, the implementation of conservation measures or regulatory actions has greatly reduced the imminence and severity of threats to the Santa Cruz cypress and its habitat. All five populations are primarily threatened by changes in the historical fire regime. Additionally, threats from competition with nonnative species and climate change exist for all populations. Our evaluation of the best available information indicates that the overall level of threats is not significantly different at any of these populations (Service 2015, pp. 24–41), with the primary current threat to all populations being alteration of fire regime. We, therefore, conclude that Santa Cruz cypress is not currently in danger of extinction, but is threatened with becoming an endangered species within the foreseeable future throughout all of its range.

Because we have determined that Santa Cruz cypress is likely to become endangered in the foreseeable future throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Service's final policy interpreting the phrase ''Significant Portion of Its Range'' (79 FR 37578; July 1, 2014). Therefore, on the basis of the best available scientific and commercial information, we find that the Santa Cruz cypress now meets the definition of a threatened species (*i.e.,* is likely to become an endangered species within the foreseeable future throughout all of its range) and are reclassifying the Santa Cruz cypress from an endangered species to a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Effects of This Rule

This rule will revise 50 CFR 17.12(h) to reclassify Santa Cruz cypress from endangered to threatened on the List of Endangered and Threatened Plants. However, this reclassification does not significantly change the protections afforded this species under the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Santa Cruz cypress. Whenever a species is listed as threatened, the Act allows promulgation of special rules under section 4(d) that modify the standard protections for threatened species found under section 9 of the Act and Service regulations at

50 CFR 17.31 (for wildlife) and 17.71 (for plants), when it is deemed necessary and advisable to provide for the conservation of the species. No special section 4(d) rules are proposed, or anticipated to be proposed, for Santa Cruz cypress, because there is currently no conservation need to do so for this species. Recovery actions directed at Santa Cruz cypress will continue to be implemented, as funding allows, as outlined in the Recovery Plan for this species (Service 1998, entire).

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. No tribal lands are within the range of the Santa Cruz cypress.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this final rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2013–0092 or upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are employees of the Pacific Southwest Regional Office in Sacramento, California, in coordination with employees of the Ventura Fish and Wildlife Office in Ventura, California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.12(h) as follows:

■ a. By removing the entry for *''Cupressus abramsiana''* under CONIFERS, and

■ b. By adding an entry for *''Hesperocyparis abramsiana''* under CONIFERS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
CONIFERS							
*	*	*	*	*	*		*
Hesperocyparis abramsiana.	Santa Cruz cypress	U.S.A. (CA)	Cupressaceae	T	252	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: February 1, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–03296 Filed 2–18–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE450

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Community Development Quota pollock directed fishing allowance from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide opportunity for harvest of the 2016 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 19, 2016, until the effective date of the final 2016 and 2017 harvest specifications for Bering Sea and Aleutian Islands (BSAI) groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2016 pollock total allowable catch (TAC) allocated to the Community Development Quota (CDQ) directed fishing allowance (DFA) is 1,900 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015), and as adjusted by an inseason adjustment (81 FR 184, January 5, 2016).

As of February 11, 2016, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the 2015 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ DFA is added to the 2016 Bering Sea CDQ DFA. As a result, the 2016 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) are revised as follows: 0 mt to CDQ DFA. Furthermore, pursuant to § 679.20(a)(5), Table 5 of the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015), as adjusted by the inseason adjustment (81 FR 184, January 5, 2016), is revised to make 2016 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2016 CDQ pollock allocations established at § 679.20(a)(5).

TABLE 5—FINAL 2016 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2016 Allocations	2016 A season [1]		2016 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,340,000	n/a	n/a	n/a
CDQ DFA	135,900	54,360	38,052	81,540
ICA [1]	48,240	n/a	n/a	n/a
AFA Inshore	578,880	231,552	162,086	347,328
AFA Catcher/Processors [3]	463,104	185,242	129,669	277,862
Catch by C/Ps	423,740	169,496	n/a	254,244
Catch by CVs [3]	39,364	15,746	n/a	23,618
Unlisted C/P Limit [4]	2,316	926	n/a	1,389
AFA Motherships	115,776	46,310	32,417	69,466
Excessive Harvesting Limit [5]	202,608	n/a	n/a	n/a
Excessive Processing Limit [6]	347,328	n/a	n/a	n/a
Total Bering Sea DFA	1,157,760	463,104	324,173	694,656
Aleutian Islands subarea ABC	32,227	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	17,100	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	11,691	n/a	3,009
Area harvest limit [7]				
541	9,668	n/a	n/a	n/a
542	4,834	n/a	n/a	n/a
543	1,611	n/a	n/a	n/a
Bogoslof District ICA [8]	500	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (4.0 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

[8] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 11, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 16, 2016

Emily H. Menashes,

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

[FR Doc. 2016–03465 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 33
Friday, February 19, 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 COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 738, 740, 742, 743, 744, 772, and 774

[Docket No. 140221170–5728–02]

RIN 0694–AF75

Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Laser, Imaging, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant control under Category XII (Fire Control, Laser, Imaging, and Guidance and Control Equipment) of the United States Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) would be controlled under the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by amending Export Control Classification Number (ECCN) 7A611 and creating new ''600 series'' ECCNs 7B611, 7D611, and 7E611. In addition, for certain dual-use infrared detection items, this proposed rule would expand controls for certain software and technology, eliminate the use of some license exceptions, revise licensing policy, and expand license requirements for certain transactions involving military end users or foreign military commodities. This proposed rule would also harmonize provisions within the EAR by revising controls related to certain quartz rate sensors and uncooled thermal imaging cameras.

DATES: Comments must be received by April 4, 2016.

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

- Federal eRulemaking Portal: *http://www.regulations.gov.* Search for this rule using its regulations.gov docket number: BIS–2015–0016
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF75 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF75.

FOR FURTHER INFORMATION CONTACT: For questions regarding the ECCNs included in this rule, contact Dennis Krepp, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Telephone: 202–482–1309, Email: *Dennis.Krepp@bis.doc.gov.* For general questions regarding the proposed regulatory changes, contact Steven Emme, Office of the Assistant Secretary for Export Administration, Telephone: 202–482–5491, Email: *Steven.Emme@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is part of the Administration's Export Control Reform Initiative (Initiative), the objective of which is to protect and enhance U.S. national security interests. The Initiative began in August 2009 when President Obama directed the Administration to conduct a broad-based review of the U.S. export control system to identify additional ways to enhance national security. The Department of State's International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML) are being amended to control only the items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and the Export Administration Regulations (EAR) are being amended to control military items that do not warrant USML controls. These changes will enhance national security by (i) improving interoperability of U.S. military forces with allied countries, (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services, and (iii) allowing export control officials to focus government resources on transactions that pose greater concern.

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

Following the structure set forth in the final rule entitled ''Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform'' (78 FR 22660, April 16, 2013) (''April 16 (initial implementation) rule''), BIS published a proposed rule entitled ''Revisions to the Export Administration Regulations (EAR): Control of Fire Control, Range Finder, Optical, and Guidance and Control Equipment the President Determines No Longer Warrant Control Under the United States Munitions List (USML)'' (80 FR 25798, May 5, 2015) (''May 5 proposed rule''). That proposed rule was published in conjunction with a proposed rule published by the Department of State's Directorate of Defense Trade Controls (DDTC) to propose controls for the ITAR's USML Category XII.

The proposed changes described in this proposed rule and the corresponding changes in the State Department's proposed amendment to USML Category XII are based, in part, on a review of public comments submitted in response to the May 5 proposed rule. The review of the comments on USML Category XII by the Departments of Commerce, Defense, Homeland Security, and State (hereinafter, ''the agencies'' or the ''interagency review'') focused on identifying those types of articles that provide the United States with a critical military or intelligence capability and that are not currently in normal commercial use. It is the intent of the above agencies that the proposed USML Category XII and corresponding 600 series ECCNs not control items in normal commercial use. Such items should be controlled under existing dual-use controls on the CCL, consistent with the Wassenaar Arrangement List of Dual-Use Goods and Technologies. However, if the proposed entries in

USML Category XII or corresponding 600 series ECCNs include items in normal commercial use, then the public is encouraged to submit comments identifying such entries and examples of commercial items captured by those entries.

To address concerns regarding the sensitivity of certain dual-use items related to infrared detection capability, this proposed rule would add restrictions to the export or reexport of several sensors and cameras, and related software and technology, that provide important night vision capability for military use but are also widely used in civil products and applications. These proposed restrictions include amending the availability of certain license exceptions, including TSR, APR, and STA; expanding the license requirement in § 744.9 and scope of ECCN 0A919; adding new ECCN 0E987 for the development or production of commodities controlled by 0A987 that incorporate a focal plane array or image intensifier tube; expanding software controls related to items in ECCNs 6A002 and 6A003 by revising ECCNs 6D002, 6D003, and 6D991; and expanding the scope of read-out integrated circuits controlled under ECCN 6A990 and related software and technology in ECCNs 6D991 and 6E990.

This proposed rule would also revise controls pertaining to cameras classified under ECCN 6A993.a as a result of meeting the criteria to Note 3.a to ECCN 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz). The interagency review found that these 9 Hz cameras have been incorporated into foreign military commodities. As a result, this proposed rule would amend § 744.9 to include such 9 Hz cameras and subject them to the license requirements described in that section. Additionally, this proposed rule would create new ECCN 0E987 to control technology required for the development or production of ECCN 0A987 commodities that incorporate a focal plane array or image intensifier tube.

As a result of the interagency review, BIS believes that a limited number of military items, primarily less-sensitive parts and components, should move from USML Category XII to the 600 series entries proposed in this rule. This proposed rule would create (or revise in the case of 7A611) the following ''600 series'' ECCNs: 7A611, military fire control, laser, imaging, and guidance and control commodities; 7B611, test, inspection, and production commodities ''specially designed'' for military fire control, laser, imaging, and guidance and control commodities; 7D611, software ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 7A611 or 7B611; and 7E611, technology ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 7A611 or 7B611, or software controlled by 7D611.

In this proposed rule, all references to the USML are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (see 27 CFR part 447). Pursuant to § 38(a)(1) of the AECA, all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

BIS intends this proposed rule to be evaluated on its own merits, and the public need not review the May 5 proposed rule to understand this action. Once the public comments on this rule are reviewed and responded to, BIS intends to publish a final rule.

Public Comments in Response to the May 5 Proposed Rule

BIS received 60 public comments in response to the May 5 proposed rule. Many of the comments focused on aspects of both the BIS proposed rule and the DDTC proposed rule. Generally, many commenters found that when the May 5 proposed rules used an unambiguous, bright line to delineate jurisdiction, the line was drawn in the wrong place. For many entries on the proposed USML Category XII, commenters found that no military specification or parameters were used to identify items warranting ITAR control. In addition, many commenters asserted that the proposed USML Category XII would capture items currently subject to the EAR, including some items that are currently EAR99. For other entries, commenters said the proposed rules added difficulty in determining jurisdiction. For instance, commenters indicated that new terms introduced to the ITAR in the proposal, such as ''core'' and ''permanently encapsulated sensor assembly,'' added new layers of complexity and confusion to the current controls. In addition, many commenters expressed concerns regarding new proposed controls in the EAR for certain infrared detection items and for the inclusion of certain items in the proposed 600 series entries.

Because of these concerns, one of the most common themes throughout the comments was that the May 5 proposed rules would lead to or further a competitive disadvantage for U.S. companies and research institutions. Commenters stated that many of the items proposed for control under either the proposed USML Category XII or 600 series entries were in normal commercial use and available from non-U.S. sources. To address these concerns, some commenters proposed additional parameters for various entries or recommended the use of ''specially designed'' in place of attempts to identify positive control parameters.

Changes From the May 5 Proposed Rule

To address concerns raised in the public comments and to further harmonize and simplify the EAR, this proposed rule makes a number of changes from the May 5 proposed rule. First, this rule does not propose to amend part 742 to create a new worldwide Regional Stability (RS) control for dual-use items but would maintain a new worldwide RS control for certain military technology in ECCN 7E611.a. All other items described in this proposed rule that are or would be subject to RS controls would generally be subject to an RS Column 1 control, which imposes a license requirement for all destinations except Canada. For items the agencies believe warrant strict control, this proposed rule amends the availability of license exceptions or licensing policy, as described further below.

This proposed rule also does not include controls proposed in the May 5 proposed rule for certain maintenance, repair, or overhaul software or technology related to certain dual-use infrared detection commodities. Such controls, which were proposed in new ECCNs 6D994 and 6E994, would exceed those of the Wassenaar Arrangement, and based on public comments, would likely have resulted in extensive license requirements for purely commercial activities, such as civil automotive repair.

Due to the elimination of the term ''permanent encapsulated sensor assembly'' as a parameter for determining jurisdiction for focal plane arrays in DDTC's proposed rule, this

proposed rule also does not include the definition for that term in part 772, as proposed in the May 5 proposed rule. This rule also removes references to that term that were proposed to be included in ECCN 6A002.

With respect to the structure of the 600 series, this proposed rule would create only one set of 600 series ECCNs corresponding to USML Category XII rather than two sets. The May 5 proposed rule included a 6x615 series for military fire control, range finder, and optical items and a 7x611 series for military guidance and control items. In order to simplify controls, this proposed rule would only establish one set of 600 series ECCNs, the 7x611 series, which would correspond to all items proposed for control under USML Category XII.

Additional changes made from the May 5 proposed rule are discussed more fully below.

Proposed Revisions To Further Harmonize and Simplify the EAR

This rule proposes new revisions to the EAR that were not included in the May 5 proposed rule. In order to make the EAR more consistent and easier to apply, this proposed rule would revise various parts of the EAR related to certain QRS–11 sensors and to license requirements related to uncooled thermal imaging cameras.

Proposed Removal of Controls Specific to QRS–11 Sensors

In 2007, DDTC and BIS published final rules (72 FR 31452 (June 7, 2007); 72 FR 62768 (Nov. 7, 2007)) that moved the licensing jurisdiction for certain QRS–11 quartz rate sensors from the ITAR to the EAR when such sensors were integrated into and included as an integral part of a Commercial Standby Instrument System (or aircraft incorporating such system) or exported solely for integration into such a system. The BIS final rule added certain QRS–11 sensors to ECCN 7A994 and included an RS Column 1 control. In addition, the BIS final rule amended § 734.4 to add certain QRS–11 sensors to the list of items for which there is no *de minimis* level for foreign-made items incorporating such content.

While predating Export Control Reform (ECR), the movement of certain QRS–11 sensors from the ITAR to the EAR reflects many of the rationales for ECR. The sensors, while originally designed for military application, began to be used in civil aircraft prior to the 2007 final rules. Thus, due to application of the see-through rule, State Department authorization would have been required for numerous exports and reexports involving civil aircraft.

With the advent of ECR, BIS believes that special controls are no longer warranted for certain QRS–11 sensors. Consequently, this proposed rule would remove the RS Column 1 control from ECCN 7A994, along with references to certain QRS–11 sensors in the License Requirements Notes and Related Controls. To the extent that such sensors are not described on the USML (and the agencies do not believe that any of the sensors are described on the revised USML), one would follow the Order of Review in Supplement No. 4 to part 774 to determine whether the sensors may be captured under a 600 series ECCN or under a dual-use ECCN.

This proposed rule would also remove and reserve § 734.4(a)(3), which currently provides that there is no *de minimis* level for certain foreign-made items incorporating certain QRS–11 sensors subject to the EAR. Depending on the classification of the applicable QRS–11 sensor, one would follow the applicable *de minimis* requirements for 600 series items or for non-600 series items. In addition, this proposed rule would remove the restriction on the availability of license exceptions for certain QRS–11 sensors under § 740.2(a)(9), and this proposed rule would remove references to QRS–11 sensors classified under ECCN 7A994 in ECCNs 7E994 (Related Controls) and 9A991 (License Requirement Notes and Related Controls). Finally, this proposed rule would also amend Note 1 in the definition of ''specially designed'' to remove the reference to ECCN 7A994. With the proposed removal of the RS Column 1 control, 7A994 would only be subject to the Anti-Terrorism reason for control and would not need to be included in Note 1.

Proposed Amendments to License Requirements and License Exception Eligibility for Certain Uncooled Thermal Imaging Cameras Controlled in ECCN 6A003

On May 22, 2009, BIS published a final rule (74 FR 23941) (''May 2009 final rule'') that revised license requirements and license exception eligibility for certain uncooled thermal imaging cameras in ECCN 6A003. That rule revised ECCN 6A003 and § 742.6 to make the RS Column 1 reason for control inapplicable for certain transactions for a group of countries (now Country Group A:1) if certain uncooled thermal imaging cameras are fully packaged for use as consumer ready civil products or if such cameras with not more than 111,000 elements are to be embedded in civil products by authorized companies.

While BIS believes that this structure has been useful to address foreign availability concerns regarding uncooled thermal imaging cameras, the different authorization structure established by the May 2009 final rule added complexity to the regulations. Further, BIS believes that with the implementation of License Exception STA, the authorizations described in § 742.6(a)(2)(iii) and (v) are no longer necessary for exports or reexports of certain uncooled thermal imaging cameras in 6A003. Thus, this proposed rule would remove §§ 742.6(a)(2) and (a)(4)(ii). Also, this proposed rule would remove the current distinction in ECCN 6A003 for RS Column 1 and Column 2 controls and subject all items in 6A003 to the RS Column 1 reason for control. BIS acknowledges that this proposal would require a license for certain transactions that currently would not require one, but BIS believes that the use of STA will alleviate concerns regarding this change. BIS welcomes comments on this proposal.

Due to the proposed changes to § 742.6 and ECCN 6A003, this proposed rule would also amend corresponding footnotes (current footnotes 2 and 4) used in the Commerce Country Chart (Supplement No. 1 to part 738). In addition, this proposed rule would amend License Exception APR to remove references in § 740.16(b) to the text proposed for removal in § 742.6. This proposed rule would also amend § 742.4 to remove similar references to text in § 742.6 proposed for deletion. Finally, this proposed rule would remove and reserve § 743.3, which describes the current reporting requirement created by the May 2009 final rule.

Proposed Revisions To Increase Controls for Infrared Detection Items Subject to the EAR

The May 5 proposed rule included a number of proposed revisions to the EAR to address concerns regarding the sensitivity of certain items providing infrared detection capability. This proposed rule includes many of the same proposals, but with some differences noted below. This proposed rule would revise certain controls and policies for infrared detection items and foreign-made military commodities incorporating infrared detection items by amending §§ 734.4, 740.2, 740.16, 740.20, 742.6, and 744.9 of the EAR.

Revisions to Section 734.4 for 0A919 Foreign Military Commodities

Section 734.4(a)(5) of the EAR currently provides that there is no *de minimis* level for foreign military commodities, as described in ECCN 0A919, that incorporate certain infrared detection items. Since this proposed rule would expand the scope of items controlled under ECCN 0A919, as described further below, § 734.4(a)(5) would also be revised to reflect changes to that ECCN. However, this proposed rule would amend the *de minimis* treatment for 0A919 items incorporating infrared detection content to make them consistent with 0A919 items incorporating 600 series or 9x515 content. Thus, under this proposed rule, there would be no *de minimis* level for foreign-made military commodities described in ECCN 0A919, which incorporate commodities classified under ECCNs 6A002, 6A003, 6A990, or 6A993.a (that meet the criteria of Note 3.a to ECCN 6A003.b.4.b), if the 0A919 commodities are destined for a country in Country Group D:5. When destined for a country outside of Country Group D:5, such 0A919 commodities would be subject to the 25% *de minimis* threshold.

Addition to Section 740.2

Section 740.2 sets forth restrictions on all license exceptions, and the May 5 proposed rule included a restriction in § 740.2(a)(7) for certain 6E002 production technology for certain infrared detection components in 6A002.a.2 or a.3 as well as for 6E990 technology.

The interagency review re-examined those technologies that warranted additional restrictions under § 740.2. As a result of that review, this proposed rule would increase the scope of technology subject to the restriction by including certain development technology in ECCN 6E001. However, this proposed rule would also narrow the type of technology subject to the restriction to focus on technology related to the most sensitive dual-use focal plane arrays and image intensifier tubes in 6A002 to ensure that the restriction is not overly broad in covering technology related to all dual-use components. Thus, under this proposed rule, § 740.2(a)(7) would apply to 6E001 or 6E002 technology required for the development or production of the following focal plane arrays: photon detector, microbolometer detector, pyroelectric, or multispectral detector infrared focal plane arrays (IRFPAs), described in ECCN 6A002, having a peak response within the wavelength range exceeding 900 nm but not exceeding 30,000 nm, excluding lead sulfide or lead selenide IRFPAs having a peak response within the wavelength range exceeding 1,000 nm but not exceeding 5,000 nm and not exceeding 16 detector elements. Moreover, § 740.2(a)(7) would apply to 6E001 or 6E002 technology required for the development or production of third generation image intensifier tubes or image intensifier tubes greater than third generation (*e.g.,* EBAPS). Such 6E001 and 6E002 technology would, however, remain eligible for § 740.11(b)(2) of License Exception GOV.

Restrictions on the Use of License Exception APR

License Exception APR currently authorizes specified reexports of items subject to the EAR by certain countries to specified destinations without individual licenses from BIS. The May 5 proposed rule would increase the number of items ineligible for paragraph (a) of APR by including all items in ECCNs 6A002, 6A003, and 6A990 in the restrictions found in paragraph (a)(2). This proposed rule maintains that proposed change. Similarly, this proposed rule would also add all items in those ECCNs to the scope of items subject to the restriction in paragraph (b)(2) on the use of paragraph (b) of APR. Also, this proposed rule would further revise paragraph (b) of APR, as previously described, with respect to certain uncooled thermal imaging cameras. With the proposed removal of paragraph (b)(3), this proposed rule also revises paragraph (b) by consolidating the list of items ineligible to be reexported under paragraph (b)(1) in one location in paragraph (b)(2).

Restrictions on the Use of License Exception STA

The EAR currently restricts the use of License Exception STA for specific commodities controlled by ECCNs 6A002, as well as related technology controlled by 6E001 or 6E002, for export or reexport to countries listed in § 740.20(c)(2). The May 5 proposed rule would amend § 740.20(b)(2) to remove License Exception STA availability for additional items related to infrared detection, and this proposed rule largely adopts that proposal. This rule maintains those proposed changes and would make License Exception STA unavailable for the following items: Newly-proposed technology controlled under ECCN 0E987; all commodities controlled under ECCN 6A002 or 6A990; software controlled under ECCN 6D002 for the ''use'' of commodities controlled under ECCN 6A002.b; software controlled under ECCN 6D003.c; software controlled under ECCN 6D991 for the ''development,'' ''production,'' or ''use'' of commodities controlled under ECCNs 6A002, 6A003, or 6A990; technology controlled under ECCN 6E001 for the ''development'' of commodities controlled under ECCNs 6A002 or 6A003; technology controlled under ECCN 6E002 for the ''production'' of commodities controlled under ECCNs 6A002 or 6A003; and technology controlled under ECCN 6E990.

Revisions to Licensing Policy

As previously mentioned, this proposed rule does not include the worldwide RS control that was proposed in the May 5 proposed rule. Thus, this proposed rule also does not include the corresponding licensing policy that was proposed in the May 5 proposed rule for § 742.6(b)(1). However, this proposed rule would revise current § 742.6(b)(1) to include new licensing policy for 6E001 or 6E002 technology for the development or production of focal plane arrays or image intensifier tubes described in 6A002, or for 6E990 technology. Such technology would be subject to a presumption of denial for license applications for exports or reexports to countries in Country Group D:5. BIS is proposing this change due to the sensitivity of such technology.

Revisions to End-Use/End-User Controls

Section 744.9 currently requires a license for the export or reexport to any destination other than Canada for cameras controlled by ECCNs 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c when the exporter knows or is informed that the item is intended to be used by a ''military end-user'' or to be incorporated into a ''military commodity'' controlled by ECCN 0A919, in addition to other applicable license requirements in the EAR.

This proposed rule, like the May 5 proposed rule, would revise § 744.9 to require a license for exports, reexports, or transfers (in-country) of commodities controlled by ECCN 0A987 (incorporating items in ECCNs 6A002 and 6A003, or certain cameras in 6A993.a), ECCN 6A002, ECCN 6A003, ECCN 6A990, ECCN 6A993.a commodities meeting the criteria of Note 3.a to ECCN 6A003.b.4.b, ECCN 8A002.d.1.c, and ECCN 8A002.d.2, when the exporter, reexporter, or transferor knows or is informed that the item is intended to be used by a ''military end-user'' or to be incorporated into a ''military commodity'' controlled by ECCN

0A919. Commodities controlled by ECCN 6A993.a as a result of meeting the criteria of Note 3.a to ECCN 6A003.b.4.b are cameras with a maximum frame rate equal to or less than 9 Hz. Although these 9 Hz cameras are subject only to Anti-Terrorism controls, the agencies determined that 9 Hz cameras are used in foreign-made military commodities and thus merited inclusion in § 744.9.

Based on public comments to the May 5 proposed rule, this proposed rule does not include the license requirement for such items if at the time of the export, reexport, or transfer, the person is unable to determine whether the item will be or is intended to be used by a military end user or incorporated into a 0A919 military commodity. Increasing the scope of § 744.9 to include both the unable to determine standard and the license requirement for 9 Hz cameras (which are often low-cost consumer goods sold through distributors or storefronts) would have triggered extensive license requirements due to the inability to determine whether the items would be purchased by military end users. To address concerns with that standard, while still making 9 Hz cameras subject to § 744.9 license requirements, this proposed rule omits the unable to determine standard and would maintain the existing knowledge standard in § 744.9.

Revisions to ECCN 0A919

ECCN 0A919 currently controls ''military commodities'' produced and located outside the United States that are not subject to the ITAR, and incorporate one or more cameras controlled under ECCNs 6A003.b.3, 6A003.b.4.b, or 6A003.b.4.c. In addition, ECCN 0A919 controls such ''military commodities'' if they incorporate more than a *de minimis* amount of U.S.-origin 600 series content or are the direct products of U.S.-origin 600 series technology or software.

To control the reexport of such military commodities that incorporate a wider group of items on the CCL, this proposed rule would revise ECCN 0A919 to control military commodities produced outside the United States that are not subject to the ITAR, and have any of the following characteristics: (i) Incorporate one or more commodities classified under ECCNs 6A002, 6A003, or 6A990; (ii) incorporate one or more commodities controlled under ECCN 6A993.a as a result of meeting the criteria specified in Note 3.a to ECCN 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz); (iii) incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content; or (iv) are direct products of U.S.-origin ''600 series'' technology or software. This proposed change to ECCN 0A919 mirrors the proposal in the May 5 proposed rule.

Establishment of ECCN 0E987

As with the May 5 proposed rule, this proposed rule would create a new ECCN for technology required for the ''development'' or ''production'' of commodities controlled by ECCN 0A987, if such commodities incorporate a focal plane array or image intensifier tube. ECCN 0E987 would be subject to RS Column 1 and Anti-Terrorism Column 1 controls. In addition, items controlled by 0E987 would not be eligible for License Exception STA.

Revisions to ECCN 6A002

ECCN 6A002 currently controls specified optical sensors or equipment and components therefor. The Department of State's proposed rule for Category XII, which is being published concurrently with this rule, proposes the use of ''specially designed'' for certain focal plane arrays, image intensifier tubes, and other related items that would be subject to the ITAR. Because of that change, this proposed rule does not include references in 6A002 to ''permanent encapsulated sensor assembly'' or use luminous sensitivity to describe those image intensifier tubes subject to the EAR and controlled under 6A002.

As noted above, this proposed rule does not include the worldwide RS control that was proposed in the May 5 proposed rule. This proposed rule maintains the existing reasons for control and would revise the Related Controls paragraph to include references to controls in USML Category XII, as well as proposed controls in ECCN 0A919 and § 744.9.

Revisions to ECCN 6A003

ECCN 6A003 currently controls specified cameras, systems or equipment and components therefor. As with the May 5 proposed rule, this proposed rule would add a reference to USML Category XII(c) in the Related Controls paragraph of ECCN 6A003. Also, this rule revises the Related Controls references to ECCN 0A919 and § 744.9 to reflect the expansion of the applicability of those provisions to all of ECCN 6A003.

Due to proposed changes described previously regarding license requirements for certain uncooled thermal imaging cameras in ECCN 6A003, this proposed rule would also revise the applicability of the regional stability control to the ECCN by eliminating the RS Column 2 control and applying the RS Column 1 control to the entire ECCN. This proposed change would result in requiring a license for certain items in 6A003 that currently may not require a license when exported or reexported to certain destinations. While License Exception STA would be available for many of these transactions, BIS encourages organizations that may be affected by this change to submit public comments, including any quantitative data, on the impact of this proposal.

Revisions to ECCN 6A990

Under the Department of State's proposed rule to revise USML Category XII, certain read-out integrated circuits (ROICs) would be controlled under XII(e). ROICs that are ''specially designed'' for focal plane arrays controlled under ECCN 6A002.a.3 would be classified under ECCN 6A990 and subject to the RS Column 1 reason for control. Unlike the May 5 proposed rule, this proposed rule would also add a note to clarify that ROICs ''specially designed'' for civil automotive applications would not be controlled under ECCN 6A990. BIS is proposing this note in order to address technological and market developments, and this note parallels a similar carve out in ECCN 6A003.

ROICs classified under 6A990 would not be eligible for License Exception STA and would be subject to the limitations on the use of License Exception APR in § 740.16(a)(2) and (b)(2). This rule also proposes to insert references to Category XII(e), ECCN 0A919, and § 744.9 under the Related Controls paragraph. Also, this rule would allow for the use of License Exception LVS for this ECCN with a $500 value limit. This change would ensure that controls on ROICs subject to the EAR are not more restrictive than controls for ROICs proposed to be controlled in USML Category XII(e), which would be eligible for the exemption in § 123.16(b)(2) of the ITAR.

Revisions to ECCN 6A993

As previously mentioned, § 744.9 is proposed to be revised to require a license for 9 Hz cameras if exported to a ''military end user'' or if incorporated into a ''military commodity.'' To remind readers of the applicability of § 744.9 and ECCN 0A919 to 9 Hz cameras, this proposed rule would provide a reference to those provisions under the Related Controls paragraph of 6A993.

Revisions to ECCNs 6D002, 6D003, and 6D991

The Wassenaar Arrangement's Lists of Dual-Use Goods and Technologies

impose limited controls on software related to commodities controlled under ECCNs 6A002 and 6A003. As a result, the CCL currently has the following multilateral and unilateral software controls related to such items: ECCN 6D002 (software ''specially designed'' for the ''use'' of commodities controlled under ECCN 6A002.b), ECCN 6D003.c (software designed or modified for cameras incorporating ''focal plane arrays'' specified by ECCN 6A002.a.3.f and designed or modified to remove a frame rate restriction and allow the camera to exceed the frame rate specified in ECCN 6A003.b.4 Note 3.a), and ECCN 6D991 (software specially designed for the ''use'' of commodities controlled under ECCN 6A002.a.1.d).

To address concerns regarding the lack of comprehensive software controls related to commodities controlled under ECCNs 6A002 and 6A003, this proposed rule would consolidate existing, unilateral software controls and would expand them to revise ECCN 6D991 to also control software, not elsewhere specified, that is ''specially designed'' for the ''development,'' ''production,'' or ''use'' of commodities controlled by ECCNs 6A002 or 6A003. Under this proposed rule, such software would be subject to the RS Column 1 reason for control. Also, this proposed rule would remove eligibility to use License Exception TSR for the software described above in ECCNs 6D002 and 6D003.c.

To prevent confusion over multiple ECCNs potentially controlling the same software, this proposed rule would add language to the Related Controls paragraphs of ECCN 6D991 to confirm that software currently controlled under ECCNs 6D002 and 6D003.c would remain controlled under those provisions. To reflect this understanding, this proposed rule would also revise the Related Controls paragraphs of ECCNs 6D002 and 6D003 to provide references to ECCNs 6D991.

Revisions to ECCNs 6E001 and 6E002

ECCNs 6E001 and 6E002 currently control ''development'' and ''production'' technology, respectively, related to multiple ECCNs in Category 6, including items related to infrared detection in ECCNs 6A002 and 6A003. This proposed rule would remove eligibility for License Exception TSR for all 6E001 or 6E002 technology related to commodities controlled under 6A002 or 6A003, and this proposed rule would add guidance to the Related Controls paragraphs in ECCNs 6E001 and 6E002 to provide clarity on technology controls related to commodities subject to the ITAR.

Proposed Establishment of ''600 Series'' for Military Fire Control, Laser, Imaging, and Guidance and Control Items Under ECCNs 7A611, 7B611, 7D611, and 7E611

This proposed rule would establish a ''600 series'' by revising ECCN 7A611 and adding new ECCNs 7B611, 7D611, and 7E611 for military fire control, laser, imaging, and guidance and control commodities, software, and technology. Categories 6 and 7 of the CCL currently control certain laser, imaging, and guidance and control items. In order to ease understanding and use of this ''600 series,'' BIS is proposing to consolidate such controls under Category 7 rather than both Categories 6 and 7. However, should readers look for such 600 series items in Category 6, this proposed rule would amend ECCN 6A611 to refer readers to Category 7 to locate the appropriate controls. ECCN 6A611 was added to the CCL by a previously published final rule entitled Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Other Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 79 FR 37551 (July 1, 2014). Also, to assist readers in locating controls for navigation and avionics items ''specially designed'' for a military application, this proposed rule would move the current heading of ECCN 7A611 into the Related Controls paragraph of proposed ECCN 7A611.

Under this proposed ''600 series,'' ECCN 7A611 would control military fire control, laser, imaging, and guidance and control equipment that would be removed from USML Category XII and that are not covered by an existing ECCN subject to controls for reasons other than Anti-Terrorism (AT) reasons. Due to the increased use of ''specially designed'' in the proposed USML Category XII and to ensure that no current defense articles are inadvertently decontrolled, ECCN 7A611 would use ''specially designed'' as the primary control parameter in paragraphs .a through .e, which would control certain guidance, navigation, or control systems; inertial measurement units; accelerometers; gyros or angular rate sensors; or gravity meters (gravimeters). Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by ECCN 7A611 (except 7A611.y) or a defense article in USML Category XII and not controlled elsewhere on the USML or in 7A611.y or 3A611.y. All items controlled under 7A611 (excluding 7A611.y) would be controlled for NS, RS, AT, and UN reasons. Paragraph .y would control specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in ECCN 7A611, or a defense article in USML Category XII and not elsewhere specified on the USML or in the CCL, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor. No items would be listed in 7A611.y under this proposed rule, but should any items be added, they would be subject to AT controls only.

This proposed rule does not include any of the items enumerated under ECCN 6A615 in the May 5 proposed rule in ECCN 7A611. Due to the increased use of ''specially designed'' in USML Category XII in the State Department's corresponding proposed rule, BIS believes that many of the items previously proposed for control under ECCN 6A615 would be controlled under USML Category XII. In addition, after reviewing public comments, BIS believes that many of the items proposed for control under ECCN 6A615.c in the May 5 proposed rule would be adequately captured as dual-use items under ECCN 6C004.

New ECCN 7B611 would impose controls on test, inspection, and production equipment and related commodities ''specially designed'' for military fire control, laser, imaging, and guidance and control equipment. Paragraph .a would control such equipment ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of items controlled in ECCN 7A611 (except 7A611.y) or commodities in USML Category XII that are not enumerated in USML Category XII or controlled by a ''600 series'' ECCN. Paragraph .b would control environmental test facilities ''specially designed'' for certification, qualification, or testing of commodities controlled in ECCN 7A611 (except 7A611.y) or commodities in USML Category XII that are not enumerated in USML Category XII or a ''600 series'' ECCN. Paragraph .c would control field test equipment ''specially designed'' to evaluate or calibrate the operation of systems described in USML Category XII(a), (b), or (c). Paragraphs .d through .w are reserved. Paragraph .x would control parts, components, accessories, and attachments that are ''specially designed'' for such test, inspection and production equipment that are not enumerated on the USML or controlled by another ''600 series'' ECCN. Items in ECCN 7B611 would be controlled for NS, RS, AT, and UN reasons.

New ECCN 7D611 would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 7A611 or 7B611. Such software would be controlled for NS, RS, AT, and UN reasons. Any software added to 7D611.y would be controlled for AT reasons only.

New ECCN 7E611 would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by 7A611, 7B611, or 7D611. Such technology would be controlled for NS, RS, AT, and UN reasons. Any technology added to 7E611.y would be controlled for AT reasons only. As described in proposed § 742.6(a)(8), the RS control would impose a license requirement for exports and reexports of technology in 7E611.a to all destinations, including Canada (all other technology in 7E611, other than 7E611.y, would be subject to an RS Column 1 control). BIS believes that this worldwide RS control would only affect technical data currently controlled in USML Category XII(f) that is not eligible for the Canadian exemption under Supplement No. 1 to part 126 of the ITAR. As described in § 742.6(b)(1), 7E611.a technology would be subject to the same licensing policy as other 600 series items. In addition, License Exception STA would not be available for 7E611.a technology but would be available for technology in 7E611.b or .c for exports or reexports to Country Group A:5.

Proposed Revisions to Other Existing ECCNs

The May 5 proposed rule included revisions to many existing dual-use ECCNs to provide cross references to controls for similar items subject to the ITAR under the proposed revisions to USML Category XII. This proposed rule includes revisions to the same ECCNs but updates many of the cross references to account for changes since the State Department's May 5 proposal.

Revisions to ECCN 0A987

ECCN 0A987 currently controls specified optical sighting devices, and this proposed rule would revise ECCN 0A987.f to specify that the entry controls laser aiming devices or laser illuminators ''specially designed'' for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm. A proposed note to ECCN 0A987.f would further specify that the entry does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights. This proposed rule would also provide jurisdictional guidance in the Related Controls paragraph to more clearly delineate jurisdiction between USML Category XII and ECCN 0A987.

Revisions to ECCN 2A984

ECCN 2A984 currently controls concealed object detection equipment that operates in the frequency range from 30 GHz to 3000 GHz and has a spatial resolution of 0.5 milliradians up to and including 1 milliradian at a standoff distance of 100 meters. Under the Department of State's proposed revisions to USML Category XII, certain terahertz imaging systems would be enumerated under USML Category XII(c). Consequently, this proposed rule would add a reference to Category XII(c) in the Related Controls paragraph of ECCN 2A984.

Revisions to ECCN 6A004

ECCN 6A004 currently controls optical equipment and components, including gimbals meeting a number of parameters, including slew, bandwidth, angular pointing error, diameter, and angular acceleration. The Department of State proposes to control certain gimbals under Category XII(e). To aid in properly determining jurisdiction and classification of gimbals, this proposed rule would amend the Related Controls paragraph of ECCN 6A004 to reference gimbals controlled under USML Category XII(e).

Revisions to ECCN 6A005

ECCN 6A005 currently controls specified lasers, components and optical equipment. The Department of State's corresponding proposed rule would control certain laser systems and lasers under USML Category XII(b) and (e), respectively. To aid in properly determining jurisdiction and classification, this proposed rule would revise the Related Controls paragraph of ECCN 6A005 to refer readers back to USML Category XII(b) and (e) for laser systems or lasers subject to the ITAR. Additionally, this proposed rule would add a reference in the Related Controls paragraph to USML Category XVIII for certain laser-based directed energy weapon items.

Revisions to ECCNs 6A007 and 6A107

ECCNs 6A007 and 6A107 currently control certain gravity meters (gravimeters) and gravity gradiometers. Under the State Department's proposed rule, certain gravity meters and gravity gradiometers subject to the ITAR would be controlled under USML Category XII(d). Consequently, this proposed rule would add references to the Related Controls paragraphs of ECCNs 6A007 and 6A107 to refer readers to that paragraph in Category XII. This proposed rule also adds a reference to ECCN 7A611 in the Related Controls paragraphs of those ECCNs.

Revisions to ECCN 6A008

ECCN 6A008 currently controls radar systems, equipment, and assemblies, including certain laser detection and ranging (LADAR) and light detection and ranging (LIDAR) equipment under ECCN 6A008.j. The Department of State's proposed rule would control certain LIDAR, LADAR, and range-gated systems in USML Category XII(b). Consequently, this proposed rule would amend the Related Controls paragraph of ECCN 6A008 to add references to those provisions of Category XII.

Revisions to ECCNs 7A001 and 7A101

ECCNs 7A001 and 7A101 control certain accelerometers. The Department of State's proposed rule would control certain accelerometers subject to the ITAR under USML Category XII(e). Therefore, this proposed rule would amend the Related Controls paragraphs of ECCNs 7A001 and 7A101 to add references to USML Category XII(d). This proposed rule also adds references to ECCN 7A611 in the Related Controls paragraphs of those ECCNs.

Revisions to ECCNs 7A002 and 7A102

ECCNs 7A002 and 7A102 control certain gyros or angular rate sensors. Under the State Department's proposed rule, certain gyros or angular rate sensors would be subject to the ITAR under USML Category XII(e). This proposed rule would amend the Related Controls paragraphs of ECCNs 7A002 and 7A102 to add references to USML Category XII(e). This proposed rule also adds references to ECCN 7A611. For the Related Controls paragraph in ECCN 7A102, this proposed rule would also add references to ECCNs 7A002 and 7A994.

Revisions to ECCN 7A003

ECCN 7A003 controls inertial measurement equipment or systems. Under the State Department's proposed rule, certain guidance or navigation systems would be subject to the ITAR under USML Category XII(d). This proposed rule would amend the Related Controls paragraph of ECCN 7A003 to add a reference to that USML entry. Also, this proposed rule would add a reference to ECCN 7A611.

Revisions to ECCN 7A005

ECCN 7A005 currently controls specified Global Navigation Satellite Systems (GNSS) receiving equipment. This proposed rule would amend the Related Controls section of ECCN 7A005 to use ''GNSS'' in place of ''GPS'' and to provide a reference to GNSS receiving equipment subject to the ITAR under USML Category XII.

Revisions to ECCN 8A002

To reflect the expansion of the scope of § 744.9 to apply to 8A002.d.1.c and .d.2 items, this proposed rule would add an additional sentence regarding § 744.9 to the Related Controls paragraph of 8A002.

Effects of This Proposed Rule

De minimis

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new ''600 series'' ECCNs. Section 734.3 of the EAR provides, *inter alia,* that under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a *de minimis* percentage of controlled U.S.-origin content. Under the April 16 (initial implementation) rule, there is no *de minimis* eligibility for ''600 series'' items destined for countries subject to a U.S. arms embargo, but there is a 25% *de minimis* percentage for ''600 series'' items destined for all countries not subject to U.S. arms embargoes. The fire control, laser, imaging, and guidance and control items that would be subject to the EAR as a result of this proposed rule would become eligible for *de minimis* treatment, so long as they are not destined for a country subject to a U.S. arms embargo.

Use of License Exceptions

Unless subject to the restrictions on the use of STA in § 740.20(b)(2), many of the fire control, laser, imaging, and guidance and control items described in this proposed rule would become eligible for several license exceptions, including STA, which would be available for exports to certain government agencies of NATO and other multi-regime allies. The exchange of information and statements required under STA is substantially less burdensome than the license application requirements currently required under the ITAR. Some items covered by this rule also would be eligible for the following license exceptions: LVS (limited value shipments), up to $1500, and RPL (servicing and parts replacement).

Alignment With the Wassenaar Arrangement Munitions List (WAML)

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with U.S. obligations to the multilateral export control regimes. Accordingly, the Administration will, in this proposed rule, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. USML Category XII encompasses multiple WAML categories, including ML 5 (*e.g.,* fire control and range-finding systems), ML 11 (*e.g.,* ''guidance and navigation equipment''), and ML 15 (*e.g.,* imaging equipment). For simplicity, this proposed rule uses one of these categories—ML 11 (''electronic equipment specially designed for military use,'' including ''guidance and navigation equipment'')—to add items moving from USML Category XII to the new 600 series ECCNs ending in ''11.''

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before April 4, 2016. All comments must be in writing and submitted via one or more of the methods listed under the **ADDRESSES** caption to this notice. All comments (including any personal identifiable information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields for information that would identify the commenter blank, and including no identifying information in the comment itself.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

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

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

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

Some items formerly on the USML would become eligible for License

Exception STA under this rule. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This proposed rule addresses controls on fire control, laser, imaging, and guidance and control items. With few exceptions, most exports of such items, even when destined to NATO member states and other close allies, require State Department authorization. In addition, the exports of technology necessary to produce such items in the inventories of the United States and its NATO and other close allies require State Department authorizations. Under the EAR, as proposed, such technology that would be subject to the EAR would become eligible for export to NATO member states and other close allies under License Exception STA unless otherwise specifically excluded. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration believes that complying with the requirements of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Control number 0694–0137 also includes thermal imaging camera reporting under § 743.3. This proposed rule would remove the reporting requirement in § 743.3. Thus, BIS estimates this elimination would reduce the total annual burden hours in control number 0694–0137 by 60 hours annually (60 reports at 1 hour each).

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

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that the May 5 proposed rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble to that proposed rule. Although BIS received no comments on that rationale, and has accordingly made no changes to the proposed rule based on the RFA certification, BIS has determined that, in the interest of openness and transparency, it will briefly restate the rationale behind the certification here.

This proposed rule is part of the Administration's Export Control Reform Initiative, which seeks to revise the USML to a positive list—one that does not use generic, catch-all controls for items listed—and to move some items that the President has determined no longer merit control under the ITAR to control under the CCL.

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

The main effects on small entities resulting from this rule will be in application times, costs, and delays in receiving licenses to export goods subject to the CCL. However, while small entities may experience some costs and time delays for exports due to the license requirements of the CCL, these costs and delays will likely be significantly less than they were for items previously subject to the USML. BIS believes that in fact this rule will result in significantly reduced administrative costs and delays for exports of items that will, upon this rule's implementation, be subject to the EAR rather than the ITAR. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increases to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. By contrast, BIS is statutorily prohibited from imposing licensing fees. In addition, exporters and reexporters of goods that would become subject to the EAR under this rule would need fewer licenses because their transactions would become eligible for license exceptions that were not available under the ITAR. Additionally, the ITAR controls parts and components even when they are incorporated—in any amount—into a foreign-made product. That limitation on the use of U.S.-made goods subject to the ITAR discouraged foreign manufacturers from importing U.S. goods. However, the EAR has a *de minimis* exception for U.S.-manufactured goods that are incorporated into foreign-made products. This exception may benefit small entities by encouraging foreign producers to use more U.S.-made items in their goods.

Even where an exporter or reexporter would need to obtain a license under the EAR, that process is both cheaper and the process is more flexible than obtaining a license under the ITAR. For example, unlike the ITAR, the EAR does not require license applicants to provide BIS with a purchase order with the application, meaning that small (or any) entities can enter into negotiations or contracts for the sale of goods without having to caveat any sale presentations with a reference to the need to obtain a license under the ITAR before shipment can occur. Second, the EAR allows license applicants to obtain licenses to cover all expected exports or reexports to a particular consignee over the life of a license, rather than having to obtain a new license for every transaction.

In short, BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected

entities, including small entities. While BIS acknowledges that this rule may have some cost impacts to small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. Accordingly, the Chief Counsel for Regulation for the Department of Commerce has certified that this rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research science and technology.

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

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

PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 2. Section 734.4 is amended by:
■ a. Removing and reserving paragraph (a)(3);
■ b. Removing the Note to paragraph (a)(3); and
■ c. Revising paragraph (a)(5) to read as follows:

§ 734.4 *De minimis* U.S. content.

(a) * * *

(5) There is no *de minimis* level for foreign-made ''military commodities'' incorporating one or more of the commodities described in ECCN 0A919.a.1 when destined for a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR.

* * * * *

PART 738—[AMENDED]

■ 3. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 4. In Supplement No. 1 to part 738, The Commerce Country Chart, is amended by:
■ a. Removing references to footnote number 2 in the rows for Albania, Cyprus, Malta, and South Africa;
■ b. Removing references to footnote number 4 in the rows for Austria; Cyprus; Finland; Ireland; Korea, South; Malta; South Africa; Sweden; and Switzerland; and
■ c. Removing and reserving footnotes 2 and 4 to the table.

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 6. Section 740.2 is amended by:
■ a. Removing and reserving paragraph (a)(9), and
■ b. Revising paragraph (a)(7) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(7) With the exception of License Exception GOV (§ 740.11(b)(2)), license exceptions are not available for the following 6E001 or 6E002 technology:

(i) Technology required for the ''development'' or ''production'' of photon detector, microbolometer detector, pyroelectric, or multispectral detector infrared focal plane arrays (IRFPAs), described in ECCN 6A002, having a peak response within the wavelength range exceeding 900 nm but not exceeding 30,000 nm, excluding lead sulfide or lead selenide IRFPAs having a peak response within the wavelength range exceeding 1,000 nm but not exceeding 5,000 nm and not exceeding 16 detector elements; or

(ii) Technology required for the ''development'' or ''production'' of third generation or greater (*e.g.,* EBAPS) image intensifier tubes described in ECCN 6A002.

* * * * *

■ 7. Section 740.16 is amended by:
■ a. Revising paragraphs (a)(2), (b)(1), and (b)(2), and
■ b. Removing and reserving (b)(3), to read as follows:

§ 740.16 Additional permissive reexports (APR).

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI or CC reasons and are not military commodities described in ECCN 0A919; commodities described in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications); or commodities described in ECCNs 6A002, 6A003, or 6A990; and

* * * * *

(b) * * *

(1) Eligible commodities may be reexported to and among destinations in Country Group A:1 and Hong Kong for use or consumption within a destination in Country Group A:1 (see Supplement No. 1 to part 740) or Hong Kong, or for reexport from such country in accordance with other provisions of the EAR.

(2) Commodities not eligible for reexport under paragraph (b)(1) are:

(i) Commodities controlled for nuclear nonproliferation or missile technology reasons;

(ii) Commodities in 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications);

(iii) ''Military commodities'' described in ECCN 0A919; or

(iv) Commodities described in ECCNs 6A002, 6A003, or 6A990, or commodities described in ECCN 0A987 incorporating an image intensifier tube.

(3) [RESERVED]

* * * * *

■ 8. Section 740.20 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(x), to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(ii) License Exception STA may not be used for any item controlled under ECCNs 0A981, 0A982, 0A983, 0A985, 0E982, or 0E987.

* * * * *

(x) License Exception STA may not be used for items controlled by ECCNs 6A002; 6A990; 6D002 (software specially designed for the ''use'' of commodities controlled under 6A002.b); 6D003.c; 6D991 (software ''specially designed'' for the ''development,'' ''production,'' or ''use'' of commodities controlled under 6A002, 6A003, or 6A990); 6E001 (''technology'' for the ''development'' of commodities controlled under ECCNs 6A002 or 6A003); 6E002 ''technology'' (for the ''production'' of commodities controlled under ECCNs 6A002 or 6A003); or 6E990.

* * * * *

PART 742—[AMENDED]

■ 9. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 10. Section 742.4 is amended by revising paragraph (a) to read as follows:

§ 742.4 National security.

(a) *License requirements.* It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to all destinations except those in Country Group A:1 (see Supplement No. 1 to part 740), for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the ''License Requirements'' section. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see § 740.4 and Supplement No. 1 to part 740 of the EAR).

* * * * *

■ 11. Section 742.6 is amended by:

■ a. Removing and reserving paragraphs (a)(2) and (a)(4)(ii);

■ b. Revising the last sentence of paragraph (a)(1);

■ c. Adding paragraph (a)(8); and

■ d. Revising paragraph (b)(1), to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) * * * Transactions described in paragraph (a)(3) of this section are subject to the RS Column 1 license requirements set forth in that paragraph rather than the license requirements set forth in this paragraph (a)(1).

* * * * *

(8) Special worldwide RS license requirement for ECCN 7E611.a. A license is required to export or reexport items described in ECCN 7E611.a to all destinations, including Canada.

* * * * *

(b) * * *

(1) Licensing policy for RS Column 1 items and ECCN 7E611.a.

(i) *9x515 and ''600 series'' ECCNs.* Applications for exports and reexports of 9x515 and ''600 series'' items will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. Other applications for exports and reexports described in paragraph (a)(1), (6), (7), or (8) of this section will be reviewed on a case-by-case basis to determine whether the export or reexport could contribute directly or indirectly to any country's military capabilities in a manner that would alter or destabilize a region's military balance contrary to the foreign policy interests of the United States. Applications for reexports of items described in paragraph (a)(3) of this section will be reviewed applying the policies for similar commodities that are subject to the ITAR. Applications for export or reexport of items classified under any 9x515 or ''600 series'' ECCN requiring a license in accordance with paragraph (a)(1) or (8) of this section will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR if destined to a country set forth in Country Group D:5 in Supplement No. 1 to part 740 of the EAR. Applications for export or reexport of ''parts,'' ''components,'' ''accessories,'' ''attachments,'' ''software,'' or ''technology'' ''specially designed'' or otherwise required for the F–14 aircraft will generally be denied. When destined to the People's Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to Part 740 of the EAR, items classified under any 9x515 ECCN will be subject to a policy of denial.

(ii) *Certain infrared detection technology.* Applications for exports and reexports to a country listed in Country Group D:5 (in Supplement No. 1 to part 740 of the EAR) of technology controlled under 6E001 for the development of focal plane arrays or image intensifier tubes described in 6A002, technology controlled under 6E002 for the production of focal plane arrays or image intensifier tubes described in 6A002, or technology controlled under 6E990 will be reviewed with a presumption of denial.

* * * * *

PART 743—[AMENDED]

■ 12. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); 78 FR 16129; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 13. Part 743 is amended by removing and reserving § 743.3.

PART 744—[AMENDED]

■ 14. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3

CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 21, 2015, 80 FR 3461 (January 22, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 15. Section 744.9 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

§ 744.9 Restrictions on certain exports and reexports of certain cameras, systems, or equipment.

(a) *General prohibitions.* In addition to the applicable license requirements for national security, regional stability, anti-terrorism and United Nations embargo reasons in §§ 742.4, 742.6, 742.8, 746.1(b), and 746.3 of the EAR, a license is required to export, reexport, or transfer (in-country) to any destination other than Canada commodities described in ECCNs 0A987 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), 8A002.d.1.c, or 8A002.d.2 if at the time of export, reexport, or transfer, the exporter, reexporter, or transferor knows or is informed that the item will be or is intended to be:

(1) Used by a ''military end-user,'' as defined in paragraph (d) of this section; or

(2) Incorporated into a ''military commodity'' controlled by ECCN 0A919.

(b) *Additional prohibition on exporters, reexporters, or transferors informed by BIS.* BIS may inform an exporter, reexporter, or transferor, either individually by specific notice or through amendment to the EAR, that a license is required for the export, reexport, or transfer of commodities described in ECCNs 0A987 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), 8A002.d.1.c, or 8A002.d.2 to specified end users, because BIS has determined that there is an unacceptable risk of diversion to the users or unauthorized incorporation into the ''military commodities'' described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration.

* * * * *

PART 772—[AMENDED]

■ 16. The authority citations paragraph for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 17. Section 772.1 is amended by revising the last sentence in Note 1 to the definition of ''specially designed,'' to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Specially designed.

* * * * *

Note 1: * * * For purposes of ''specially designed,'' ECCNs 0B986, 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999, 6A998 (except for .b), and 9A991 are treated as ECCNs controlled exclusively for AT reasons.

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PART 774—[AMENDED]

■ 18. The authority citations paragraph for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

Supplement No. 1 to Part 774 [Amended]

■ 19. In Supplement No. 1 to part 774, Category 0, ECCN 0A919 is amended by revising the Items paragraph of the List of Items Controlled section to read as follows:

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

* * * * *

0A919 ''Military commodities'' located and produced outside the United States as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

a. ''Military commodities'' produced and located outside the United States that are not subject to the International Traffic in Arms Regulations (22 CFR parts 120–130) and having any of the following characteristics:

a.1. Incorporate one or more commodities classified under ECCNs 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criterion of Note 3.a to 6A003.b.4);

a.2. Incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' controlled content (see § 734.4 of the EAR); *or*

a.3. Are direct products of U.S.-origin ''600 series'' technology or software (see § 736.2(b)(3) of the EAR).

b. [Reserved]

■ 20. In Supplement No. 1 to part 774, Category 0, ECCN 0A987 is amended by:

■ a. Revising the Related Controls paragraph in the List of Items Controlled section;

■ b. Revising paragraph f. in the Items paragraph in the List of Items Controlled section; and

■ c. Adding a note to 0A987.f, to read as follows:

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and ''components'' as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) Sighting devices operating outside the visible spectrum, as enumerated in USML Category XII, or laser aiming or laser illumination equipment not specified in 0A987.f are subject to the ITAR. (2) Section 744.9 imposes a license requirement on certain commodities described in 0A987 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

* * * * *

Items:

* * * * *

f. Laser aiming devices or laser illuminators specially designed for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm.

Note: 0A987.f does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights.

* * * * *

■ 21. In Supplement No. 1 to part 774, Category 0, add ECCN 0E987 between ECCN 0E984 and EAR99, to read as follows:

0E987 ''Technology'' ''required'' for the ''development,'' or ''production'' of commodities controlled by 0A987 that incorporate a focal plane array or image intensifier tube.

License Requirements

Reason for Control: RS, AT.

Control(s)	Country chart (see Supp. No. 1 to Part 738)
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)
CIV: N/A
TSR: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

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

■ 22. In Supplement No. 1 to part 774, Category 2, ECCN 2A984 is amended by adding Note 4 to the end of the Related Controls paragraph in the List of Items Controlled section, to read as follows:

2A984 Concealed object detection equipment operating in the frequency range from 30 GHz to 3000 GHz and having a spatial resolution of 0.5 milliradian up to and including 1 milliradian at a standoff distance of 100 meters; and ''parts'' and ''components,'' n.e.s.

* * * * *

List of Items Controlled

Related Controls: * * * (4) See USML Category XII(c) for terahertz imaging systems ''subject to the ITAR.''

* * * * *

■ 23. In Supplement No. 1 to part 774, Category 6, ECCN 6A002 is amended by:
■ a. Removing the ''Special Conditions for STA'' section; and
■ b. Revising the Related Controls paragraph in the List of Items Controlled section.

6A002 Optical sensors and equipment and ''components'' therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) For focal plane arrays, image intensifier tubes, and related parts and components subject to the ITAR, see USML Category XII(e). (2) See also ECCNs 6A102, 6A202, and 6A992. (3) See ECCN 0A919 for foreign-made military commodities that incorporate commodities described in 6A002. (4) Section 744.9 imposes a license requirement on commodities described in ECCN 6A002 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

* * * * *

■ 24. In Supplement No. 1 to part 774, Category 6, ECCN 6A003 is amended by:
■ a. Revising the Control(s) table in the License Requirements section;
■ b. Revising notes 4 and 5 in the Related Controls paragraph in the List of Items Controlled section; and
■ c. Adding note 6 to the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6A003 Cameras, systems or equipment, and ''components'' therefor, as follows (see List of Items Controlled).

License Requirements

* * * * *

Control(s)	Country chart (see Supp. No. 1 to Part 738)
NS applies to entire entry.	NS Column 2
NP applies to cameras controlled by 6A003.a.2, a.3 or a.4 and to plug-ins in 6A003.a.6 for cameras controlled by 6A003.a.3 or a.4.	NP Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to items controlled in 6A003.b.3 and b.4.	See § 746.1(b) for UN controls

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (4) See ECCN 0A919 for foreign made military commodities that incorporate cameras described in 6A003. (5) Section 744.9 imposes a license requirement on cameras described in 6A003 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919. (6) See USML Category XII(c) for cameras subject to the ITAR.

* * * * *

■ 25. In Supplement No. 1 to part 774, Category 6, ECCN 6A004 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

6A004 Optical equipment and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) For optical mirrors or 'aspheric optical elements' ''specially designed'' for lithography ''equipment,'' see ECCN 3B001. (2) See USML Category XII(e) for gimbals ''subject to the ITAR.'' (3) See also 6A994.

* * * * *

■ 26. In Supplement No. 1 to part 774, Category 6, ECCN 6A005 is amended by revising the Related Controls paragraph in the List of Items Controlled section.

6A005 ''Lasers,'' ''components'' and optical equipment, as follows (see List of Items Controlled), excluding items that are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See ECCN 6D001 for ''software'' for items controlled under this entry. (2) See ECCNs 6E001 (''development''), 6E002 (''production''), and 6E201 (''use'') for technology for items controlled under this entry. (3) Also see ECCNs 6A205 and 6A995. (4) See ECCN 3B001 for excimer ''lasers'' ''specially designed'' for lithography equipment. (5) ''Lasers'' ''specially designed'' or prepared for use in isotope separation are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110). (6) See USML Category XII(b) and (e) for laser systems or lasers subject to the ITAR. (7) See USML Category XVIII for certain laser-based directed energy weapon systems, equipment, and components subject to the ITAR.

* * * * *

■ 27. In Supplement No. 1 to part 774, Category 6, ECCN 6A007 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6A007 Gravity meters (gravimeters) and gravity gradiometers, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: (1) See USML Category XII(d) for certain gravity meters (gravimeters) and gravity gradiometers subject to the ITAR. (2) See also ECCNs 6A107, 6A997, and 7A611.

* * * * *

■ 28. In Supplement No. 1 to part 774, Category 6, ECCN 6A008 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

6A008 Radar systems, equipment and assemblies, having any of the following (see List of Items Controlled), and ''specially designed'' ''components'' therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: This entry does not control: Secondary surveillance radar (SSR); Car radar designed for collision prevention; Displays or monitors used for Air Traffic Control (ATC) having no more than 12 resolvable elements per mm; Meteorological (weather) radar. See also ECCNs 6A108 and 6A998. ECCN 6A998 controls, *inter alia,* the Light Detection and

Ranging (LIDAR) equipment excluded by the note to paragraph j of this ECCN (6A008). See USML Category XII(b) for certain LIDAR, Laser Detection and Ranging (LADAR), or range-gated systems subject to the ITAR.

* * * * *

■ 29. In Supplement No. 1 to part 774, Category 6, ECCN 6A107 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

6A107 Gravity meters (gravimeters) or gravity gradiometers, other than those controlled by 6A007, designed or modified for airborne or marine use, as follows, (see List of Items Controlled) and ''specially designed'' ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See USML Category XII(d) for certain gravity meters (gravimeters) or gravity gradiometers subject to the ITAR. See also ECCN 7A611.

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■ 30. In Supplement No. 1 to part 774, Category 6, ECCN 6A611 is revised to read as follows:

6A611 Acoustic systems and equipment, radar, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor, ''specially designed'' for a military application that are not enumerated in any USML category or other ECCN are controlled by ECCN 3A611. Military fire control, laser, imaging, and guidance and control equipment that are not enumerated in any USML category or ECCN are controlled by ECCN 7A611.

■ 31. In Supplement No. 1 to part 774, Category 6, ECCN 6A990 is revised to read as follows:

6A990 Read-out integrated circuits, as follows (see List of Items Controlled).

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

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

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for read-out integrated circuits ''subject to the ITAR.'' (2) See ECCN 0A919 for foreign made military commodities that incorporate commodities described in 6A990. (3) Section 744.9 imposes a license requirement on commodities described in 6A990 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919.

Related Definitions: N/A

Items:

a. Read-out integrated circuits ''specially designed'' for ''focal plane arrays'' controlled by 6A002.a.3;

Note: 6A990.a does not control read-out integrated circuits ''specially designed'' for civil automotive applications.

b. [RESERVED]

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■ 32. In Supplement No. 1 to part 774, Category 6, ECCN 6A993 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6A993 Cameras, not controlled by 6A003 or 6A203, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See ECCN 0A919 for foreign made military commodities that incorporate cameras described in 6A993.a that meet the criteria specified in Note 3.a to 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz). (2) Section 744.9 imposes license requirements on cameras described in 6A993.a as a result of meeting the criteria specified in Note 3.a to 6A003.b.4.b (*i.e.,* having a maximum frame rate equal to or less than 9 Hz) if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into a commodity controlled by ECCN 0A919.

* * * * *

■ 33. In Supplement No. 1 to part 774, Category 6, ECCN 6D002 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section; and

■ b. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6D002 ''Software'' ''specially designed'' for the ''use'' of equipment controlled by 6A002.b, 6A008 or 6B008.

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except N/A for the following: (1) Items controlled for MT reasons; (2) ''Software'' ''specially designed'' for the ''use'' of ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1; or (3) ''Software'' ''specially designed'' for the ''use'' of commodities controlled by 6A002.b.

List of Items Controlled

* * * * *

Related Controls: (1) ''Software'' ''specially designed'' for the ''use'' of ''space-qualified'' LIDAR ''equipment'' ''specially designed'' for surveying or for meteorological observation, released from control under the note in 6A008.j, is controlled in 6D991. (2) See also 6D102, 6D991, and 6D992.

* * * * *

■ 34. In Supplement No. 1 to part 774, Category 6, ECCN 6D003 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section; and

■ b. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6D003 Other ''software'' as follows (see List of Items Controlled).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for 6D003.c and exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''software'' for items controlled by 6D003.a.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 6D103, 6D991, and 6D993.

* * * * *

■ 35. In Supplement No. 1 to part 774, Category 6, ECCN 6D991 is revised to read as follows:

6D991 ''Software,'' n.e.s., ''specially designed'' for the ''development'', ''production'', or ''use'' of commodities controlled by 6A002, 6A003, 6A990, 6A991, 6A996, 6A997, or 6A998.

License Requirements

Reason for Control: RS, AT

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
RS applies to ''software'' for commodities controlled by 6A002, 6A003, 6A990, or 6A998.b.	RS Column 1
RS applies to ''software'' for commodities controlled by 6A998.c.	RS Column 2
AT applies to entire entry, except ''software'' for commodities controlled by 6A991.	AT Column 1
AT applies to ''software'' for commodities controlled by 6A991.	AT Column 2

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A
TSR: N/A

List of Items Controlled

Related Controls: (1) See ECCN 6D002 for ''software'' ''specially designed'' for the ''use'' of commodities controlled under ECCN 6A002.b. (2) See ECCN 6D003.c for ''software'' ''specially designed'' for cameras incorporating ''focal plane arrays'' specified by 6A002.a.3.f and ''specially designed'' to remove a frame rate restriction and allow the camera to exceed the frame rate specified in 6A003.b.4 Note 3.a.

Related Definitions: N/A

Items:

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

■ 36. In Supplement No. 1 to part 774, Category 6, ECCN 6E001 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section; and

■ b. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment, materials or ''software'' controlled by 6A (except 6A990, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998, or 6A999.c), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for the following: (1) Items controlled for MT reasons; (2) ''Technology'' for commodities controlled by 6A002, 6A003, 6A004.e or 6A008.j.1; (3) ''Technology'' for ''software'' ''specially designed'' for ''space qualified'' ''laser'' radar or Light Detection and Ranging (LIDAR) equipment defined in 6A008.j.1 and controlled by 6D001 or 6D002; or (4) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''development'' of the following: 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A001.a.2.d, 6A001.a.2.e., 6A004.c, 6A004.d,, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when ''specially designed'' for real time applications; or (c) ''Software'' controlled by 6D001 and ''specially designed'' for the ''development'' or ''production'' of equipment controlled by 6B008, or 6D003.a.

* * * * *

List of Items Controlled

Related Controls: (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) Technical data directly related to laser systems, infrared imaging systems, and all other items described in USML Category XII are subject to the ITAR under USML Category XII(f). (3) See also 6E101, 6E201, and 6E991.

* * * * *

■ 37. In Supplement No. 1 to part 774, Category 6, ECCN 6E002 is amended by:

■ a. Revising the TSR paragraph in the List Based License Exceptions section; and

■ b. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

6E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment or materials controlled by 6A (except 6A990, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, 6A998 or 6A999.c), 6B (except 6B995) or 6C (except 6C992 or 6C994).

* * * * *

List Based License Exceptions (See Part 740 for a description of all license exceptions)

* * * * *

TSR: Yes, except for the following:

(1) Items controlled for MT reasons;

(2) ''Technology'' for commodities controlled by 6A002, 6A003, 6A004.e, 6A008.j.1; or

(3) Exports or reexports to destinations outside of those countries listed in Country Group A:5 (See Supplement No. 1 to part 740 of the EAR) of ''technology'' for the ''production'' of the following: (a) Items controlled by 6A001.a.1.b, 6A001.a.1.e, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.3, 6A001.a.2.a.5, 6A001.a.2.a.6, 6A001.a.2.b, 6A004.c, 6A004.d, 6A006.a.2, 6A006.c.1, 6A006.d, 6A006.e, 6A008.d, 6A008.h, 6A008.k, 6B008; and (b) Items controlled by 6A001.a.2.c and 6A001.a.2.f when ''specially designed'' for real time applications.

* * * * *

List of Items Controlled

Related Controls: (1) Technical data directly related to satellites and all other items described in USML Category XV are subject to the ITAR under USML Category XV(f). (2) Technical data directly related to laser systems, infrared imaging systems, and all other items described in USML Category XII are subject to the ITAR under USML Category XII(f). (3) See also 6E992.

* * * * *

■ 38. In Supplement No. 1 to part 774, Category 6, ECCN 6E990 is amended by revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

6E990 ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by ECCN 6A990.

* * * * *

List of Items Controlled

Related Controls: Technical data directly related to read-out integrated circuits described in USML Category XII(e) are subject to the ITAR under USML Category XII(f).

* * * * *

■ 39. In Supplement No. 1 to part 774, Category 7, ECCN 7A001 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A001 Accelerometers as follows (see List of Items Controlled) and ''specially designed'' ''components'' therefor.

* * * * *

List of Items Controlled

* * * * *

Related Controls: (1) See USML Category XII(e) for accelerometers subject to the ITAR. (2) See also ECCNs 7A101, 7A611, and 7A994. For angular or rotational accelerometers, see ECCN7A001.b. MT controls do not apply to accelerometers that are ''specially designed'' and developed as Measurement While Drilling (MWD) sensors for use in downhole well service applications.

* * * * *

■ 40. In Supplement No. 1 to part 774, Category 7, ECCN 7A002 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A002 Gyros or angular rate sensors, having any of the following (see List of Items Controlled) and ''specially designed'' ''components'' therefor.

* * * * *

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for gyros or angular rate sensors subject to the ITAR. (2) See also ECCNs 7A102, 7A611, and 7A994. For angular or rotational accelerometers, see ECCN 7A001.b.

* * * * *

■ 41. In Supplement No. 1 to part 774, Category 7, ECCN 7A003 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A003 'Inertial measurement equipment or systems,' having any of the following (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: See also ECCNs 7A103, 7A611, and 7A994. See USML Category XII(d) for guidance or navigation systems subject to the ITAR.

* * * * *

■ 42. In Supplement No. 1 to part 774, Category 7, amend ECCN 7A005 by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A005 Global Navigation Satellite Systems (GNSS) receiving equipment having any of the following (see List of Items Controlled) and ''specially designed'' ''components'' therefor.

* * * * *

List of Items Controlled

Related Controls: (1) See also ECCNs 7A105 and 7A994. Typically commercially available GNSS receivers do not employ decryption or adaptive antennas and are classified as 7A994. (2) See USML Category XII(d) for GNSS receiving equipment subject to the ITAR.

* * * * *

■ 43. In Supplement No. 1 to part 774, Category 7, ECCN 7A101 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A101 Accelerometers, other than those controlled by 7A001 (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for accelerometers subject to the ITAR. (2) See also ECCNs 7A001 and 7A611. (3) This entry does not control accelerometers that are ''specially designed'' and developed as MWD (Measurement While Drilling) sensors for use in downhole well service operations.

* * * * *

■ 44. In Supplement No. 1 to part 774, Category 7, ECCN 7A102 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7A102 Gyros, other than those controlled by 7A002 (see List of Items Controlled), and ''specially designed'' ''parts'' and ''components'' therefor.

* * * * *

List of Items Controlled

Related Controls: (1) See USML Category XII(e) for gyros or angular rate sensors subject to the ITAR. (2) See also ECCNs 7A002, 7A611, and 7A994.

* * * * *

■ 45. In Supplement No. 1 to part 774, Category 7, ECCN 7A611 is revised to read as follows:

7A611 Military fire control, laser, imaging, and guidance and control equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry except 7A611.y.	NS Column 1
RS applies to entire entry except 7A611.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7A611.y.	See § 746.1(b) for UN controls

List Based License Exceptions

(See Part 740 for a description of all license exceptions)
LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7A611.

List of Items Controlled

Related Controls: (1) Military fire control, laser, imaging, and guidance and control equipment that are enumerated in USML Category XII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) Navigation and avionics equipment and systems, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor, ''specially designed'' for a military application that are not enumerated in any USML category or another ''600 series'' ECCN are controlled by ECCN 3A611. (3) See Related Controls in ECCNs 0A987, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 7A001, 7A002, 7A003, 7A005, 7A101, and 7A102. (4) See ECCN 3A611 and USML Category XI for controls on countermeasure equipment. (5) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S. origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. Guidance, navigation, or control systems, not elsewhere specified on the USML, that are ''specially designed'' for a defense article on the USML or for a 600 series item.

b. Inertial measurement units (IMUs), not elsewhere specified on the USML, that are ''specially designed'' for a 600 series item.

c. Accelerometers, not elsewhere specified on the USML, that are ''specially designed'' for a defense article on the USML or for a 600 series item.

d. Gyros or angular rate sensors, not elsewhere specified on the USML, that are ''specially designed'' for a defense article on the USML or for a 600 series item.

e. Gravity meters (gravimeters), not elsewhere specified on the USML, that are ''specially designed'' for a defense article on the USML or for a 600 series item.

f. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 7A611 (except 7A611.y) or a defense article enumerated or otherwise described in Category XII and not elsewhere specified on the USML, in 7A611.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a defense article in Category XII and not elsewhere specified on the USML or in the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1 [RESERVED]

■ 46. In Supplement No. 1 to part 774, Category 7, ECCN 7A994 is revised to read as follows:

7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including ''parts'' and ''components,'' n.e.s.

License Requirements

Reason for Control: AT

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
AT applies to entire entry.	AT Column 1

License Requirement Notes:

(1) Typically commercially available GPS do not employ decryption or adaptive antenna and are classified as 7A994.

List Based License Exceptions

(See Part 740 for a description of all license exceptions)
LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See 7A005 and 7A105.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

* * * * *

■ 47. In Supplement No. 1 to part 774, Category 7, add a new ECCN 7B611 between ECCNs 7B103 and 7B994, to read as follows:

7B611 Test, inspection, and production commodities ''specially designed'' for military fire control, laser, imaging, and guidance and control equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

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

List Based License Exceptions

(See Part 740 for a description of all license exceptions)
LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7B611.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. Test, inspection, and production end items and equipment ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled in ECCN 7A611 (except 7A611.y) or commodities in USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

b. Environmental test facilities ''specially designed'' for the certification, qualification, or testing of commodities controlled in ECCN 7A611 (except 7A611.y) or guidance and control equipment in USML Category XII that are not enumerated in USML Category XII or ''600 series'' ECCN.

c. Field test equipment ''specially designed'' to evaluate or calibrate the operation of systems described in USML Category XII(a), (b), or (c).

d. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity listed in this entry and that are not enumerated on the USML or controlled by another ''600 series'' ECCN.

■ 48. In Supplement No. 1 to part 774, Category 7, add a new ECCN 7D611 between ECCNs 7D103 and 7D994, to read as follows:

7D611 ''Software'' ''specially designed'' for commodities controlled by 7A611 or equipment controlled by 7B611, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to Part 738)
NS applies to entire entry except 7D611.y.	NS Column 1
RS applies to entire entry except 7D611.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7D611.y.	See § 746.1(b) for UN controls

List Based License Exceptions

(See Part 740 for a description of all license exceptions)
CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any software in 7D611.

List of Items Controlled

Related Controls: ''Software'' directly related to articles enumerated in USML Category XII is subject of USML paragraph XII(f).
Related Definitions:
Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCNs 7A611 (except 7A611.y) or 7B611.

b. to x. [RESERVED]

y. Specific ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities described in 7A611.y.

■ 49. In Supplement No. 1 to part 774, Category 7, add a new ECCN 7E611 between ECCNs 7E104 and 7E994, to read as follows:

7E611 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 7A611, commodities controlled by 7B611, or software controlled by 7D611, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	Country chart (see Supp. No. 1 to Part 738)
NS applies to entire entry except 7E611.y.	NS Column 1
RS applies to ''development'' or ''production'' ''technology'' in 7E611.a.	A license is required to export and reexport these items to all countries, including Canada. A column specific to this control does not appear on the Commerce Country Chart. (*See* § 742.6(a)(8)).
RS applies to entire entry except 7E611.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7E611.y.	See § 746.1(b) for UN controls

List Based License Exceptions

(See Part 740 for a description of all license exceptions)
CIV: N/A
TSR: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for ''development'' or ''production'' ''technology'' in 7E611.a. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 7E611.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category XII are subject to the control of USML Category XII(f).
Related Definitions: N/A
Items:

a. ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by ECCNs 7A611.a–.e.

b. ''Technology'' ''required'' for the ''development'' or ''production'' of commodities or ''software'' controlled by ECCNs 7A611 (except 7A611.a–.e or .y), 7B611, or 7D611.

c. ''Technology'' ''required'' for the operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or ''software'' controlled by ECCNs 7A611 (except 7A611.y), 7B611, or 7D611 (except 7D611.y).

d. through x. [RESERVED]

y. Specific ''technology'' ''required'' for the ''production,'' ''development,'' operation, installation, maintenance, repair, or overhaul of commodities or software controlled by ECCNs 7A611.y or 7D611.y.

■ 50. In Supplement No. 1 to part 774, Category 7, ECCN 7E994 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

7E994 ''Technology,'' n.e.s., for the ''development,'' ''production'', or ''use'' of navigation, airborne communication, and other avionics equipment.

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List of Items Controlled

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Related Controls: N/A

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■ 51. In Supplement No. 1 to part 774, Category 8, ECCN 8A002 is amended by revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

8A002 Marine systems, equipment, ''parts'' and ''components,'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

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Related Controls: (1) See also 8A992 and for underwater communications systems, see Category 5, Part I—Telecommunications. (2) See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note. (3) For electronic imaging systems ''specially designed'' or

modified for underwater use incorporating image intensifier tubes specified by 6A002.a.2.a or 6A002.a.2.b, see 6A003.b.3. (4) For electronic imaging systems ''specially designed'' or modified for underwater use incorporating ''focal plane arrays'' specified by 6A002.a.3.g, see 6A003.b.4.c. (5) Section 744.9 imposes a license requirement on commodities described in 8A002.d.1.c or .d.2 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.

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■ 52. In Supplement No. 1 to part 774, Category 9, ECCN 9A991 is amended by:

■ a. Removing the License Requirement Notes paragraph in the License Requirements section, and

■ b. Revising the Related Controls paragraph in the List of Items Controlled section to read as follows:

9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and ''parts'' and ''components,'' n.e.s. (see List of Items Controlled).

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List of Items Controlled

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Related Controls: N/A

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Dated: February 11, 2016.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2016–03182 Filed 2–18–16; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice: 9445]

RIN 1400–AD32

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category XII

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Category XII (fire control, laser, imaging, and guidance and control equipment) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The Department also proposes to amend USML Categories VIII, XIII, and XV to reflect that items now described in those Categories will be in the revised Category XII.

DATES: The Department of State will accept comments on this proposed rule until April 4, 2016.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

• Email: *DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—Category XII Second Proposed.''

• Internet: At *www.regulations.gov*, search for this notice by using this rule's RIN (1400–AD32).

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

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov.* ATTN: Regulatory Change, USML Category XII.

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

The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563.

All references to the USML in this rule are to the list of defense articles that are controlled for the purpose of export or temporary import pursuant to the ITAR, and not to the defense articles on the USML that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for the purpose of permanent import under its regulations (see 27 CFR part 447). Pursuant to § 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. For the sake of clarity, the list of defense articles controlled by ATF for the purpose of permanent import is the United States Munitions Import List (USMIL). The transfer of defense articles from the ITAR's USML to the EAR's CCL for the purpose of export control does not affect the list of defense articles controlled on the USMIL under the AECA for the purpose of permanent import.

Revision of Category XII

The revision of USML Category XII was first published as a proposed rule (RIN 1400–AD32) on May 5, 2015, for public comment (see 80 FR 25821) (first proposed rule). The comment period ended July 6, 2015. One hundred twenty parties submitted public comments, which were reviewed and considered by the Department and other agencies.

The majority of the public comments stated that the proposed controls in USML Category XII included items that are in commercial and civil applications, identifying items that would largely be controlled under paragraphs (b), (c), (d), and (e), and requested that the Department limit the USML controls for most paragraphs to items specially designed for the military. The comments varied in level of detail and specific paragraphs addressed, if any, but the general tenor of the public comments was consistent. These comments led the Department to reevaluate USML Category XII in its entirety and to draft this second proposed rule to allow for public feedback on new proposed changes. Given the thorough redrafting of USML Category XII, the Department does not address each public comment in detail.

This second proposed rule revises USML Category XII, covering fire control, range finder, optical and guidance and control equipment, to advance the national security objectives of the President's Export Control Reform initiative and to more accurately

describe the articles within the category, in order to establish a ''bright line'' between the USML and the CCL for the control of these articles. The revisions to Category XII being proposed in this second proposed rule are described below, along with a description of any changes from the first proposed rule.

The most significant change from the first proposed rule to this second proposed rule is that, in response to a high number of substantive public comments, certain articles will be controlled based on the design intent of the manufacturer. This was decided because the Department found that certain articles could be used as components or as end items for the same military application. While applying the standard terminology ''specially designed for a defense article'' would apply to articles that operate as a component for a higher-level assembly, that terminology would not describe the same articles when used as end items on their own for the same military purpose. To address this concern, paragraphs (b)(6) and (c)(2)(iii) control articles if they are specially designed for a military end user. A military end user is defined in the new Note to Category XII as the national armed services, National Guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. An item is specially designed for a military end user if it was created for use by a military end user or users. If an item is created for both military and non-military end users, or if the item was created for no specific end user, then it is not specially designed for a military end user. Contemporaneous documents are required to support the design intent; otherwise, use by a military end user will establish that the item was specially designed for a military end user.

Paragraph (a) is revised to add subparagraphs (1) through (10) to more clearly describe the articles controlled in (a).

Paragraph (a)(1) is added for fire control systems. In response to one comment, the Department moved the control on ''specially designed parts and components'' to paragraph (e) for this paragraph and others, so that all parts and components are described in paragraph (e). None of the parts and components in paragraph (e) are designated significant military equipment. One comment requested clarification on the classification of defense articles enumerated elsewhere in the USML that are specially designed components of a fire control system, such as fire control computers for aircraft, described in USML Category VIII(h)(16). A control on ''specially designed parts and components'' is a catch all control for items that are not elsewhere specified in the USML, and items that are explicitly described elsewhere, such as USML Category VIII(h)(16), are controlled by that entry.

Paragraph (a)(2) is added for weapons sights and weapons aiming or imaging systems, with certain infrared focal plane arrays, image intensifier tubes, ballistic computers, or lasers, when specially designed for a defense article. The Department received multiple comments requesting revisions to this paragraph. These comments were not adopted, as these weapons sights and weapon aiming and imaging systems all relate to the sighting, aiming, or imaging for a defense article and therefore warrant USML control.

Paragraph (a)(3) is added for electronic or optical weapon positioning, laying, or spotting systems.

Paragraph (a)(4) is added for certain laser spot trackers and laser spot detectors that are for laser target designators or coded laser target markers controlled in paragraph (b)(1). The Department revised this control from the first proposed rule by tying it to paragraph (b)(1) to more specifically describe the kinds of items controlled by this paragraph.

Paragraph (a)(5) is added for bomb sights and bombing computers.

Paragraph (a)(6) is added for electro-optical missile or ordnance tracking systems.

Paragraph (a)(7) is added for electro-optical ordnance guidance systems.

Paragraph (a)(8) is added for electro-optical systems that automatically detect and locate weapons launch or fire.

Paragraph (a)(9) is added for remote wind sensing systems specially designed for ballistic-corrected aiming.

Paragraph (a)(10) is added for certain helmet mounted display (HMD) systems. In response to comments, the Department limited the scope of the control for HMD's with optical sights or slewing devices that control infrared imaging systems and end items from the first proposed rule, to those infrared systems and end items that are also defense articles themselves. This clarifies that HMDs for civilian firefighter systems are not described in this control.

Paragraph (b) is revised to add subparagraphs (1) through (7) to more clearly describe the articles controlled in (b). Controls on lasers and others parts and components of laser systems are moved to paragraph (e).

Paragraph (b)(1) is added for laser target designators or coded target markers that mediate the delivery of ordnance to a target. The Department made the control language from the first proposed rule more specific to more completely describe the defense articles controlled by this paragraph.

Paragraph (b)(2) is added for infrared laser target illumination systems having a variable beam divergence. The Department made the control language from the first proposed rule more specific to more completely describe the defense articles controlled by this paragraph.

Paragraph (b)(3) is added for certain laser range finders. In response to comments, the Department revised the control language from the first proposed rule to specify only laser ranger finders operating at a wavelength of 1064 nm and having a Q-switched pulse output, and laser ranger finders operating in excess of 1064 nm and meeting certain technical parameters.

Paragraph (b)(4) is added for certain targeting or target location systems. In response to public comments, the Department revised the control from the first proposed rule to require that the system use a Global Navigation Satellite System (GNSS), guidance, or navigation defense article.

Paragraph (b)(5) is added for optical augmentation systems.

Paragraph (b)(6) is added for light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems specially designed for a military end user.

Paragraph (b)(7) is added for developmental lasers and laser systems funded by the Department of Defense, with certain exceptions.

Paragraph (c) is revised to add subparagraphs (1) through (9) to more clearly describe the articles controlled in (c). Controls on image intensifier tubes (IITs), infrared focal plane arrays (IRFPAs), IRFPA dewar cooler assemblies (IDCAs), gimbals, and other parts and components of imaging systems are moved to paragraph (e).

Paragraph (c)(1) is added for night vision or infrared cameras specially designed for defense articles. The Department revised this entry in response to comments regarding non-military uses of cameras and imaging systems described in the first proposed rule. As a specially designed component of another defense article, a camera, as defined in the Note to paragraph (c)(1), is eligible for paragraph (b) of specially designed in § 120.41.

Paragraph (c)(2) is added for certain binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems. The Department revised this entry in response to comments regarding non-military uses of binocular, goggles, and other close eye systems described in the first proposed rule. For articles that employ third generation IITs or are sensor fused, the Department described the articles based on their technical characteristics. For articles with an IRFPA or infrared imaging camera, the articles are controlled if specially designed for a military end user.

Paragraph (c)(3) is added for targeting systems specially designed for defense articles.

Paragraph (c)(4) is added for infrared search and track (IRST) systems that utilize a longwave IRFPA and maintain positional or angular state of a target through time. The Department revised this control from the first proposed rule in response to public comments regarding non-military IRST systems.

Paragraph (c)(5) is added for certain infrared imaging systems, described in nine subparagraphs: (1) Mobile systems that provide real-time target location at ranges greater than 5 km; (2) airborne stabilized systems specially designed for military reconnaissance; (3) multispectral imaging systems that classify or identify military or intelligence targets or characteristics; (4) automated missile detection or warning systems; (5) systems hardened to withstand electromagnetic pulse (EMP) or chemical, biological, or radiological threats; (6) systems incorporating mechanisms to reduce signature; (7) certain aerial persistent surveillance systems; (8) certain gimbaled infrared systems; (9) systems specially designed for USML platforms. The Department revised this entry from the first proposed rule in response to comments regarding non-military imaging systems described in the proposed rule.

Paragraph (c)(6) is added for certain terahertz imaging systems. In response to public comments, the Department revised the technical parameter from the first proposed rule from 0.3 milliradians to 0.1 milliradians.

Paragraph (c)(7) is added for systems or equipment incorporating an infrared beacon or emitter specially designed for Combat Identification. The Department revised this entry to Combat Identification from Identification Friend or Foe (IFF) in the first proposed rule in response to public confusion regarding IFF.

Paragraph (c)(8) is added for systems that project radiometrically calibrated scenes directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm.

Paragraph (c)(9) is added for developmental imaging systems funded by the Department of Defense.

Paragraph (d) is revised to include controls on GNSS equipment previously controlled in Category XV and to add subparagraphs (1) through (6) to more clearly describe the articles controlled in (d). Controls on inertial measurement units, accelerometers, gyroscopes, GNNS security devices, and other parts and components of navigation systems are moved to paragraph (e).

Paragraph (d)(1) is added for certain guidance or navigation systems. The Department did not adopt public comments to revise this entry to items specially designed for the military. Rather the Department has revised the technical parameters from the first proposed rule to a level that more clearly describes the military critical technology.

Paragraph (d)(2) is added for GNSS receiving equipment, moved from Category XV.

Paragraph (d)(3) is added for GNSS anti-jam systems specially designed for use with the anti-jam antennae described in USML Category XI(c)(10). In response to public comments, the Department revised the entry for anti-jam GNNS systems from the first proposed rule by expressly linking the control to the anti-jam antennae described in USML Category XI(c)(10).

Paragraph (d)(4) is added for certain mobile relative gravimeters.

Paragraph (d)(5) is added for certain mobile gravity gradiometers.

Paragraph (d)(6) is added for developmental guidance, navigation, or control systems funded by the Department of Defense.

Paragraph (e) is revised to add subparagraphs (1) through (23) to more clearly describe the parts and components for the systems in (a)–(d) that are controlled in (e).

Paragraph (e)(1) is added for parts and components specially designed for articles described in paragraph (a)(1) or (a)(8).

Paragraph (e)(2) is added for lasers specially designed for defense articles. In response to public comments regarding the non-military uses of lasers described in the first proposed rule, the Department limited this entry to lasers that are specially designed for defense articles.

Paragraph (e)(3) is added for laser stacked arrays specially designed for defense articles. In response to public comments regarding the non-military uses of laser stacked arrays described in the first proposed rule, the Department limited this entry to laser stacked arrays that are unique to defense articles.

Paragraph (e)(4) is added for IRFPAs specially designed for defense articles. In response to public comments, the Department completely revised the controls on IRFPAs from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(5) is added for certain charge multiplication focal plane arrays specially designed for defense articles. In response to public comments, the Department completely revised the controls on charge multiplication focal plane arrays from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(6) is added for second generation and greater IITs specially designed for defense articles, and specially designed parts and components therefor. This control includes third generation IITs, EBAPS, night vision and thermal fused IITs, and all subsequent IIT designs. In response to public comments, the Department completely revised the controls on IITs from the first proposed rule, limiting the USML control to those that are unique to defense articles.

Paragraph (e)(7) is added for parts and components specially designed for articles described in paragraph (c)(3), (c)(4), or (c)(5)(vi)–(vii).

Paragraph (e)(8) is added for inertial measurement units specially designed for defense articles. In response to public comments, the Department revised the controls on inertial measurement units from the first proposed rule to a technical parameter based control to a control on all inertial measurement units that are unique to defense articles.

Paragraph (e)(9) is added for GNSS security devices, Selective Availability Anti-Spoofing Module (SAASM), Security Module (SM), and Auxiliary Output Chip (AOC) chips.

Paragraph (e)(10) is added for certain accelerometers that meet the technical parameters. In response to public comments regarding the non-military uses of accelerometers described in the first proposed rule, the Department revised this entry to more specifically describe the items warranting control on the USML.

Paragraph (e)(11) is added for certain gyroscopes and angular rate sensors that meet the technical parameters. In

response to public comments regarding the non-military uses of gyroscopes and angular rate sensors described in the first proposed rule, the Department revised this entry to more specifically describe the items warranting control on the USML.

Paragraph (e)(12) is added for optical sensors that have a spectral filter that is specially designed for items controlled in USML Category XI(a)(4) and optical sensor assemblies that provide threat warning or tracking for those items controlled in USML Category XI(a)(4). In response to public comments, the Department revised the control from the first proposed rule to add the specially designed control parameter.

Paragraph (e)(13) is added for read-out integrated circuits (ROICs) specially designed for defense articles.

Paragraph (e)(14) is added for IDCAs, with or without an IRFPA, specially designed for defense articles, other than those in USML Category XV, and specially designed parts and components therefor.

Paragraph (e)(15) is added for gimbals specially designed for defense articles in this category.

Paragraph (e)(16) is added for IRFPA Joule-Thomson (JT) self-regulating cryostats specially designed for defense articles.

Paragraph (e)(17) is added for infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for defense articles.

Paragraph (e)(18) is added for drive, control, signal, or image processing electronics specially designed for defense articles in this category.

Paragraph (e)(19) is added for near-to-eye displays specially designed for defense articles in this category.

Paragraph (e)(20) is added for resonators, receivers, transmitters, modulators, gain media, and drive electronics or frequency converters specially designed for defense articles in this category.

Paragraph (e)(21) is added for two-dimensional infrared scene projector emitter arrays (*i.e.*, resistive arrays) specially designed for infrared scene generators controlled in USML Category IX(a)(10).

Paragraph (e)(22) is added for classified parts, components, accessories, attachments, and associated equipment.

Paragraph (e)(23) is added for developmental IITs, FPAs, ROICs, accelerometers, gyroscopes, angular rate sensors, and inertial measurement units funded by the Department of Defense.

Paragraph (f) is revised to more clearly describe the technical data and defense services controlled in paragraph (f). In response to public comments, the Department significantly revised paragraph (f), so that it now mirrors the other technical data and defense services paragraphs in ECR-revised USML Categories.

A new (x) paragraph has been added to USML Category XII, allowing ITAR licensing for commodities, software, and technology subject to the EAR provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category XII *and* are described in the purchase documentation submitted with the application.

Finally, articles common to the Missile Technology Control Regime (MTCR) Annex and the USML are to be identified on the USML with the parenthetical ''(MT)'' at the end of each section containing such articles. A separate proposed rule will address the sections in the ITAR that include MTCR definitions.

The following definitions explain and amplify terms used in this Category and are provided to assist exporters in understanding the scope of the proposed control.

Charge multiplication is a form of electronic image amplification, the generation of charge carriers as a result of an impact ionization gain process.

Focal plane array is a linear or two-dimensional planar layer, or combination of planar layers, of individual detector elements, with or without readout electronics, which work in the focal plane.

Note: This definition does not include a stack of single detector elements or any two, three, or four element detectors provided time delay and integration is not performed within the element.

Image intensifier tube refers to an imaging device that incorporates a photoemissive transducer (*i.e.*, photocathode) and achieves electron image amplification in the vacuum space.

Multispectral refers to producing discrete outputs associated with more than one spectral band of response.

Request for Comments

As the U.S. Government works through the proposed revisions to the USML, some control parameters are proposed recognizing that they may control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. With the thought that multiple perspectives would be beneficial to the USML revision process, the Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Categories 5, 11 and 15 (WA–ML15) and the relevant Dual Use List Categories including the IRFPAs in Category 6 (WA–DU 6.A.2). To that end, the public is asked to identify any potential lack of coverage brought about by the proposed rules for Category XII contained in this notice and the new and revised ECCNs published separately by the Department of Commerce when reviewed together.

(2) Another key goal of this rulemaking is to identify items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List. The public is asked to identify any items proposed for control on the USML that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List.

(3) A third key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of control criteria that do not clearly describe items that would be defense articles and thus do not establish a ''bright line'' between the USML and the CCL.

(4) Although the proposed revisions to the USML do not preclude the possibility that items in normal commercial use would or should be ITAR-controlled because, *e.g.*, they provide the United States with a critical military or intelligence advantage, the U.S. government does not want to inadvertently control items on the ITAR that are in normal commercial use. Items that would be controlled on the USML in this proposed rule have been identified as possessing parameters or characteristics that provide a critical military or intelligence advantage. The public is thus asked to provide specific examples of items, if any, that would be controlled by the revised USML Category XII that are now in normal commercial use. The examples should demonstrate actual commercial use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items.

(5) For any criteria the public believes control items in normal commercial use, the public is asked to identify parameters or characteristics that differentiate such items from items exclusively or primarily in military use.

(6) For any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement's Dual Use

List), if any, for such items, and the consequences of such items being controlled on the USML.

(7) The Department seeks public comment on each paragraph of the proposed USML Category XII.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Orders 12372 and 13132

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

Executive Orders 12866 and 13563

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

Executive Order 12988

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

Executive Order 13175

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

Paperwork Reduction Act

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

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

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

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

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

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

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

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the ITAR will decline commensurate with the drop in the number of persons who will be required to register with the

Department pursuant to the ITAR. As stated above, the Department estimates that up to 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 100,000 hours annually. However, the ITAR does provide for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

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

§ 121.1 [Amended]

■ 2. Section 121.1 is amended by:

■ a. Removing and reserving paragraph (e) in U.S. Munitions List Category VIII.

■ b. Revising U.S. Munitions List Category XII:

■ c. Removing and reserving paragraph (a) in U.S. Munitions List Category XIII.

■ d. Removing and reserving paragraph (c) in U.S. Munitions List Category XV.

The revision to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XII—Fire Control, Laser, Imaging, and Guidance and Control Equipment

* (a) Fire control and aiming systems, as follows:

(1) Fire control systems;

(2) Weapon sights, weapon aiming systems, and weapon imaging systems (*e.g.*, clip-on), with or without an integrated viewer, display, or reticle, specially designed for an article subject to this subchapter and also incorporating or specially designed to incorporate any of the following:

(i) An infrared focal plane array having a peak response at a wavelength exceeding 1,000 nm;

(ii) Second generation or greater image intensifier tubes;

(iii) A ballistic computer for adjusting the aim point display; or

(iv) Infrared laser having a wavelength exceeding 710 nm;

(3) Electronic or optical weapon positioning, laying, or spotting systems;

(4) Laser spot trackers and laser spot detection, location, or imaging systems, with an operational wavelength shorter than 400 nm or longer than 710 nm and that are for laser target designators or coded laser target markers controlled in paragraph (b)(1);

Note to paragraph (a)(4): For controls on LIDAR, see paragraph (b)(6) of this category.

(5) Bomb sights or bombing computers;

(6) Electro-optical missile or ordnance tracking systems,

(7) Electro-optical ordnance guidance systems;

(8) Electro-optical systems that automatically detect and locate weapons launch or fire;

(9) Remote wind-sensing systems specially designed for ballistic-corrected aiming; or

(10) Helmet mounted display (HMD) systems or end items, incorporating optical sights or slewing devices that aim, launch, track, or manage munitions, or control infrared imaging systems or end items described in this category, other than such items controlled in Category VIII (*e.g.*, Combat Vehicle Crew HMD, Mounted Warrior HMD, Integrated Helmet Assembly Subsystem, Drivers Head Tracked Vision System);

* (b) Laser systems and end items, as follows:

(1) Laser target designators or coded target markers that mediate the delivery of ordnance to a target;

(2) Target illumination systems having a variable beam divergence, and a laser output wavelength exceeding 710 nm, to artificially light an area to search for or locate a target;

(3) Laser rangefinders having any of the following:

(i) Output wavelength of 1064 nm and any Q-switched pulse output; or

(ii) Output wavelength exceeding 1064 nm and any of the following:

(A) Single shot ranging capability of 3 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km visibility; or

(B) Multiple shot ranging capability at 3 Hz or greater of 1 km or greater against a standard 2.3 m x 2.3 m NATO target having 10% reflectivity and 23 km visibility;

(4) Targeting systems and target location systems, incorporating or specially designed to incorporate a laser rangefinder and incorporating or specially designed to incorporate a Global Navigation Satellite System (GNSS), guidance, or navigation defense article controlled in paragraph (d) of this category (MT if designed or modified for rockets, missiles, space launch vehicles (SLVs), drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(5) Systems specially designed to use laser energy with an output wavelength exceeding 710 nm to exploit differential target-background retroreflectance in order to detect personnel or optical/electro-optical equipment (*e.g.*, optical augmentation systems);

(6) Light detection and ranging (LIDAR), laser detection and ranging (LADAR), or range-gated systems specially designed for a military end user (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km); or

(7) Developmental lasers or laser systems funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (b)(7): This paragraph does not control lasers or laser systems: (a) In production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (b)(7): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (b)(7): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017 or later.

* (c) Night vision, infrared, or terahertz imaging systems or end items, as follows:

(1) Night vision or infrared cameras specially designed for articles in this subchapter;

Note to paragraph (c)(1): The articles controlled by this paragraph have sufficient electronics to enable at a minimum the output of an analog or digital signal once power is applied.

(2) Binoculars, bioculars, monoculars, goggles, or head or helmet-mounted imaging systems (including video-based articles having a separate near-to-eye display), as follows:

(i) Incorporating an autogated third generation image intensifier tube or a higher generation image intensifier tube;

(ii) Fusing output of an image intensifier tube and an infrared focal

plane array having a peak response greater than 1,000 nm; or

(iii) Having an infrared focal plane array or imaging camera, and is specially designed for a military end user;

(3) Targeting systems specially designed for articles in this subchapter;

(4) Infrared search and track (IRST) systems, that:

(i) Incorporate or are specially designed to incorporate an infrared focal plane array or imaging camera, having a peak response within the wavelength range exceeding 3 microns or greater; and

(ii) Maintain positional or angular state of a target through time;

(5) Infrared imaging systems, as follows:

(i) Mobile reconnaissance, scout, or surveillance systems providing real-time target location at ranges greater than 5 km (*e.g.*, LRAS, CIV, HTI, SeeSpot, MMS);

(ii) Airborne stabilized systems specially designed for military reconnaissance (*e.g.*, DB–110, C–B4);

(iii) Multispectral imaging systems that classify or identify military or intelligence targets or characteristics;

(iv) Automated missile detection or warning systems;

(v) Systems hardened to withstand electromagnetic pulse (EMP) or chemical, biological, or radiological threats;

(vi) Systems incorporating mechanism(s) to reduce signature;

(vii) Persistent surveillance systems with a ground sample distance (GSD) of 0.5 m or better (smaller) at 10,000 ft AGL and a simultaneous coverage area of 3 km^2 or greater;

(viii) Gimbaled infrared systems, as follows:

(A) Having a stabilization better (less) than 30 microradians RMS and a turret with a ball diameter of 15 inches or greater; or

(B) Specially designed for articles in this subchapter; or

(ix) Systems specially designed for military platforms controlled in this subchapter (MT if for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics and designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km);

(6) Terahertz imaging systems having a peak response in the frequency range exceeding 30 GHz but not exceeding 3000 GHz, and having a resolution less (better) than 0.1 milliradians at a standoff range of 100 m;

(7) Systems or equipment, incorporating an infrared (IR) beacon or emitter, specially designed for Combat Identification;

(8) Systems that project radiometrically calibrated scenes at a frame rate greater than 30 Hz directly into the entrance aperture of an electro-optical or infrared (EO/IR) sensor controlled in this subchapter within either the spectral band exceeding 10 nm but not exceeding 400 nm, or the spectral band exceeding 900 nm but not exceeding 30,000 nm;

(9) Developmental electro-optical, infrared, or terahertz systems funded by the Department of Defense.

Note 1 to paragraph (c)(9): This paragraph does not control electro-optical, infrared, or terahertz imaging systems: (a) In production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter, or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (c)(9): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (c)(9): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017 or later.

(d) Guidance, navigation, and control systems or end items, as follows:

(1) Guidance or navigation systems (*e.g.*, inertial navigation systems, inertial reference units, attitude and heading reference systems) as follows (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range greater than or equal to 300 km);

(i) Having a circle of equal probability (CEP) of position error rate less (better) than 0.28 nautical miles per hour, without the use of positional aiding references;

(ii) Having a heading error or true north determination of less (better) than 0.28 mrad secant (latitude) (0.016043 degrees secant (latitude));

(iii) Having a CEP of position error rate less than 0.2 nautical miles in an 8 hour period, without the use of positional aiding references; or

(iv) Specified to function at linear acceleration levels exceeding 25 g;

Note 1 to paragraph (d)(1): For rocket, SLV, or missile flight control and guidance systems (including guidance sets), see Category IV(h).

Note 2 to paragraph (d)(1): Inertial measurement units are described in paragraph (e) of this category.

(2) Global Navigation Satellite System (GNSS) receiving equipment, as follows:

(i) GNSS receiving equipment specially designed for military applications (MT if designed or modified for airborne applications and capable of providing navigation information at speeds in excess of 600 m/s);

(ii) Global Positioning System (GPS) receiving equipment specially designed for encryption or decryption (*e.g.*, Y-Code, M-Code) of GPS precise positioning service (PPS) signals (MT if designed or modified for airborne applications);

(iii) GPS receiving equipment specially designed for use with an antenna described in Category XI(c)(10) (MT if designed or modified for airborne applications); or

(iv) GPS receiving equipment specially designed for use with rockets, missiles, SLVs, drones, or unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km (MT);

Note to paragraph (d)(2)(iv): ''Payload'' is the total mass that can be carried or delivered by the specified rocket, missile, SLV, drone or unmanned aerial vehicle that is not used to maintain flight. For definition of ''range'' as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of ''range'' as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(3) GNSS anti-jam systems specially designed for use with an antenna described in Category XI(c)(10);

(4) Mobile relative gravimeters having automatic motion compensation, with an in-service accuracy of less (better) than 0.4 mGal (MT if designed or modified for airborne or marine use and having a time to steady-state registration of two minutes or less);

(5) Mobile gravity gradiometers having an accuracy of less (better) than 10 Eotvos squared per radian per second for any component of the gravity gradient tensor, and having a spatial gravity wavelength resolution of 50 m or less (MT if designed or modified for airborne or marine use);

Note to paragraph (d)(5): ''Eotvos'' is a unit of acceleration divided by distance that was used in conjunction with the older centimeter-gram-second system of units. The Eotvos is defined as 1/1,000,000,000 Galileo (Gal) per centimeter.

(6) Developmental guidance, navigation, or control systems funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km);

Note 1 to paragraph (d)(6): This paragraph does not control guidance, navigation, or control systems: (a) In production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (d)(6): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (d)(6): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017, or later.

Note 4 to paragraph (d)(6): For definition of ''range'' as it pertains to rocket systems, see note 1 to paragraph (a) of USML Category IV. For definition of ''range'' as it pertains to aircraft systems, see note to paragraph (a) of USML Category VIII.

(e) Parts, components, accessories, or attachments, as follows:

(1) Parts and components specially designed for articles described in paragraph (a)(1) or (a)(8) of this section;

(2) Lasers specially designed for articles in this subchapter;

(3) Laser stacked arrays specially designed for articles in this category;

(4) Infrared focal plane arrays (IRFPAs) specially designed for articles in this subchapter;

(5) Charge multiplication focal plane arrays exceeding 50 mA/W for any wavelength exceeding 760 nm and specially designed for articles described in this subchapter;

(6) Second generation and greater image intensifier tubes specially designed for articles in this subchapter, and specially designed parts and components therefore;

Note to paragraph (e)(6): Second and third generation image intensifier tubes are defined as having a peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns and having either: (a) An S–20, S–25, or multialkali photo cathode; or (b) a GaAs, GaInAs, or other III–V compound semiconductor photocathode.

(7) Parts and components specially designed for articles described in paragraph (c)(3), (c)(4), or (c)(5)(vi)–(vii);

(8) Inertial measurement units specially designed for articles in this subchapter (MT for systems incorporating accelerometers specified in (e)(10) or gyroscopes or angular rate sensors specified in (e)(11) that are designated MT);

(9) GNSS security devices (*e.g.*, Selective Availability Anti-Spoofing Modules (SAASM), Security Modules (SM), and Auxiliary Output Chips (AOC);

(10) Accelerometers having a bias repeatability of less (better) than 10 μg and a scale factor repeatability of less (better) than 10 parts per million, or capable of measuring greater than 100,000 g (MT);

Note 1 to paragraph (e)(10): For weapon fuze accelerometers, see Category III(d) or IV(h).

Note 2 to paragraph (e)(10): MT designation does not include accelerometers that are designed to measure vibration or shock.

(11) Gyroscopes or angular rate sensors as follows (MT if having a rated drift stability of less than 0.5 degrees (1 sigma or rms) per hour in a 1 g environment or specified to function at acceleration levels greater than 100 g):

(i) Having an angle random walk of less (better) than 0.001 degrees per square root hour; or

(ii) Mechanical gyroscopes or rate sensors having a bias repeatability less (better) than 0.0015 degrees per hour;

Note to paragraphs (e)(10) and (e)(11): ''Repeatability'' is the closeness of agreement among repeated measurements of the same variable under the same operating conditions when changes in conditions or non-operating periods occur between measurements.

''Bias'' is the accelerometer output when no acceleration is applied.

''Scale factor'' is the ratio of change in output to a change in the input.

The measurement of ''bias'' and ''scale factor'' refers to one sigma standard deviation with respect to a fixed calibration over a period of one year.

''Drift Rate'' is the component of gyro output that is functionally independent of input rotation and is expressed as an angular rate.

''Stability'' is a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.)

(12) Optical sensors having a spectral filter specially designed for systems or equipment controlled in USML Category XI(a)(4), or optical sensor assemblies that provide threat warning or tracking for systems or equipment controlled in Category XI(a)(4);

(13) Read-out integrated circuits (ROICs) specially designed for articles in this subchapter;

(14) Integrated IRFPA dewar cooler assemblies (IDCAs), with or without an IRFPA, specially designed for articles in this subchapter other than Category XV, and specially designed parts and components therefore;

(15) Gimbals specially designed for articles in this category;

(16) IRFPA Joule-Thomson (JT) self-regulating cryostats specially designed for articles controlled in this subchapter;

(17) Infrared lenses, mirrors, beam splitters or combiners, filters, and treatments and coatings, specially designed for articles controlled in this category;

(18) Drive, control, signal, or image processing electronics, specially designed for articles controlled in this category;

(19) Near-to-eye displays specially designed for articles controlled in this category;

(20) Resonators, receivers, transmitters, modulators, gain media, drive electronics, and frequency converters specially designed for laser systems controlled in this category;

(21) Two-dimensional infrared scene projector emitter arrays (*i.e.*, resistive arrays) specially designed for infrared scene generators controlled in USML Category IX(a)(10);

* (22) Any part, component, accessory, attachment, or associated equipment, that:

(i) Is classified;

(ii) Contains classified software;

(iii) Is manufactured using classified production data; or

(iv) Is being developed using classified information.

Note to paragraph (e)(22): ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(23) Developmental image intensification tubes, focal plane arrays, read-out-integrated circuits, accelerometers, gyroscopes, angular rate sensors and inertial measurement units funded by the Department of Defense (MT if designed or modified for rockets, missiles, SLVs, drones, or unmanned aerial vehicle systems capable of a range equal to or greater than 300 km);

Note 1 to paragraph (e)(23): This paragraph does not control items: (a) In production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (e)(23): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (e)(23): This provision is applicable to those contracts or other funding authorizations that are dated XXXX, 2017, or later.

(f) Technical data (see § 120.10) and defense services (see § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category and classified technical data directly related to items controlled in ECCNs 7A611, 7B611, and 7D611. (See § 125.4 for exemptions.) (MT for technical data and defense services related to articles designated as such.) Technical data directly related to manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

(g)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Note to Category XII: For purposes of determining whether an item (*i.e.,* system, end item, part, component, accessory, attachment, or software) is specially designed for a military end user, a ''military end user'' means the national armed services (army, navy, marine, air force, or coast guard), national guard, national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support military end uses. A system or end item is not specially designed for a military end user if the item was developed with knowledge that it is or would be for use by both military end users and non-military end users, or if the item was or is being developed with no knowledge for use by a particular end user. In such instances, documents contemporaneous with the development must establish such knowledge.

* * * * *

Rose E. Gottemoeller,

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

[FR Doc. 2016–03197 Filed 2–18–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118867–10]

RIN 1545–BJ53

Requirements for Type I and Type III Supporting Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the prohibition on certain contributions to Type I and Type III supporting organizations and the requirements for Type III supporting organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type I and Type III supporting organizations and their supported organizations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 19, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118867–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118867–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–118867–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan Carter at (202) 317–5800 or Mike Repass at (202) 317–4086; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 19, 2016.

Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced;
- How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.509(a)–4(i)(4)(iv)(D) (written record of close cooperation and coordination by the governmental supported organizations) and § 1.509(a)–4(i)(6)(iii)(B) (written record of contributions received by the supported organization). Requiring the supporting organization to collect written records of its governmental supported organizations' close cooperation and coordination with each other and written records of the contributions its supported organizations directly received in response to solicitations by the supporting organization permits the IRS to determine whether the supporting organization satisfies the requirements to be a functionally integrated or non-functionally integrated Type III supporting organization. The record keepers are Type III supporting organizations.

Estimated number of recordkeepers: 7,872.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated total annual recordkeeping burden: 15,744.

Estimated frequency of collection of such information: Annual.

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 control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Overview

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) regarding organizations described in section 509(a)(3) of the Internal Revenue Code (Code). An organization described in section 501(c)(3) is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must be described in section 509(a)(1), (2), or (3). Organizations described in section 509(a)(3) are known as ''supporting organizations.'' Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which in this context are referred to as ''supported organizations.''

To be described in section 509(a)(3), an organization must satisfy (1) an organizational test, (2) an operational test, (3) a relationship test, and (4) a disqualified person control test. The organizational and operational tests require that a supporting organization be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more supported organizations. The relationship test requires a supporting organization to establish one of three types of relationships with one or more supported organizations. A supporting organization that is operated, supervised or controlled by one or more supported organizations is known as a ''Type I'' supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is known as a ''Type II'' supporting organization. The relationship of a Type II supporting organization with its supported organization(s) involves common supervision or control by the persons supervising or controlling both the supporting organization and the supported organization(s). A supporting organization that is operated in connection with one or more supported organizations is known as a ''Type III'' supporting organization and is discussed further in the remainder of this preamble. Finally, the disqualified person control test requires that a supporting organization not be controlled directly or indirectly by certain disqualified persons.

These proposed regulations focus primarily on the relationship test for Type III supporting organizations. Specifically, the proposed regulations reflect statutory changes enacted by sections 1241 through 1243 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (2006) (PPA)), which made the following five changes to the requirements an organization must satisfy to qualify as a Type III supporting organization:

(1) Removed the ability of a charitable trust to rely on the special rule under § 1.509(a)–4(i)(2)(iii) of the regulations then in effect;

(2) Directed the Secretary of the Treasury to promulgate regulations under section 509 that establish a new distribution requirement for Type III supporting organizations that are not ''functionally integrated'' (a non-functionally integrated (NFI) Type III supporting organization) to ensure that a ''significant amount'' is paid to supported organizations (for this purpose the term ''functionally integrated'' means a Type III supporting organization that is not required under Treasury regulations to make payments to supported organizations, because the supporting organization engages in activities that relate to performing the functions of, or carrying out the purposes of, its supported organization(s));

(3) Required a Type III supporting organization to provide annually to each of its supported organizations the information required by the Treasury Department and the IRS to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) Prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) Prohibited a Type I or Type III supporting organization from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

These proposed regulations set forth additional rules on the requirements for Type III supporting organizations, including additional requirements to meet the responsiveness test for all Type III supporting organizations; additional rules regarding the qualification of an organization as a functionally integrated Type III supporting organization under § 1.509(a)–4(i)(4), including provisions for supporting organizations that support governmental entities; and additional rules regarding the required annual distributions under § 1.509(a)–4(i)(5) by a NFI Type III supporting organization. The proposed regulations also define the term ''control'' for purposes of section 509(f)(2), which prohibits a Type I supporting organization or a Type III supporting organization from accepting contributions from persons who control the governing body of its supported organization(s).

2. Prior Rulemaking

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 42335) an advanced notice of proposed rulemaking (ANPRM) (REG–155929–06) in response to the PPA. The ANPRM described proposed rules to implement the changes made by the PPA to the Type III supporting organization requirements and solicited comments regarding those proposed rules.

On September 24, 2009, the Treasury Department and the IRS published in the **Federal Register** (74 FR 48672) a notice of proposed rulemaking (the 2009 NPRM) (REG–155929–06). The 2009 NPRM contained proposed regulations (the 2009 proposed regulations) setting forth the requirements to qualify as a Type III supporting organization under the PPA.

On December 28, 2012, the Treasury Department and the IRS published in the **Federal Register** (77 FR 76382) a Treasury decision (TD 9605) containing final and temporary regulations (the 2012 TD) regarding the requirements to qualify as a Type III supporting organization. Based on the comments received, the 2012 TD made certain changes to the rules proposed in the 2009 NPRM, included in the temporary regulations significant changes to the distribution requirement, and reserved certain topics for further consideration. Also on December 28, 2012, the Treasury Department and the IRS published in the **Federal Register** (77 FR 76426) a notice of proposed rulemaking (the 2012 NPRM) (REG–155929–06) that incorporated the text of the temporary regulations in the 2012 TD by cross-reference. The 2012 TD provided transition relief for Type III supporting organizations in existence on December 28, 2012, that met and continued to meet the test under former § 1.509(a)–4(i)(3)(ii), as in effect prior to December 28, 2012, treating them as functionally integrated until the first day of their second taxable years

beginning after December 28, 2012. The preamble to the 2012 TD also identified issues for possible future rulemaking and requested comments. The IRS received three comments on these issues. The comments were considered in developing these proposed regulations and are available for public inspection at *www.regulations.gov* or upon request. No public hearing was requested.

The Treasury Department and the IRS published Notice 2014–4, 2014–2 I.R.B. 274, to provide additional transition relief for any Type III supporting organization that (1) supports at least one governmental supported organization to which the supporting organization is responsive within the meaning of § 1.509(a)–4(i)(3) and (2) engages in activities for or on behalf of the governmental supported organization that perform the functions of, or carry out the purposes of, the governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself. Notice 2014–4 provides that such an organization will be treated as a functionally integrated Type III supporting organization until the earlier of the date final regulations are published under § 1.509(a)–4(i)(4)(iv) in the **Federal Register** or the first day of the organization's third taxable year beginning after December 31, 2013.

On December 23, 2015, the Treasury Department and the IRS published in the **Federal Register** (80 FR 79684) a Treasury Decision (TD 9746) containing final regulations (the 2015 TD) regarding the distribution requirement for NFI Type III supporting organizations. The preamble of those regulations provided that supporting organizations supporting a governmental supported organization could continue to rely on Notice 2014–4 until the date of publication of the notice of proposed rulemaking prescribing the new proposed regulations under § 1.509(a)–(i)(4)(iv). The IRS received three comments in response to Notice 2014–4, which the Treasury Department and the IRS considered in developing these proposed regulations.

Explanation of Provisions and Summary of Comments

This section describes the proposed provisions and addresses comments that the Treasury Department and the IRS received in response to the 2012 TD and Notice 2014–4.

1. Gifts From Controlling Donor—Meaning of Control

Type I and Type III supporting organizations are prohibited from accepting a gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization, or from persons related to a person possessing such control. Section 509(f)(2) and § 1.509(a)–4(f)(5). For this purpose, related persons include family members and 35-percent controlled entities within the meaning of section 4958(f). Although the 2012 TD reserved § 1.509(a)–4(f)(5)(ii), ''Meaning of control,'' the preamble to the 2012 TD indicated that the Treasury Department and the IRS intended to issue proposed regulations that would provide such a definition.

These proposed regulations define ''control'' for this purpose consistently with § 1.509(a)–4(j), which relates to control by disqualified persons for purposes of the disqualified person control test. In general, under the proposed regulations, the governing body of a supported organization is considered ''controlled'' by a person if that person, alone or by aggregating his or her votes or positions of authority with certain related persons, as described in section 509(f)(2)(B)(ii) and (iii), may require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act.

2. Type III Supporting Organization Relationship Test

Section 1.509(a)–4(i)(1) provides that for each taxable year, a Type III supporting organization must satisfy (i) a notification requirement, (ii) a responsiveness test, and (iii) an integral part test provided in the regulations. These proposed regulations provide additional rules regarding each of these requirements.

A. Notification Requirement

Section 509(f)(1)(A) provides that an organization shall not be considered a Type III supporting organization unless the organization provides to each supported organization, for each taxable year, such information as the Secretary may require to ensure that the organization is responsive to the needs or demands of the supported organizations.

To satisfy this notification requirement, § 1.509(a)–4(i)(2) requires a Type III supporting organization to provide to each of its supported organizations for each taxable year: (1) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support it provided to the supported organization during the supporting organization's preceding taxable year; (2) a copy of the supporting organization's most recently filed Form 990, ''Return of Organization Exempt from Income Tax,'' or other annual information return required to be filed under section 6033; and (3) a copy of the supporting organization's governing documents, including any amendments (unless previously provided and not subsequently amended). For NFI Type III supporting organizations, the description of support in the written notice includes all of the distributions described in § 1.509(a)–4(i)(6) to the supported organization.

The proposed regulations amend § 1.509(a)–4(i)(2) to clarify that a supporting organization must deliver the required documents to each of its supported organizations by the last day of the fifth month of the taxable year after the taxable year in which the supporting organization provided the support it is reporting. This proposed change is intended to reduce confusion, but does not substantively change the due date or the content of the required notification. Date of delivery is determined applying the general principles of section 7502.

B. Responsiveness Test

Section 1.509(a)–4(i)(3)(i) provides that a supporting organization meets the responsiveness test if it is ''responsive to the needs or demands of a supported organization.'' To meet this responsiveness test, an organization must satisfy: (1) A relationship test described in § 1.509(a)–4(i)(3)(ii) under which the officers, directors, or trustees of the organization have a specified relationship with the officers, directors, or trustees (and in some cases the members) of the supported organization; and (2) a significant voice test described in § 1.509(a)–4(i)(3)(iii) under which the officers, directors, or trustees of the supported organization, by reason of this relationship, have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by the supporting organization, and in otherwise directing the use of the income or assets of the supporting organization. The preamble to the 2012 TD stated that, in determining the appropriate distribution amount for NFI

Type III supporting organizations, the Treasury Department and the IRS considered the required relationship between a supporting organization and its supported organizations, and that the Treasury Department and the IRS intended to issue proposed regulations in the future that would amend the responsiveness test by requiring a Type III supporting organization to be responsive to all of its supported organizations.

In response to this proposal in the preamble to the 2012 TD, one commenter stated that a supporting organization should not be required to be responsive to all of its supported organizations because the resulting administrative burden would effectively limit the total number of organizations a supporting organization could support. The commenter suggested alternatives under which a supporting organization would be responsive to only a subset of its supported organizations that would vary from year to year.

The Treasury Department and the IRS note that the distinguishing characteristic of Type III supporting organizations, and the basis for their public charity classification, is that they are responsive to and significantly involved in the operations of their publicly supported organizations. *See* § 1.509(a)–4(f)(4). The Treasury Department and the IRS believe that, unless a Type III supporting organization is responsive to each of its supported organizations, the supported organizations cannot exercise the requisite level of oversight of and engagement with the supporting organization. Limiting the responsiveness requirement to fewer than all of the supported organizations may result in the necessary oversight and accountability being present for less than all of a supporting organization's operations. Therefore, the proposed regulations revise § 1.509(a)–4(i)(3)(i) to require a supporting organization to be responsive to the needs and demands of each of its supported organizations in order to meet the responsiveness test.

To illustrate how concerns about potential administrative burdens may be addressed consistent with the responsiveness test, the proposed regulations include a new example. The proposed example is intended to demonstrate one way in which a Type III supporting organization that supports multiple organizations may satisfy the responsiveness test in a manner that can be cost-effective. The example shows that a supporting organization can, with respect to each of its supported organizations, meet a different subset of the required relationships with the supporting organization's officers, directors, or trustees listed in § 1.509(a)–4(i)(3)(ii). It also shows how a supporting organization can organize and hold regular meetings, provide information, and encourage communication to help ensure that the supported organizations have a significant voice in the operations of the supporting organization.

Another commenter requested additional guidance regarding the ability of trusts to satisfy the significant voice requirement of the responsiveness test. The new Example 3 provides further illustration of how Type III supporting organizations, including charitable trusts, might satisfy the significant voice requirement of the responsiveness test. The Treasury Department and the IRS note that although the examples in the regulations relating to the responsiveness test may involve a Type III supporting organization that is organized as either a corporation or a trust, the applicable law and relevant regulatory provisions, as modified by the proposed regulations, are applicable to all Type III supporting organizations in the same manner, whether organized as a corporation or a trust. The Treasury Department and the IRS anticipate that Type III supporting organizations may be able to demonstrate they satisfy the responsiveness test in a variety of ways, and that the determination will be based on all the facts and circumstances.

As a result of the proposed changes to the responsiveness test, the proposed regulations also include conforming changes to examples and other regulatory provisions.

C. Integral Part Test—Functionally Integrated Type III Supporting Organizations

Section 1.509(a)–4(i)(1) provides that, for each taxable year, a Type III supporting organization must satisfy the integral part test. The integral part test is satisfied under § 1.509(a)–4(i)(1)(iii) by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organizations are dependent. To satisfy this test, a Type III supporting organization must meet the requirements either for a functionally integrated Type III supporting organization or for an NFI Type III supporting organization, as set forth in § 1.509(a)–4(i)(4) or (5), respectively.

A Type III organization is functionally integrated under § 1.509(a)–4(i)(4) if (1) it engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of that section, (2) it is the parent of each of its supported organizations as described in paragraph (i)(4)(iii) of that section, or (3) it supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of that section. The direct furtherance test is not addressed by these regulations.

i. Parent of Each Supported Organization

Under the current regulations, a supporting organization is the parent of a supported organization if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization. *See* § 1.509(a)–4(i)(4)(iii). This definition was adopted by the 2012 TD; however, the preamble to the 2012 TD stated that the Treasury Department and the IRS had determined that the definition of parent was insufficiently specific. It further stated that the Treasury Department and the IRS intended to issue proposed regulations that would provide a new definition of parent.

As noted in the preamble to the 2009 NPRM, the classification of a parent organization as functionally integrated was intended to ''apply to supporting organizations that oversee or facilitate the operation of an integrated system, such as hospital systems.'' To more fully accomplish this purpose, the proposed regulations amend § 1.509(a)–4(i)(4)(iii) to clarify that in order for a supporting organization to qualify as the parent of each of its supported organizations, the supporting organization and its supported organizations must be part of an integrated system (such as a hospital system), and the supporting organization must engage in activities typical of the parent of an integrated system. Examples of these activities include (but are not limited to) coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation for the supported organizations. The Treasury Department and the IRS request comments on what activities are typical of the parent of an integrated system, and whether additional

activities should be explicitly listed as examples.

The proposed regulations retain the requirement that the governing body, members of the governing body, or officers of the supporting organization must appoint or elect a majority of the officers, directors, or trustees of the supported organization. The Treasury Department and the IRS intend, as stated in the 2009 NPRM, the use of the phrase ''appointed or elected, directly or indirectly'' to mean the supporting organization could qualify as a parent of a second-tier (or lower) subsidiary. Thus, for example, if the directors of supporting organization A appoint a majority of the directors of supported organization B, which in turn appoints a majority of the directors of supported organization C, the directors of supporting organization A will be treated as appointing the majority of the directors of both supported organization B and supported organization C.

The preamble to the 2012 TD stated that the Treasury Department and the IRS intended that the new definition of parent would specifically address the power to remove and replace officers, directors, or trustees of the supported organization. The Treasury Department and the IRS interpret the existing requirement under § 1.509(a)–4(i)(4)(iii) that the parent organization have the power to appoint or elect a majority of the officers, directors, or trustees of each supported organization to include the requirement that the parent organization also have the power to remove and replace such officers, directors, or trustees, or otherwise have an ongoing power to appoint or elect with reasonable frequency. The Treasury Department and the IRS request comments on whether § 1.509(a)–4(i)(4)(iii) should be amended to provide further clarification on this issue.

ii. Supporting a Governmental Supported Organization

The 2009 NPRM proposed an exception to the general rules for qualifying as a functionally integrated Type III supporting organization if the supporting organization supported only one governmental entity, which was defined as an entity the assets of which are subject to the appropriations process of a federal, state, local, or Indian tribal government. The 2009 NPRM also provided that in order to be considered functionally integrated, a substantial part of the supporting organization's total activities had to directly further the exempt purpose(s) of its supported organization, and that exempt purposes are not directly furthered by fundraising, grantmaking, or investing and managing non-exempt-use assets. The Treasury Department and IRS received multiple comments regarding this proposal. The 2012 TD stated the Treasury Department and the IRS were continuing to consider the public comments on the 2009 NPRM regarding this governmental entity exception and reserved § 1.509(a)–4(i)(4)(iv) for future guidance on how a Type III supporting organization can qualify as functionally integrated by supporting a governmental entity.

These proposed regulations take the prior comments into consideration and provide rules to qualify as functionally integrated both for new and existing Type III supporting organizations that support governmental supported organizations. These proposed rules also define the term ''governmental supported organization.''

One commenter stated that the definition of a governmental supported organization in the 2009 NPRM was too complicated and difficult to understand and administer. This commenter proposed using the existing definition of a governmental unit in section 170(b)(1)(A)(v) and (c)(1).

The Treasury Department and the IRS agree with the commenter that for simplicity and administrability the term ''governmental supported organization'' should be defined by using an existing Code definition of a governmental unit. The proposed regulations define a governmental supported organization as a governmental unit described in section 170(c)(1), or an organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1). The Treasury Department and the IRS further note that a governmental unit described in section 170(c)(1) includes all of the agencies, departments, and divisions of the governmental unit, and all such agencies, departments, and divisions will be treated as one governmental supported organization for purposes of § 1.509(a)–4(i)(4)(iv). The Treasury Department and the IRS specifically request comments on the proposed definition of governmental supported organization.

Two commenters said that the 2009 NPRM's limit of only one governmental supported organization was too strict and instead recommended allowing a supporting organization to qualify for this exception if it supports at least one governmental supported organization, as Notice 2014–4 provides. One commenter noted that the 2009 NPRM's limit of only one governmental supported organization would adversely affect existing supporting organizations that support an additional supported organization that is not itself a governmental entity, but that has a substantial operational connection with the governmental supported organization. Another commenter said that the test in Notice 2014–4 was not sufficient because it did not cover activities, such as fundraising and grant making, that the governmental supported organization could not otherwise perform.

In response to these comments, the Treasury Department and the IRS propose a new test for Type III supporting organizations that support only governmental supported organizations to qualify as functionally integrated. The Treasury Department and the IRS agree it would be appropriate to treat a Type III supporting organization that supports two or more governmental supported organizations as functionally integrated, provided that the governmental supported organizations are themselves connected geographically or operationally, which will help ensure that the supported organizations provide sufficient input to and oversight of the supporting organization. Thus, the proposed regulations provide that a supporting organization that supports more than one governmental supported organization may be considered functionally integrated if all of its governmental supported organizations either: (1) Operate within the same geographic region (defined as a city, county, or metropolitan area); or (2) work in close coordination or collaboration with one another to conduct a service, program, or activity that the supporting organization supports. To satisfy the close cooperation or coordination requirement, the proposed regulations require a supporting organization to maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their collaborative or cooperative efforts with respect to the particular service, program, or activity. In addition, the proposed regulations incorporate the 2009 NPRM proposed requirement that a substantial part of the supporting organization's total activities must directly further the exempt purposes of its governmental supported organization(s). The Treasury Department and the IRS believe that using a substantial part requirement, instead of the substantially all requirement in § 1.509(a)–4(i)(4)(iv)(A), is appropriate when supporting

organizations support only governmental supported organizations operating in the same geographic region or working in close collaboration because the input from and oversight by the governmental supported organizations minimize the potential for abuse.

Two commenters stated that activities such as fundraising, grant-making, and managing non-exempt-use assets should be considered activities that directly further the exempt purposes of a governmental supported organization. The Treasury Department and the IRS note that the integral part test's definition of ''directly further'' in § 1.509(a)–4(i)(4)(ii)(C) generally excludes fundraising, making grants, and investing and managing non-exempt-use assets. The Treasury Department and the IRS excluded these items because they determined that a Type III supporting organization should qualify as functionally integrated only if the supporting organization itself conducts activities that perform the functions of or carry out the purposes of the supported organization (as distinguished from providing financial support for the activities carried out by the supported organization). The Treasury Department and the IRS do not believe a different definition of ''directly further'' should apply to supporting organizations that support governmental supported organizations. Accordingly, the proposed regulations do not adopt this comment. However, under the proposed rules, these types of organizations would be considered functionally integrated if a substantial part, but not substantially all, of their total activities directly further the exempt purposes of their governmental supported organization(s). Accordingly, these proposed regulations allow these organizations to conduct more fundraising and other financial activities, if certain requirements are met, than is permitted under the substantially all test of § 1.509(a)–4(i)(4)(ii).

In response to comments, the proposed regulations also provide a special rule for existing Type III supporting organizations, provided that they support no more than one additional supported organization that is not a governmental supported organization. A Type III supporting organization in existence on or before February 19, 2016 is treated as functionally integrated if: (1) It supports one or more governmental supported organizations and no more than one supported organization that is not a governmental supported organization; (2) it designated each of its supported organizations as provided in § 1.509(a)–4(d)(4) on or before February 19, 2016; and (3) a substantial part of its total activities directly furthers the exempt purposes of its governmental supported organization(s).

The proposed regulations also further extend the transition relief provided in Notice 2014–4 and extended by the 2015 TD. Under the proposed regulations, a Type III supporting organization in existence on or before February 19, 2016 that continues to meet the requirements of Notice 2014–4 is treated as functionally integrated until the earlier of the first day of the organization's first taxable year beginning after the date final regulations under § 1.509(a)–4(i)(4)(iv) are published or the first day of the organization's second taxable year beginning after February 19, 2016.

D. Integral Part Test—Non-Functionally Integrated Type III Supporting Organizations

Section 1.509(a)–4(i)(5) generally provides that an NFI Type III supporting organization meets the integral part test if it satisfies the distribution requirement of paragraph (i)(5)(ii) of that section and the attentiveness requirement of paragraph (i)(5)(iii) of that section. Section 1.509(a)–4(i)(5)(ii) provides that, with respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding its ''distributable amount''. Section 1.509(a)–4(i)(6) provides the amount of a distribution made to a supported organization is the amount of cash or the fair market value of the property distributed.

For clarity and consistency, the proposed regulations revise § 1.509(a)–4(i)(5)(ii) to state that a supporting organization must make distributions as described in § 1.509(a)–4(i)(6) to satisfy the distribution requirement, and revise section 1.509(a)–4(i)(6) to describe in detail what distributions count towards the distribution requirement.

i. Reduction of Distributable Amount for Taxes Subtitle A Imposes

Section 1.509(a)–4(i)(5)(ii)(B) provides that the distributable amount is equal to the greater of 85 percent of an organization's adjusted net income for the immediately preceding taxable year (as determined by applying the principles of section 4942(f) and § 53.4942(a)–2(d)) or its minimum asset amount for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Code during the immediately preceding taxable year. *See* § 1.509(a)–4(i)(5)(ii)(B).

The Treasury Department and the IRS believe that, because the taxes under subtitle A of the Code are imposed on a supporting organization's unrelated business taxable income (pursuant to section 511) and the activity that produces the unrelated business taxable income does not further the supported organization's exempt purposes, these taxes should not be treated as an amount distributed to a supported organization. Therefore, the proposed regulations remove the provision in § 1.509(a)–4(i)(5)(ii)(B) that reduces the distributable amount by the amount of taxes subtitle A of the Code imposed on a supporting organization during the immediately preceding taxable year.

ii. Distributions That Count Toward Distribution Requirement

As noted above, § 1.509(a)–4(i)(6) provides details on the distributions by a supporting organization that count toward satisfying the distribution requirement imposed in § 1.509(a)–4(i)(5)(ii). The current regulations provide that distributions include but are not limited to: (1) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes; (2) any amount paid by the supporting organization to perform an activity that directly furthers the exempt purposes of the supported organization within the meaning of § 1.509(a)–4(i)(4)(ii), but only to the extent such amount exceeds any income derived by the supporting organization from the activity; (3) any reasonable and necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income; (4) any amount paid to acquire an exempt-use asset described in § 1.509(a)–4(i)(8)(ii); and (5) any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive.

The preamble to the 2012 TD stated that the list in § 1.509(a)–4(i)(6) is not exhaustive and other distributions may count toward the distribution requirement. The preamble further stated the Treasury Department and the IRS intended to propose regulations that more fully describe the expenditures (including expenditures for administrative and additional charitable activities) that do and do not count toward the distribution requirement.

The Treasury Department and the IRS believe that the non-exclusive list in the current regulations creates uncertainty

for supporting organizations and the IRS about what counts toward the distribution requirement. Therefore, the proposed regulations revise and clarify the list in § 1.509(a)–4(i)(6) of what counts toward the distribution requirement and make it an exclusive list.

The 2012 TD clarified that reasonable and necessary administrative expenses paid to accomplish the exempt purposes of supported organizations, and not expenses incurred in the production of investment income, count toward the distribution requirement. For example, if a supporting organization conducts exempt activities that are for the benefit of, perform the functions of, or carry out the purposes of its supported organization(s) and also conducts nonexempt activities (such as investment activities or unrelated business activities), then the supporting organization's administrative expenses (such as salaries, rent, utilities and other overhead expenses) must be allocated between the exempt and nonexempt activities on a reasonable and consistently-applied basis. The administrative expenses attributable to the exempt activities are treated as distributions to its supported organization(s) if such expenses are reasonable and necessary. The administrative expenses and operating costs attributable to the nonexempt activities are not treated as distributions to the supported organization(s). The proposed regulations retain this provision, but also provide additional guidance on fundraising expenses.

The 2012 TD did not specifically address whether fundraising expenses count toward the distribution requirement. The proposed regulations specify that reasonable and necessary administrative expenses paid to accomplish the exempt purposes of a supported organization generally do not include fundraising expenses the supporting organization incurs. However, under the proposed regulations, reasonable and necessary expenses incurred by the supporting organization to solicit contributions that a supported organization receives directly from donors count toward the distribution requirement, but only to the extent that the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation activities of the supporting organization. The Treasury Department and the IRS believe this rule would provide greater consistency with the treatment of contributions that supporting organizations receive directly and then distribute to their supported organizations (net of the supporting organizations' solicitation expenses). To ensure that a supporting organization has the information it needs to calculate the allowable expenses, the proposed regulations require the supporting organization to obtain written substantiation from the supported organization of the amount of contributions the supported organization actually received as a result of the supporting organization's solicitations.

One commenter requested that program related investments (PRIs) count toward the distribution requirement. The preamble to the 2012 TD stated the 2012 final and temporary regulations did not specifically address whether or not PRIs may count toward the distribution requirement or are excluded in calculating a supporting organization's distributable amount for a taxable year. The Treasury Department and the IRS recognize that private foundations may use PRIs in a variety of ways to accomplish their exempt purposes and that PRIs thus are treated as qualifying distributions under section 4942. However, because supporting organizations must be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of their supported organizations, they differ from private foundations. For purposes of meeting the integral part test, the Treasury Department and the IRS do not believe that PRIs should be treated as distributions to supported organizations. The Treasury Department and the IRS believe that other provisions relating to the distribution requirement, such as the availability of set asides and the potential for carry-forwards of excess distributions, provide significant flexibility for supporting organizations to meet the current and future needs of their supported organizations. For these reasons, the proposed regulations do not adopt this comment.

Effective Date and Reliance

These regulations are proposed to be effective on the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**. However, taxpayers may rely on the provisions of the proposed regulations until final or temporary regulations are issued.

Statement of Availability of IRS Documents

The IRS Notice 2014–4 cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

In connection with the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in the proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations will not impact a substantial number of small entities.

Based on IRS Statistics of Income data for 2013, there are 1,052,495 active nonprofit charitable organizations recognized by the IRS under section 501(c)(3), of which only 7,872 organizations self-identified as Type III supporting organizations. The universe of organizations that would be affected by the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and § 1.509(a)–4(i)(6)(iii) is a subset of all Type III supporting organizations. Thus, the number of organizations that would be affected by the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and (i)(6)(iii), which is expected to be significantly less than 7,872, would not be substantial. Moreover, the time to complete the recordkeeping requirements is expected to be no more than 2 hours for each organization, which would not have a significant economic impact. Therefore, the collection of information under proposed § 1.509(a)–4(i)(4)(iii) and (i)(6)(iii) would not have a significant economic impact.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic comments or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and

the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jonathan Carter and Mike Repass, Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.509(a)–4 is amended by:

■ 1. Revising paragraphs (f)(5)(ii), (i)(2)(i) introductory text, (i)(2)(i)(A), (i)(2)(iii), and (i)(3)(i);

■ 2. Adding *Example 3* to paragraph (i)(3)(iv);

■ 3. Revising paragraphs (i)(4)(ii)(A)(*1*), (i)(4)(ii)(B), (i)(4)(iii) and (iv), (i)(5)(ii)(A) and (B), (i)(5)(iii)(A), *Example 4* of paragraph (i)(5)(iii)(D), the third sentence of paragraph (i)(6) introductory text, and paragraphs (i)(6)(iii) and (v) introductory text and (l).

The revisions and additions read as follows:

§ 1.509(a)–4 Supporting organizations.

* * * * *

(f) * * *

(5) * * *

(ii) *Meaning of control.* For purposes of paragraph (f)(5)(i) of this section, the governing body of a supported organization will be considered *controlled* by a person described in paragraph (f)(5)(i)(A) of this section if that person, alone or by aggregating the person's votes or positions of authority with persons described in paragraph (f)(5)(i)(B) or (C) of this section, may require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act. The governing body of a supported organization will generally be considered to be controlled directly or indirectly by one or more persons described in paragraph (f)(5)(i)(A), (B), or (C) of this section if the voting power of such persons is 50 percent or more of the total voting power of such governing body or if one or more of such persons have the right to exercise veto power over the actions of the governing body of the supported organization. However, all pertinent facts and circumstances will be taken into consideration in determining whether one or more persons do in fact directly or indirectly control the governing body of a supported organization.

* * * * *

(i) * * *

(2) * * * (i) *Annual notification.* For each taxable year (the Reporting Year), a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support (including all of the distributions described in paragraph (i)(6) of this section if applicable) the supporting organization provided to the supported organization during the supporting organization's taxable year immediately preceding the Reporting Year (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided);

* * * * *

(iii) *Due date.* The notification documents required by this paragraph (i)(2) shall be delivered or electronically transmitted by the last day of the fifth calendar month of the Reporting Year.

* * * * *

(3) * * * (i) *General rule.* A supporting organization meets the responsiveness test only if it is responsive to the needs or demands of each of its supported organizations. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (iii) of this section with respect to each of its supported organizations.

* * * * *

(iv) * * *

Example 3. Z is described in section 501(c)(3). Z's organizational documents provide that it supports ten different organizations, each of which is described in section 509(a)(1). One of the directors of S (one of the supported organizations) is a voting member of Z's board of directors and participates in Z's regular board meetings. Officers of Z hold regular face-to-face or telephonic meetings during the year to which officers of all the supported organizations are invited. Z's meetings with the supported organizations may be held jointly or separately. Prior to the meetings, Z makes available to the supported organizations (including by email) up-to-date information about its activities including its assets and liabilities, receipts and distributions, and investment policies and returns. In the meetings, officers of each of the supported organizations have an opportunity to ask questions and discuss with officers of Z the projected needs of their organizations, as well as Z's investment and grant making policies and practices. In addition to holding these meetings with the supported organizations, Z provides the contact information of one of its officers to each of the supported organizations and encourages them to contact that officer if they have questions, or if they wish to schedule additional meetings to discuss the projected needs of their organization and how Z should distribute its income and invest its assets. Z provides the information required under paragraph (i)(2) of this section and a copy of its annual audited financial statements to the principal officers of the supported organizations. Z meets the relationship test of paragraph (i)(3)(ii)(B) or (C) of this section with respect to each of its supported organizations. Based on these facts, Z also satisfies the significant voice requirement of paragraph (i)(3)(iii) of this section, and therefore meets the responsiveness test of this paragraph (i)(3) with respect to each of its ten supported organizations.

* * * * *

(4) * * *

(ii) * * *

(A) * * *

(*1*) Directly further the exempt purposes of one or more supported organizations by performing the functions of, or carrying out the purposes of, such supported organization(s); and

* * * * *

(B) *Meaning of substantially all.* For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization's activities directly further the exempt purposes of one or more supported organization(s), all pertinent facts and circumstances will be taken into consideration.

* * * * *

(iii) *Parent of supported organization(s).* For purposes of paragraph (i)(4)(i)(B) of this section, in order for a supporting organization to qualify as the parent of each of its

supported organizations, the supporting organization and its supported organizations must be part of an integrated system (such as a hospital system), the supporting organization must engage in activities typical of the parent of an integrated system, and a majority of the officers, directors, or trustees of each supported organization must be appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization. For purposes of this paragraph (i)(4)(iii), examples of activities typical of the parent of an integrated system of supported organizations include (but are not limited to) coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation for the supported organizations.

(iv) *Supporting a governmental supported organization*—(A) *In general.* A supporting organization satisfies the requirements of this paragraph (i)(4)(iv) if—

(*1*) The supporting organization supports only governmental supported organizations, and, if the supporting organization supports more than one governmental supported organization, all of the governmental supported organizations either—

(*i*) Operate within the same geographic region; or

(*ii*) Work in close coordination or collaboration with one another to conduct a service, program, or activity that the supporting organization supports; and

(*2*) A substantial part of the supporting organization's total activities are activities that directly further, as defined by paragraph (i)(4)(ii)(C) of this section, the exempt purposes of its governmental supported organization(s).

(B) *Governmental supported organization defined.* For purposes of paragraph (i)(4)(iv)(A) of this section, the term *governmental supported organization* means a supported organization that is—

(*1*) A governmental unit described in section 170(c)(1); or

(*2*) An organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1).

(C) *Geographic region defined.* For purposes of paragraph (i)(4)(iv)(A)(*1*) of this section, the term *geographic region* means a city, county, or metropolitan area.

(D) *Close cooperation or coordination.* To satisfy the close cooperation or coordination requirement of paragraph (i)(4)(iv)(A)(*1*) of this section, the supporting organization shall maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their collaborative or cooperative efforts with respect to the particular service, program, or activity.

(E) *Exception for organizations supporting a governmental supported organization on or before* February 19, 2016. A Type III supporting organization in existence on or before February 19, 2016 will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it met and continues to meet the following requirements—

(*1*) It supports one or more governmental supported organizations described in paragraph (i)(4)(iv)(B) of this section and does not support more than one supported organization that is not a governmental supported organization;

(*2*) Each of the supported organizations is designated by the supporting organization as provided in paragraph (d)(4) of this section on or before February 19, 2016; and

(*3*) A substantial part of the supporting organization's total activities are activities that directly further, as defined by paragraph (i)(4)(ii)(C) of this section, the exempt purposes of its governmental supported organization(s).

(F) *Transition rule for supporting organizations in existence on or before* February 19, 2016. Until the earlier of the first day of the organization's first taxable year beginning after the date final regulations are published in the **Federal Register** under this paragraph (i)(4)(iv) or the first day of the organization's second taxable year beginning after February 19, 2016, a Type III supporting organization in existence on or before February 19, 2016 will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it met and continues to meet the following requirements—

(*1*) It supports at least one supported organization that is a governmental entity to which the supporting organization is responsive within the meaning of paragraph (i)(3) of this section; and

(*2*) It engages in activities for or on behalf of the governmental supported organization described in paragraph (i)(4)(iv)(F)(*1*) of this section that perform the functions of, or carry out the purposes of, that governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself.

* * * * *

(5) * * *

(ii) * * * (A) *Annual distribution.* With respect to each taxable year, a supporting organization must make distributions described in paragraph (i)(6) of this section in a total amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of the taxable year.

(B) *Distributable amount.* Except as provided in paragraphs (i)(5)(ii)(D) and (E) of this section, the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)–2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (immediately preceding taxable year) or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year.

* * * * *

(iii) * * * (A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section).

* * * * *

(D) * * *

Example 4. O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test described in paragraph (i)(3) of this section with respect to each of its supported organizations. Each year, O distributes an aggregate amount that equals its distributable amount described in paragraph (i)(5)(ii)(B) of this section and distributes an equal amount to each of the five universities. O distributes annually to each of V and W an amount that equals more than 10 percent of each university's total annual support received in its most recently completed taxable year. Based on these facts, O meets the requirements of paragraph (i)(5)(iii) of this section because it distributes two-fifths (more than the required one-third) of its

distributable amount to supported organizations that are attentive to O.

(6) *Distributions that count toward distribution requirement.* * * * Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section are limited to the following—

* * * * *

(iii) Any reasonable and necessary—

(A) Administrative expenses paid to accomplish the exempt purposes of the supported organization, which do not include expenses incurred in the production of investment income or the conduct of fundraising activities, except as provided in paragraph (i)(6)(iii)(B) of this section; and

(B) Expenses incurred to solicit contributions that are received directly by a supported organization, but only to the extent the amount of such expenses does not exceed the amount of contributions actually received by the supported organization as a result of the solicitation, as substantiated in writing by the supported organization;

* * * * *

(v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization, with such set-aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—

* * * * *

(l) *Effective/applicability dates.* (1) Paragraphs (a)(6), (f)(5), and (i) of this section are effective on December 28, 2012, except—

(i) Paragraphs (i)(4)(ii)(C), (i)(5)(ii)(C) and (D), (i)(6)(iv), (i)(7)(ii), and (i)(8) of this section are applicable on December 21, 2015; and

(ii) Paragraphs (f)(5)(ii), (i)(2)(i) and (iii), (i)(3)(i), (i)(4)(ii)(A)(1), (i)(4)(ii)(B), (i)(4)(iii) and (iv), (i)(5)(ii)(A) and (B), (i)(5)(iii)(A), (i)(6)(i), (iii) and (v) of this section, *Example 3* of paragraph (i)(3)(iv) of this section, and *Example 4* of paragraph (i)(5)(iii)(D) of this section are effective on the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**.

(2) See paragraphs (i)(5)(ii)(B) and (C) and (i)(8) of § 1.509(a)–4T contained in 26 CFR part 1, revised as of April 1, 2015, for certain rules regarding non-functionally integrated Type III supporting organizations effective before December 21, 2015. See paragraphs (i)(5)(ii)(A) and (B) and (i)(5)(iii)(D) of § 1.509(a)–4 (as effective December 21, 2015), for certain rules regarding non-functionally integrated Type III supporting organizations effective before the date the Treasury decision adopting these rules as final or temporary regulations is published in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–02858 Filed 2–18–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0060, FRL–9942–52–Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter ($PM_{2.5}$) and 2008 lead National Ambient Air Quality Standards (NAAQS). The plan is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In this rulemaking action, EPA is proposing to approve, in accordance with the requirements of the CAA, the infrastructure SIP submissions with the exception of some portions of the submittals addressing Prevention of Significant Deterioration (PSD).

DATES: Written comments must be received on or before March 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2016–0060 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, or by email at *forde.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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I. Background
II. Summary of State Submittals
III. EPA's Approach To Review Infrastructure SIPs
IV. Summary of EPA's Rationale for Proposing Approval and Disapproval
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VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised national ambient air quality standard (NAAQS or standards) for ozone (62 FR 38856) and a new NAAQS for fine particle matter ($PM_{2.5}$) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$

primary and secondary NAAQS from 65 μg/m³ to 35 μg/m³. As required by section 110(a)(1) of the CAA, the 110(a)(2) submittals were due within three years after promulgation of the revised standard.

On March 27, 2008 (73 FR 16436) EPA strengthened its NAAQS for ground-level ozone, revising the 8-hour primary ozone standard to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard.

On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for lead. The Agency revised the level of the primary lead standard from 1.5 μg/m³ to 0.15 μg/m³ . The EPA also revised the secondary NAAQS to 0.15 μg/m³ and made it identical to the revised primary standard.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of State Submittals

The Commonwealth of Puerto Rico through the Commonwealth of Puerto Rico Environmental Quality Board (PREQB) submitted five revisions to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the five different NAAQS. On November 29, 2006, PREQB submitted SIP revisions addressing the infrastructure requirements for the 1997 ozone and $PM_{2.5}$ NAAQS. On January 22, 2013 and April 16, 2015, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS, and supplemented the November 2006 submittal for the 1997 ozone and $PM_{2.5}$ NAAQS. On January 31, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2008 lead NAAQS. On February 1, 2016, PREQB submitted additional provisions for inclusion into the SIP which address infrastructure SIP requirements for 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS. Each of the infrastructure SIP revisions addressed the following infrastructure elements for the applicable NAAQS which EPA is proposing to approve pursuant to section 110(a)(2) of the CAA. Specifically sections 110(a)(2)(A), (B), portions of (C), portions of (D), (E), (F), (G), (H), portions of (J), (K), (L), and (M) for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS.

III. EPA's Approach To Review Infrastructure SIPs

EPA is acting upon Puerto Rico's SIP submissions that address the infrastructure requirements of section 110(a)(1) and (2) of the CAA for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS. The requirement for states to make a SIP submission of this type arises out of 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 302(d) of the CAA includes the Commonwealth of Puerto Rico in the definition of the term ''State.'' Section 110(a)(2) includes a list of specific elements that ''each such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of 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, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of Title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Green House Gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address Section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11]

Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

IV. Summary of EPA's Rationale for Proposing Approval and Disapproval

In this rulemaking action, EPA is proposing approval of Puerto Rico's infrastructure SIP submittals for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS as addressing requirements in section 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i) (with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M) of the CAA.

On February 1, 2016, PREQB submitted rules from the Commonwealth of Puerto Rico Statutes, ''Environmental Public Policy Act,'' Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and ''Puerto Rico Government Ethics Law,'' Act. No 1 (approved January 3, 2012), Section 5, for incorporation into the SIP to address the requirements of Sections 110(a)(2)(E)(ii) and 128 of the CAA. Among other things, these collective provisions prohibit members of the Commonwealth's Environmental Quality Board from having any ''conflicts of interests that might interfere with the discharge their offices,'' and require disclosure of potential conflicts of interest. EPA is proposing to approve these submissions, which are intended to apply to any person subject to CAA 128, for inclusion into the SIP as meeting CAA obligations under section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, and 2008 ozone NAAQS.

EPA Region 2 is the permitting authority for Puerto Rico's PSD Major Source Program. The sources affected by PSD Program are subject to the Federal Implementation Plan PSD control requirements in 40 CFR Sections 52.21. Puerto Rico does not have its own state adopted PSD program, its infrastructure submission is not approvable with respect to this element. Therefore, EPA is disapproving the following infrastructure SIP elements as they relate to the PSD program for lack of a State adopted PSD rule to satisfy section 110(a)(2) for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$, and 2008 lead NAAQS: sections 110(a)(2)(C), (D)(i) prong 3, (D)(ii) and (J). It should be noted that a FIP clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered.

Section 110(a)(2)(J) requires SIPs to meet applicable requirements of part C of the CAA related to visibility. Puerto Rico's submittal does not address the visibility portion of J, including submission of any visibility measures under this sub-element. As indicated in EPA's September 2013 Infrastructure Guidance, although states are subject to visibility and regional haze program requirements under part C, the visibility and regional haze program requirements under part C do not change due to promulgation of, or revision to, a NAAQS. The SIP is not required to be revised with respect to visibility protection since there are no new visibility obligations. Accordingly, air agencies do not need to address the visibility sub-element of section 110(a)(2)(J) in infrastructure SIP submissions. Since Puerto Rico did not make a submission addressing the visibility portion of (J), action on this sub-element is not applicable.

EPA is not acting on section 110(a)(2)(I), plan revisions for nonattainment areas. Specific SIP submissions for nonattainment areas, as required under CAA title I part D, are subject to a different submission schedule[14] than those for section 110 infrastructure elements and are reviewed and acted upon under a separate process.

A detailed analysis of EPA's review and rationale for proposing to approve and disapprove elements of the infrastructure SIP submittals as addressing these CAA requirements may be found in the Technical Support Document (TSD) for this proposed rulemaking action which is available on line at *www.regulations.gov,* Docket ID Number EPA–R02–OAR–2016–0060.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to approve Puerto Rico's infrastructure submittals dated November 29, 2006, January 22 and 31, 2013, April 16, 2005 and February 1, 2016, for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i) (with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

EPA is proposing to incorporate the Commonwealth of Puerto Rico's ''Environmental Public Policy Act'', Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and the ''Puerto Rico Government Ethics Law,'' Act. No. 1 (approved January 3, 2012), Section 5,

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* ''Findings of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[12] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[13] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[14] These elements are typically referred to as nonattainment SIP or attainment plan elements and are due by the dates prescribed under subparts 2 through 5 of part D.

for inclusion into Puerto Rico's SIP to address the requirements of Sections 110(a)(2)(E)(ii) and 128 of the CAA. EPA is further proposing to approve these submissions, which are intended to apply to any person subject to CAA 128, for inclusion into the SIP as meeting CAA obligations section 110(a)(2)(E)(ii) for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, and 2008 ozone NAAQS.

EPA is disapproving the following infrastructure SIP requirements as they relate to the PSD program for lack of a State adopted PSD rule to satisfy section 110(a)(2) for the 1997 and 2008 ozone NAAQS, 1997 and 2006 $PM_{2.5}$ NAAQS, and 2008 lead NAAQS: sections 110(a)(2)(C), (D)(i) prong 3, (D)(ii) and (J). It should be noted that a FIP clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered. Since Puerto Rico is not required to address the visibility portion of section 110(a)(2)(J) in the context of an infrastructure SIP, and therefore did not make a submission, action on this sub-element is not applicable.

VI. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Puerto Rico's ''Environmental Public Policy Act,'' Act No. 416 (2004, as amended), Section 7.A, and Section 7.D and ''Puerto Rico Government Ethics Law,'' Act. No. 1 (approved January 3, 2012), Section 5. These provisions are intended to apply to any person subject to CAA Section 128. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations* (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rulemaking action, pertaining to Puerto Rico's section 110(a)(2) infrastructure requirements for the 1997 and 2008 ozone NAAQS, 1997 and 2006 $PM_{2.5}$ NAAQS, and 2008 lead NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 9, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2016–03395 Filed 2–18–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA–R05–OAR–2015–0529; FRL–9942–57–Region 5]

Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve some elements of a state implementation plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before March 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0529 at *http://www.regulations.gov* or via email to *aburano.douglas@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the

full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6832, *Liljegren.Jennifer@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 this SIP submission?
II. What guidance is EPA using to evaluate this SIP submission?
III. What is the result of EPA's review of this SIP submission?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

A. What state SIP submission does this rulemaking address?

This rulemaking addresses a submission from the Wisconsin Department of Natural Resources (WDNR). The state submitted its infrastructure SIP for the 2012 $PM_{2.5}$ [1] NAAQS on July 13, 2015.

B. Why did the state make this SIP submission?

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance and enforcement of the NAAQS, including the 2012 $PM_{2.5}$ NAAQS. This submission must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement 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 $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Guidance) and has issued additional guidance documents, the most recent on September 13, 2013, entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2)'' (2013 Guidance). The SIP submission referenced in this rulemaking pertains to the applicable requirements of section 110(a)(1) and (2), and addresses the 2012 $PM_{2.5}$ NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submission from Wisconsin that addresses the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA 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, such as SIP submissions that address the nonattainment planning requirements of part D and the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (''SSM'') at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP-approved emissions limits with limited public notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, Wisconsin; Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

II. What guidance is EPA using to evaluate this SIP submission?

EPA's guidance for this infrastructure SIP submission is embodied in the 2007 Guidance referenced previously. Specifically, attachment A of the 2007 Guidance (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. As discussed, EPA issued additional guidance, the most recent being the 2013 Guidance that further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

III. What is the result of EPA's review of this SIP submission?

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 19, 2015, held a public hearing at WDNR state Headquarters on June 17, 2015, and closed the public comment period on June 19, 2015. No comments were received during the WDNR's public comment period.

Wisconsin provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2012 $PM_{2.5}$ NAAQS. The following review evaluates the state's submission.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures

[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.

for attaining the standards as being due when nonattainment planning requirements are due.[2] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Under Wisconsin Statutes (*Wis. Stats.*) 227 and 285, WDNR holds the authority to create new rules and implement existing emission limits and controls. Authority to monitor, update, and implement revisions to Wisconsin's SIP, including revisions to emission limits and control measures as necessary to meet NAAQS, is contained in *Wis. Stats.* 285.11–285.19. Authority related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and performance and emissions standards, is contained in *Wis. Stats.* 285.21–285.29.

Specifically, authority for WNDR to create new rules and regulations is found in *Wis. Stats.* 227.11, 285.11, and 285.21. *Wis. Stats.* 227.11(2)(a) expressly confers rulemaking authority to an agency. *Wis. Stats.* 285.11(1) and (6) require that WDNR promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement, and control of air pollution in Wisconsin.

The 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, ''an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS pollutant where applicable.'' The following current Wisconsin Administrative Code Chapters Natural Resources (NR) contain existing emission limits and control requirements that apply to particulate emissions:

Chapter NR 415, Wis. Adm. Code—
Control of Particulate Emissions
Chapter NR 431, Wis. Adm. Code—
Control of Visible Emissions

These regulations can be applied to the 2012 $PM_{2.5}$ NAAQS.

On January 1, 2015, EPA began implementing the Cross-State Air Pollution Rule (CSAPR). Wisconsin is subject to CSAPR's requirements regarding annual oxides of nitrogen (NO_X) and SO_2 power plant emissions, which are intended to address transport of $PM_{2.5}$ to downwind states. EPA and WDNR expect that CSAPR will result in reduced NO_X and SO_2 emissions from Wisconsin's power plants, which will assist Wisconsin's efforts to attain and maintain the 2012 $PM_{2.5}$ NAAQS.

In this rulemaking, EPA is not proposing to approve any new provisions in NR 415 or NR 431 that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director's discretion in the context of section 110(a)(2)(A). EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 $PM_{2.5}$ NAAQS.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

WDNR continues to operate an extensive air monitoring network, which is used to determine compliance with the NAAQS. Furthermore, WDNR submits yearly monitoring network plans to EPA, and EPA approved WDNR's Annual Air Monitoring Network Plan on October 31, 2014. Monitoring data from WDNR are entered into EPA's AQS in a timely manner, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 $PM_{2.5}$ NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

This section requires each state to provide a program for enforcement of control measures. Section 110(a)(2)(C) also includes various requirements relating to PSD.

1. Program for enforcement of control measures.

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

WDNR maintains an enforcement program to ensure compliance with SIP requirements. The Bureau of Air Management houses an active statewide compliance and enforcement team that works in all geographic regions of the state. WDNR refers actions as necessary to the Wisconsin Department of Justice with the involvement of WDNR. Under *Wis. Stats.* 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to enforce violations and assess penalties. EPA proposes that Wisconsin has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 $PM_{2.5}$ NAAQS.

2. PSD.

Section 110(a)(2)(C) includes various PSD requirements: identification of NO_X as a precursor to ozone provisions in the PSD program, identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10}[3] condensables in the PSD program, $PM_{2.5}$ increments in the PSD program, and greenhouse gas (GHG) permitting and the ''Tailoring Rule.''[4] In this rulemaking, we are not taking action on the state's satisfaction of the various PSD permitting requirements. Instead, EPA will evaluate Wisconsin's compliance with each of these requirements in a separate rulemaking.

[2] See, *e.g.,* EPA's final rule on ''National Ambient Air Quality Standards for Lead.'' 73 FR 66964 at 67034.

[3] PM_{10} refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

[4] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to have been met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP.

D. Section 110(a)(2)(D)—Interstate Transport; Pollution Abatement

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

1. Interstate transport—significant contribution.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to transport for the 2012 $PM_{2.5}$ NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interstate transport—interfere with maintenance.

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2012 $PM_{2.5}$ NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interstate transport—prevention of significant deterioration.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting interference with PSD. In this rulemaking, we are not taking action on the state's satisfaction of PSD requirements. Instead, EPA will evaluate Wisconsin's compliance with PSD requirements in separate rulemakings.

4. Interstate transport—protect visibility.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (*see* 77 FR 46952). Therefore, EPA is proposing that Wisconsin has met the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS.

5. Interstate and international pollution abatement.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 of the CAA (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Wisconsin has provisions in the EPA-approved portion of its PSD program requiring new or modified sources to notify neighboring states of potential negative air quality impacts. Wisconsin's submission references these provisions as being adequate to meet the requirements of section 126(a). Wisconsin has no pending obligations under section 115. Therefore, EPA is proposing that Wisconsin has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) with respect to the 2012 $PM_{2.5}$ NAAQS.

E. Section 110(a)(2)(E)—Adequate Authority and Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources.

Wisconsin's biennial budget ensures that EPA grant funds as well as state funding appropriations are sufficient to administer its air quality management program, and WDNR has routinely demonstrated that it retains adequate personnel to administer its air quality management program. Wisconsin's Environmental Performance Partnership Agreement with EPA documents certain funding and personnel levels at WDNR. As discussed in previous sections, basic duties and authorities in the state are outlined in *Wis. Stats.* 285.11. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2012 $PM_{2.5}$ NAAQS.

2. State board requirements.

Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On July 2, 2015, WDNR submitted rules from *Wis. Stats.* for incorporation into the SIP, pursuant to section 128 of the CAA. Wisconsin maintains a state board, called the Wisconsin Natural Resources Board (NRB). However, the NRB's functions are purely regulatory, advisory, and policy-making. Under *Wis. Stats.* 15.05, the administrative powers and duties of the WDNR, including issuance of permits and enforcement orders, are vested in the secretary. Under the statutes that govern its operations, the NRB does not and cannot approve permits or enforcement orders. Therefore, Wisconsin has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2) of the CAA, the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Wisconsin, this power is vested in the Secretary of the WDNR. *Wis. Stats.* 19.45(2) prevents financial gain of any public official, which addresses the issue of deriving any significant portion of income from persons subject to permits and enforcement orders. Additionally, *Wis. Stats.* 19.46 prevents a public official from taking actions where there is a conflict of interest. As a public official under *Wis. Stats.* 19, the Secretary of the WDNR is subject to these ethical obligations. EPA concludes that WDNR's submission as it relates to the state board requirements under section 128 is consistent with applicable CAA requirements. EPA approved these rules on Thursday, January 21, 2016 (81 FR 3334). Therefore, EPA is proposing that Wisconsin has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2012 $PM_{2.5}$ NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the

implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

WDNR requires regulated sources to submit various reports, dependent on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. The frequency and requirements for report review are incorporated as part of NR 438 and NR 439. Additionally, WDNR routinely submits quality-assured analyses and data obtained from its stationary source monitoring system for review and publication by EPA. Basic authority for Wisconsin's Federally mandated Compliance Assurance Monitoring reporting structure is provided in *Wis. Stats.* 285.65. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2012 $PM_{2.5}$ NAAQS.

G. Section 110(a)(2)(G)—Emergency Power

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Guidance states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Wis. Stats. 285.85 requires WDNR to act upon a finding that an emergency episode or condition exists. The language contained in this chapter authorizes WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. EPA proposes that Wisconsin has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2012 $PM_{2.5}$ NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or an EPA finding that the SIP is substantially inadequate.

Wis. Stats. 285.11(6) provides WDNR with the authority to develop all rules, limits, and regulations necessary to meet the NAAQS as they evolve, and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2012 $PM_{2.5}$ NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Planning Requirements of Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notification; PSD; Visibility Protection

The evaluation of the submission from Wisconsin with respect to the requirements of section 110(a)(2)(J) are described below.

1. Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements.

Wis. Stats. 285.13(5) contains the provisions for WDNR to advise, consult, contract, and cooperate with other agencies of the state and local governments, industries, other states, interstate or inter-local agencies, the Federal government, and interested persons or groups during the entire process of SIP revision development and implementation and for other elements regarding air management for which WDNR is the officially charged agency. WDNR's Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all SIP revisions. Additionally, Wisconsin is an active member of the Lake Michigan Air Directors Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

2. Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances of the NAAQS. WDNR maintains portions of its Web site specifically for issues related to the 2012 $PM_{2.5}$ NAAQS.[5] Information related to monitoring sites is found on Wisconsin's Web site, as is the calendar for all public events and public hearings held in the state. EPA proposes that Wisconsin has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

3. PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Wisconsin's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and (a)(2)(D)(i)(II). EPA will evaluate Wisconsin's compliance with the various PSD and GHG infrastructure SIP requirements of section 110(a)(2)(J) in a separate rulemaking.

4. Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. However, as EPA discussed in section D, Wisconsin has a fully approved regional haze plan. This plan also meets the visibility requirements of section 110(a)(2)(J). EPA proposes that Wisconsin has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2012 $PM_{2.5}$ NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for the performance of air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and the submission of such data to EPA upon request.

WDNR maintains the capability to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented dispersion models and more regionally directed complex photochemical grid models. WDNR

[5] *http://dnr.wi.gov/topic/AirQuality/Particles.html.*

collaborates with LADCO, EPA, and other Lake Michigan states in order to perform modeling. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60–285.69 authorize WDNR to perform modeling. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 $PM_{2.5}$ NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

WDNR implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62951). EPA approved revisions to the program on February 28, 2006 (71 FR 9934). NR 410 contains the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

In addition to the measures outlined in the paragraph addressing WDNR's submittals regarding consultation requirements of section 110(a)(2)(J), as contained in *Wis. Stats.* 285.13(5), the state follows a formal public hearing process in the development and adoption of all SIP revisions that entail new or revised control programs or strategies and targets. For SIP revisions covering more than one source, WDNR is required to provide the standing committees of the state legislature with jurisdiction over environmental matters with a 60-day review period to ensure that local entities have been properly engaged in the development process. EPA proposes that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2012 $PM_{2.5}$ NAAQS.

IV. What action is EPA taking?

EPA is proposing to approve most elements of the submission from Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2012 $PM_{2.5}$ NAAQS.

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2012 $PM_{2.5}$
(A)—Emission limits and other control measures.	A
(B)—Ambient air quality monitoring/data system.	A
(C)1—Program for enforcement of control measures.	A
(C)2—PSD.	NA
(D)1—I Prong 1: Interstate transport—significant contribution.	NA
(D)2—I Prong 2: Interstate transport—interfere with maintenance.	NA
(D)3—II Prong 3: Interstate transport—prevention of significant deterioration.	NA
(D)4—II Prong 4: Interstate transport—protect visibility.	A
(D)5—Interstate and international pollution abatement.	A
(E)1—Adequate resources	A
(E)2—State board requirements.	A
(F)—Stationary source monitoring system.	A
(G)—Emergency power	A
(H)—Future SIP revisions	A
(I)—Nonattainment planning requirements of part D.	NA
(J)1—Consultation with government officials.	A
(J)2—Public notification	A
(J)3—PSD	NA
(J)4—Visibility protection	A
(K)—Air quality modeling/data	A
(L)—Permitting fees	A
(M)—Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action/Separate Rulemaking.

V. 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).

List of Subjects in 40 CFR Part 52

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

Dated: February 3, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–03404 Filed 2–18–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160127057–6057–01]

RIN 0648–BF60

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan (Plan) and codified regulations for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). In addition, NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC. These measures include the sport fishery allocations and management measures for Area 2A. These actions are intended to conserve Pacific halibut, provide angler opportunity where available, and minimize bycatch of overfished groundfish species.

DATES: Comments on the proposed changes to the Plan and the codified regulations, and on the proposed domestic Area 2A Pacific halibut management measures must be received by March 10, 2016.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2015–0166, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0166*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William Stelle, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: 206–526–4646, fax: 206–526–6736, or email: *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html* and at the Council's Web site at *http://www.pcouncil.org.*

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982, 16 U.S.C. 773–773K, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention) (16 U.S.C. 773c). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters.

Each year between 1988 and 1995, the Pacific Fishery Management Council (Council) developed and NMFS implemented a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in Area 2A. In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). Every year since then, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries.

For 2016, the Council recommendation includes minor modifications to sport fisheries to better match the needs of the fishery, and updates to the inseason procedures to reflect current practices. The Council also recommended changes to the codified regulations to remove coordinates that are described in groundfish regulations, match the changes to the Plan, and update descriptions of tribal treaty fishing areas. This rule does contain some dates for the sport fisheries based on the 2016 Plan as recommended by the Council because the affected states are holding public meetings to gather public input on final season dates given the final 2A TAC. The states will submit final season dates following their public meetings.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, WA

The Plan provides that incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, WA, will be allowed when the Area 2A TAC is greater than 900,000 lb (408.2 mt), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). The 2016 TAC of 1,140,000 lb (517 mt) is sufficient to provide for this opportunity; therefore the Council will recommend landing restrictions at its March 2016 meeting. Following this meeting, NMFS will publish the restrictions in the **Federal Register**.

Opportunity for Public Comment

Through this proposed rule, NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the resulting proposed domestic fishing regulations by March 10, 2016. A 20 day comment period is necessary to allow adequate time for the final rule to be effective by April 1st when the incidental fisheries begin. The States of Washington, Oregon, and California will conduct public workshops in February to obtain input on the sport season dates. Following the proposed rule comment period, NMFS will review public comments and comments from the states, and issue a final rule. Either that final rule or an additional rule will include the IPHC regulations and regulations for the West Coast and Alaska.

Proposed Changes to the Plan

Each year, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), and the tribes with treaty fishing rights for halibut consider whether to pursue changes to the Plan to meet the needs of the fishery. In determining whether changes are needed, the state agencies hold public meetings prior to the Council's September meeting. Subsequently, they recommend changes to the Council at its September meeting. In 2015, fishery managers from all three

state agencies held public meetings on the Plan prior to the Council's September meeting. At the September 2015 Council meeting, NMFS, WDFW, and ODFW recommended changes to the Plan and codified regulations. The tribes and CDFW did not recommend changes to the Plan or regulations. The Council voted to solicit public input on all of the changes recommended by the state agencies, several of which were presented in the form of alternatives. WDFW and ODFW subsequently held public workshops on the recommended changes.

At its November 13–19, 2015, meeting the Council considered the results of state-sponsored workshops on the recommended changes to the Plan and public input provided at the September and November Council meetings, and made its final recommendations for modifications to the Plan. NMFS proposes to adopt all of the Council's recommended changes to the Plan as further discussed below. NMFS also proposed to make changes to the codified regulations.

Proposed Changes to the Plan

1. In section (b), Allocations, add a statement that all allocations and subquotas are described in net weight. The goal of this change is to clarify that the Plan allocations and subquotas are described in net weight consistent with the IPHC's use of net weight.

2. In section (d), Treaty Indian Fisheries, modify the description of subarea 2A–1 to account for a recent court order (United States v. Washington, 2:09-sp-00001–RSM (W.D. Wash. Sept. 3, 2015)) regarding boundaries of tribal usual and accustomed fishing grounds; specifically, the western boundary for the Quinault Tribe's fishing area and the northern boundary of the Quileute Tribe's fishing area;

3. In section (f)(1)(ii), Washington North Coast subarea, this rule proposes several changes. The changes would modify the opening day in this area from the first Thursday in May to the first Saturday in May with a second opening the following week on Thursday and Saturday and a closure during the third week of May. The goal of this change is to allow for a longer season while giving WDFW time to assess the catch and provide adequate time for public notice of any later reopenings.

4. In section (f)(1)(v), Oregon central coast subarea, this rule proposes several changes to the text to implement several measures. First, there is a change to the Central Coast allocation so that the Oregon sport allocation is divided clearly among the Columbia River, Central Coast, and Southern Oregon subareas, instead of allocating to the Columbia River subarea first then dividing the remaining allocation between the Southern Oregon and Central Coast subareas. Second, the Council is added to the list of consulting agencies consistent with inseason procedures. Third, the opening date for the nearshore fishery is changed from July 1 to June 1 to allow for a longer season.

5. In section (f)(1)(vi), Southern Oregon subarea, this rule proposes changes to the allocations for this subarea, as stated above for the Central Coast subarea. The allocation is modified from 4.0 to 3.91 percent of the Oregon sport allocation. Also, incidental retention of sablefish, Pacific cod, and flatfish species in areas closed to fishing targeting groundfish is allowed in this subarea, to make incidental retention rules consistent throughout Oregon.

6. In section (f)(5)(iii)(B), Notice procedures, this rule proposes to remove the Notice to Mariners requirement because these are not used in the halibut fishery. The proposed change to the Plan reflects current practice.

7. In section (f)(6), Sport fishery closure provisions, this rule proposes to modify this section to state that closure determinations made by IPHC are done after consultation with NMFS, Council, and the affected state agencies. The goal of this change is for the Plan to reflect current practice.

NMFS proposes to approve the Council's recommendations and to implement the changes described above. A version of the Plan including these changes can be found at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html.*

Proposed Changes to the Regulations

1. Modify Tribal fishing area descriptions at § 300.64(i) to account for a recent court order (United States v. Washington, 2:09-sp-00001–RSM (W.D. Wash. Sept. 3, 2015)) regarding boundaries of tribal usual and accustomed fishing grounds; specifically, the western boundary for the Quinault Tribe's fishing area and the northern boundary of the Quileute Tribe's fishing area;

2. Remove the coordinates for the 30 fm depth contour at § 300.63(f) and 100 fm depth contour at § 300.63(g) and refer to groundfish regulations at § 660.71 for the 30 fm depth contour and § 660.73 for the 100 fm depth contour. This change is necessary because the halibut and groundfish fisheries use the same coordinates and they should be listed in one location;

3. Update the shoreward boundary of the non-trawl Rockfish Conservation Area listed in § 300.63(e) to the boundary line approximating the 30 fm depth contour. This closed area applies to commercial halibut fishing when retaining incidentally caught groundfish. The shoreward boundary of this closed area was modified through the 2015–2016 groundfish harvest specifications; and

4. Remove Notice to Mariners notice procedures at § 300.63(c)(3)(ii) to match modifications to Plan.

Proposed 2016 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures, including season dates and bag limits that are necessary to implement the Plan in 2016. The annual domestic management measures are published each year through a final rule. For the 2015 fishing season, the final rule for Area 2A sport fisheries was published on April 1, 2015 (80 FR 17344) and the final rule for the commercial fisheries was published on March 17, 2015 (80 FR 13771) along with the IPHC regulations. Therefore, the section numbers for the commercial fisheries below refer to sections in the March 17 final rule, and the section numbers for the recreational fisheries refer to sections in the April 1 final rule. Where season dates are not indicated, those dates will be provided in the final rule, following consideration of the 2016 TAC and consultation with the states and the public.

In Section 8 of the annual domestic management measures published on March 17, 2015, ''Fishing Periods,'' paragraphs (2), (3), and (4) are proposed to read as follows:

(1) * * *

(2) Each fishing period in the Area 2A directed fishery shall begin at 0800 hours and terminate at 1800 hours local time on June 22, July 6, July 20, August 3, August 17, August 31, September 14, and September 28, unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 19 and 1200 hours local time on November 7.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will

occur between 1200 hours local time on March 19 and 1200 hours local time on November 7.

In section 26 of the annual domestic management measures, ''Sport Fishing for Halibut'' paragraph (8) is proposed to read as follows:

(8) * * *

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26.03 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50′ W. long., Low Point) is (season dates will be inserted when final rule is published). The fishing season in western Puget Sound (west of 123°49.50′ W. long., Low Point) is open (season dates will be inserted when final rule is published).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.) (North Coast subarea), is 108,030 lb (49 mt).

(i) The fishing seasons are:

(A) Fishing is open May 7, 12, and 14. Any openings after May 14 will be based on available quota and announced on the NMFS hotline.

(B) If sufficient quota remains the fishery will reopen until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. After May 14, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 14 unless the date is announced on the NMFS hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at § 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.), and Leadbetter Point, WA (46°38.17′ N. lat.)(South Coast subarea), is 42,739 lb (19.39 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N. lat, 124°37.03′ W. long;

(2) 47°25.67′ N. lat, 124°34.79′ W. long;

(3) 47°12.82′ N. lat, 124°29.12′ W. long;

(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 40,739 lb (18.48 mt) for the primary fishery and 2,000 lb (0.91 mt) for the nearshore fishery. The primary fishery commences on May 1, and continues 2 days a week (Sunday and Tuesday) until May 17. If the primary quota is projected to be obtained sooner than expected, the management closure may occur earlier. Beginning on May 29 the primary fishery will be open at most 2 days per week (Sunday and/or Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 1, and continues 7 days per week. Subsequent to closure of the primary fishery, the nearshore fishery is open 7 days per week, until 42,739 lb (19.39 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.), and Cape Falcon, OR (45°46.00′ N. lat.) (Columbia River subarea), is 11,009 lb (4.99 mt).

(i) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 pounds of the subarea allocation. The nearshore fishery extends from Leadbetter Point (46°38.17′ N. lat., 124°15.88′ W. long.) to the Columbia River (46°16.00′ N. lat., 124°15.88′ W. long.) by connecting the following coordinates in Washington 46°38.17′ N. lat., 124°15.88′ W. long. 46°16.00′ N. lat., 124°15.88′ W. long and connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore fishery opens May 2, and continues 3 days per week (Monday–Wednesday) until the nearshore allocation is taken, or September 30, whichever is earlier. The all depth fishing season commences on May 1, and continues 4 days a week (Thursday–Sunday) until 10,509 lb (4.77 mt) are estimated to have been taken and the season is closed by the Commission, or September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species when allowed by Pacific Coast groundfish regulations, during days open to the all depth fishery only.

(iv) Taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.) (Oregon Central Coast subarea), is 206,410 lb (93.63 mt).

(i) The fishing seasons are:

(A) The first season (the ''inside 40-fm'' fishery) commences June 1, and continues 7 days a week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon ''inside 40-fm'' fishery of 24,769 lb (11.24 mt), or any in-season revised subquota, is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the ''all-depth'' fishery, is open (season dates will be inserted when final rule is published). The allocation to the all-depth fishery is 181,641 lb (82.4 mt). If sufficient unharvested quota remains for additional fishing days, the season will re-open. Notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested quota remains, the third season (summer season), which is for the ''all-depth'' fishery, will be open (season dates will be inserted when final rule is published) or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning (insert date of first back up dates) and ending October 31. If after September 7, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 9 and 10, and ending October 31. After September 4, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species, when allowed by Pacific Coast groundfish regulations.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The quota for landings into ports in the area south of Humbug Mountain, OR (42°40.50′ N. lat.) to the Oregon/California Border (42°00.00′ N. lat.) (Southern Oregon subarea) is 8,605 lb (3.9 mt).

(i) The fishing season commences on May 1, and continues 7 days per week until the subquota is taken, or October 31, whichever is earlier.

(ii) The daily bag limit is one halibut per person with no size limit.

(iii) No Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish, Pacific cod, and flatfish species, in areas closed to groundfish, if halibut are on board the vessel.

(g) The quota for landings into ports south of the Oregon/California Border (42°00.00′ N. lat.) and along the California coast is 29,640 lb (13.44 mt).

(i) The fishing season will be open (season dates will be inserted when final rule is published), or until the subarea quota is estimated to have been taken and the season is closed by the Commission, or October 31, whichever is earlier. NMFS will announce any closure by the Commission on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This proposed rule is consistent with the Secretary of Commerce's authority under the Halibut Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.,* requires government agencies to assess the effects that regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the

economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information or public comments. A summary of the IRFA is provided below. The reasons why action by the agency is being considered, the objectives and legal basis for this rule are described above.

The main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A. Another objective is to allow each commercial, recreational (sport), and tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut. A third objective is to meet the needs of fishery participants in particular fisheries and fishing areas.

Each year, the states of Washington, Oregon, California, and the treaty tribes that fish for halibut meet with their fishery participants to review halibut management under the Plan. Based on feedback from these meetings and experience from the previous year's fishing season, the states or the tribes may propose changes to the Plan. Proposed changes to the Plan are intended to remedy any problems encountered during the previous year's management, problems with other fisheries with overlapping management jurisdiction (*i.e.,* Pacific Coast groundfish), or other anticipated problems.

Changes to the Plan

The 2A Halibut Catch Sharing Plan, as outlined above, allocates the TAC at various levels. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation of the Pacific halibut TAC, and the other 15 percent is allocated for incidental catch in the salmon troll fishery. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the sablefish primary fishery when the overall Area 2A halibut TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits. The non-tribal allocation is divided into four shares. At the first level, there are specific percentage allocations for tribal and non-tribal fisheries. The non-tribal portion is then allocated to commercial components and to recreational components. The commercial component is then apportioned into directed, incidental troll, and incidental sablefish fisheries. The recreational portions for Oregon and Washington are furthered apportioned into area subquotas, and these subquotas are further split into seasonal or depth fisheries (nearshore vs all depths). There may be gear restrictions and other management measures established as necessary to minimize the potential of exceeding these allocations.

At the September meeting, the Council adopted a range of Plan alternatives for public review. For 2016, the Council adopted two types of changes that are discussed separately below. The first were the routine recreational fishery adjustments to the Plan proposed by the states each year to accommodate the needs of their fisheries. The second were changes to the Plan and codified regulations proposed by NMFS which do not have alternatives, because they are either mandated by a recent court decision or are administrative in nature. At its November meeting, the Council made final Plan change recommendations from the range of alternatives for the recreational fishery adjustments; which is described in detail below.

The proposed changes to the Plan are expected to slightly increase fishing opportunities in some areas and at some times and to slightly decrease fishing opportunities in other areas and at other times. The Council's recommended changes to the Plan modify the opening dates for the sport fisheries in Washington and Oregon with the goal of extending the seasons and increasing opportunity. The change to the tribal Usual &Accustomed (U&A) boundaries is made to comply with a court order, and NMFS has no discretion to do otherwise. Thus this change is not analyzed here. The Council considered changes to the Washington North Coast, Columbia River, Oregon Central Coast, and Southern Oregon subareas:

(1) For the Washington North Coast the Council considered two opening dates, the first Thursday in May or the first Saturday in May. The Council recommended and NMFS proposes opening this fishery on the first Saturday in May. This is a minor change that will not reduce overall fishing opportunity in this area.

(2) For the Columbia River subarea the Council considered two season structures, status quo (4 days per week Thursday through Sunday) and a seven day a week fishery. The Council recommended the status quo season structure because ODFW did not receive definitive public support for this change and felt it was not necessary at this time; therefore this rule does not propose changes to the Columbia River subarea.

(3) For the Oregon Central Coast subarea the Council considered two season allocation alternatives, status quo (12 percent nearshore, 63 percent spring, 25 percent summer) and Alternative 1 (81.75 percent spring and summer combined, 18.25 percent nearshore). The Council recommended the status quo season allocations because ODFW felt given the magnitude of this change more time was needed to allow public input; therefore this rule does not propose any change to the Oregon Central Coast season allocations.

(4) For the Oregon Central Coast nearshore fishery the Council considered a change to the season dates: (1) Status quo fishery opens July 1, seven days per week until October 31; (2) fishery opens May 1, seven days per week, until October 31; (3) fishery opens May 1, seven days per week until October 31 or quota attainment, with 25 percent of the nearshore fishery allocation set-aside and available beginning July 1; and (4) fishery opens May 1, seven days per week until October 31 or quota attainment, with 50 percent of the nearshore fishery allocation set-aside and available beginning July 1. The Council recommended and NMFS proposes an alternative that is within the range listed above that would open the fishery on June 1, seven days per week, until October 31. This is a minor change that will not reduce overall fishing opportunity in this area.

(5) For the Southern Oregon subarea the Council considered two incidental retention alternatives, status quo (no bottomfish species retention outside of 30 fathoms) and Alternative 1 (allow retention of other species of flatfish, Pacific cod, and sablefish outside 30 fathoms, when fishing for halibut) and an allocation modification from 4 percent to 3.91 percent of the Oregon sport allocation. The Council recommended and NMFS proposes to implement the change to the subarea allocation and Alternative 1 with a slight modification to describe this allowance as allowed when groundfish retention is closed not at a specific depth. The changes to the Southern Oregon incidentally landed species allowances are expected to increase recreational opportunities by turning previously discarded incidental flatfish catch into landed catch.

The Small Business Administration defines a ''small'' harvesting business as one with annual receipts, not in excess of $20.5 million. For related fishprocessing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts, not in excess of $7.5 million. This rule directly affects charterboat operations, and participants in the non-treaty directed commercial fishery off the coast of Washington, Oregon, and California. Applying the SBA's size standard for small businesses, NMFS

considers all of the charterboat operations and participants in the non-treaty directed commercial fishery affected by this action as small businesses.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 feet and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 feet in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 feet in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from $7,000 for small Oregon vessels to $131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act. This analysis continues the main conclusions developed in previous analyses that charterboats and the non-treaty directed commercial fishing vessels are small businesses. See 77 FR 5477 (Feb 3, 2012) and 76 FR 2876 (Jan 18, 2011). In 2015, 512 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery and the incidental fishery in the sablefish primary fishery in Area 2A (22 licenses in 2015); incidental halibut caught in the salmon troll fishery (363 licenses in 2015); and the charterboat fleet (127 licenses in 2013, the most recent year available). No vessel may participate in more than one of these three fisheries per year. These license estimates overstate the number of vessels that participate in the fishery. IPHC estimates that 60 vessels participated in the directed commercial fishery, 100 vessels in the incidental commercial (salmon) fishery, and 13 vessels in the incidental commercial (sablefish) fishery. Although recent information on charterboat activity is not available, prior analysis indicated that 60 percent of the IPHC charterboat license holders may be affected by these regulations.

Commercial harvest vessels in West Coast fisheries are generally ''small businesses,'' unless they are associated with a catcher-processor company or affiliated with a large shorebased processing company. Catcher-processors cannot target halibut or keep halibut as bycatch. NOAA is unaware that any ''large'' seafood processing companies are affiliated with any of the IPHC permit holders.

The major effect of halibut management on small entities will be from the Area 2A TAC which is set by the IPHC, an international body. Based on the recommendations of the states, the Council and NMFS are proposing minor changes to the Plan to provide increased recreational and commercial opportunities under the allocations that result from the TAC. There are no large entities involved in the halibut fisheries; therefore, none of these changes will have a disproportionate negative effect on small entities versus large entities. These minor proposed changes to the Plan are not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

There are no projected reporting or recordkeeping requirements associated with this action.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

In 2014, a Biological Opinion (BiOp) was completed for the 2014–2016 Area 2A Pacific Halibut Catch Sharing Plan. The BiOp concluded that the continued implementation of the Plan was not likely to adversely affect southern resident killer whales, leatherback sea turtles, humpback whales, blue whales, fin whales, Guadalupe fur seals, north Pacific right whales, sei whales, sperm whales, and steller sea lions. Further the BiOp concluded that continuing implementation of the Plan was likely to adversely affect but not likely to jeopardize Puget Sound/Georgia basin bocaccio, canary rockfish, and yelloweye rockfish, southern green sturgeon, lower Columbia River Chinook, and Puget Sound Chinook. The BiOp also concluded that the continued implementation of the Plan was not likely to adversely modify critical habitat of southern resident killer whales, leatherback sea turtles, Puget Sound/Georgia basin bocaccio, canary rockfish, and yelloweye rockfish, southern green sturgeon, lower Columbia River Chinook, and Puget Sound Chinook. Because the halibut fishery does not overlap with the critical habitat for the remaining listed species it was determined that, an evaluation of the effects on critical habitat was not applicable. Finally, in a letter dated March 12, 2014, NMFS determined that fishing activities conducted under the Plan would have no effect on eulachon. None of the Council's recommended changes to the Plan proposed in this rule change the determinations made in the BiOp because they do not result in changes to fishing behavior such that the impacts to listed species is anticipated to change. NMFS is currently conducting informal consultation with the U.S. Fish and Wildlife Service regarding the ongoing implementation of the Catch Sharing Plan and its effects on short-tailed and black-footed albatross, California least tern, marbled murrelet, bull trout, and sea otters.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

Dated: February 9, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61 in alphabetical order, revise the definition of ''Subarea 2A–1'' to read as follows:

§ 300.61 Definitions

* * * * *

Subarea 2A–1 includes all waters off the coast of Washington that are north of the Quinault River, WA (47°21.00′ N. lat) and east of 125°44.00′ W. long; all waters off the coast of Washington that are between the Quinault River, WA (47°21.00′ N. lat) and Point Chehalis, WA (46°53.30′ N. lat.), and east of 125°08.50′ W. long.; and all inland marine waters of Washington.

* * * * *

■ 3. In § 300.63, revise paragraphs (c)(3)(ii), and (e)(1), and remove paragraphs (f) and (g) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in area 2A.

* * * * *

(c) * * *

(3) * * *

(ii) Actual notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, at 206–526–6667 or 800–662–9825. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor the telephone hotline for current information for the area in which they are fishing.

* * * * *

(e) * * *

(1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA, is the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

* * * * *

■ 4. In § 300.64, revise paragraph (i) to read as follows:

§ 300.64 Fishing by U.S. treaty Indian tribes.

(i) The following table sets forth the fishing areas of each of the 13 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
HOH	The area between 47°54.30′ N. lat. (Quillayute River) and 47°21.00′ N. lat. (Quinault River) and east of 125°44.00′ W. long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	The area north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44.00′ W. long.
NOOKSACK	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
PORT GAMBLE S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	The area between 48°10.00′ N. lat. (Cape Alava) and 47°31.70′ N. lat. (Queets River) and east of 125°44.00′ W. long.
QUINAULT	The area between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°08.50′ W. long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

Tribe	Boundaries
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

[FR Doc. 2016–02991 Filed 2–18–16; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 33
Friday, February 19, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance To Conduct Formative Research

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other interested parties to comment on a proposed information collection. This collection is a revision of a currently approved collection. This information collection will conduct research in support of FNS' goal of delivering science-based nutrition education to targeted audiences. From development through testing of materials and tools with the target audience, FNS plans to conduct data collections that involve formative research including focus groups, interviews (dyad, triad, telephone, *etc.*), surveys and Web-based collection tools.

DATES: Written comments must be received on or before April 19, 2016.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lynnette Thomas, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the Office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1014.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Lynnette Thomas at 703–305–2119.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Formative Research for Development of Nutrition Education and Promotion Materials and Related Tools for FNS Population Groups.

OMB Number: 0584–0524

Expiration Date: June 30, 2016.

Type of Request: Revision of previously approved information collection.

Abstract: This information collection is based on Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1787), Section 5 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1754) and Section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020). This request for approval of information collection is necessary to obtain input into the development of nutrition education interventions for population groups served by the U.S. Department of Agriculture, Food and Nutrition Service (USDA–FNS).

Interventions need to be designed so that they can be delivered through different types of media and in a variety of formats for diverse audiences.

FNS develops a variety of resources to support nutrition education and promotion activities. These resources are designed to convey science-based, behavior-focused nutrition messages about healthy eating and physical activity to children and adults eligible to participate in FNS nutrition assistance programs and to motivate them to consume more healthful foods as defined by the Dietary Guidelines for Americans (DGA). This includes education materials, messages, promotion tools and interventions for the diverse population served by the Federal nutrition programs including WIC, Team Nutrition, Food Distribution and other programs.

Obtaining formative input and feedback is fundamental to FNS' success in delivering science-based nutrition messages and reaching diverse segments of the population in ways that are meaningful and relevant. This includes conferring with the target audience, individuals who serve the target audience, and key stakeholders on the communication strategies and interventions that will be developed and on the delivery approaches that will be used to reach consumers. The formative research and testing activities described will help in the development of effective education and promotion tools and communication strategies. Collection of this information will increase FNS' ability to formulate nutrition education interventions that resonate with the intended target population, in particular low-income families.

Formative research methods and information collection will include focus groups, interviews (dyad, triad, telephone, *etc.*), surveys and Web-based data collection. The data obtained will provide input regarding the potential use of materials and products during both the developmental and testing stages. In order to determine future nutrition education needs, tools and dissemination strategies, key informant interviews will be conducted. This task involves collecting a diverse array of information from a variety of groups including: people familiar with the target audiences; individuals delivering nutrition education interventions and projects; program providers at State and local levels; program participants; and other relevant informants associated with FNS programs.

Findings from all data collection will be included in summary reports submitted to USDA–FNS. The reports will describe the data collection methods, findings, conclusions, implications, and recommendations for the development and effective

dissemination of nutrition education materials and related tools for FNS population groups. There will be no specific quantitative analysis of data. No attempt will be made to generalize the findings to be nationally representative or statistically valid.

Reporting Burden

Affected Public: State, Local and Tribal Government; Individuals and Households; and Business or Other for Profit.

Estimated Number of Respondents: 102,500 respondents.

Estimated Number of Responses per Respondent: 1 response.

Estimated Total Annual Responses: 102,500.

Estimate of Time per Respondent: .468 hours.

Estimated Total Annual Reporting Burden Hours: 48,000 hours.

Collection instruments	Estimated number respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
Reporting Burden					
Focus Group Screeners	10,000	1	10,000	0.17	1,666.67
Interview Screeners/Surveys	5,000	1	5,000	0.17	833.33
Focus Groups	5,500	1	5,500	2.00	11,000.00
Intercept Interviews	5,000	1	5,000	0.50	2,500.00
Dyad/Triad Interviews	2,000	1	2,000	1.00	2,000.00
Telephone Interviews	10,000	1	10,000	0.25	2,500.00
Surveys	10,000	1	10,000	0.50	5,000.00
Web-based Collections	40,000	1	40,000	0.50	20,000.00
Confidentiality Agreements	15,000	1	15,000	0.17	2,500.00
Total Reporting Burden	102,500	1	102,500	.468	48,000

Dated: February 8, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–03385 Filed 2–18–16; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee To Prepare for an Updated Hearing on Hate Crimes in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Wednesday, March 16, 2016, at 2:00 p.m. CST for the purpose of preparing a public hearing to receive current testimony on hate crime in the state.

This meeting is open to the public through the following toll-free call-in number: 888–438–5524, conference ID: 4234857. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also invited and welcomed to make statements during the scheduled open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=282* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Introductions—Naheed Bleecker, Chair

II. Hate Crimes and Civil Rights in Wisconsin—WI Advisory Committee

- Preparatory discussion

III. Future Plans and Actions—WI Advisory Committee

IV. Open Comment—Public Participation

V. Adjournment

DATES: The meeting will be held on Wednesday, March 16, 2016, at 2:00 p.m. CST.

Public Call Information: Dial: 888–438–5524, Conference ID: 4234857.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov.*

Dated: February 12, 2016.

David Mussatt,

Chief Regional Programs Unit.

[FR Doc. 2016–03439 Filed 2–18–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Public Meeting of the Michigan Advisory Committee; Preparations for a Public Hearing Regarding the Civil Rights Impact of Civil Forfeiture Practices in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Tuesday, March 8, 2016, at 10:00 a.m. EST for the purpose of discussing preparations for a public hearing regarding the civil rights impact of civil asset forfeiture in the State.

DATES: The meeting will be held on Tuesday, March 8, 2016, at 10:00 a.m. EST.

ADDRESSES: This meeting is available to the public through the following toll-free call-in number: 888–539–3696, conference ID: 4625695. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=255.* Click on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
  Donna Budnick, Chair
Preparatory Discussion for Public Hearing
  Civil Rights Impact of Civil Forfeiture Practices in Michigan
Future plans and actions
Open Comment
Adjournment

Public Call Information:
Dial: 888–539–3696
Conference ID: 4625695

Dated: February 12, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–03438 Filed 2–18–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee To Hear Testimony Regarding Civil Rights and Environmental Justice in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting on Wednesday March 09, 2016, from 10:30 a.m. until 7:15 p.m. CST at the National Museum of Mexican Art, 1852 W. 19th Street in Chicago, IL 60608. The purpose of this meeting is to hear testimony regarding civil rights and environmental justice in the State. This study is in support of the Commission's nationally focused 2016 statutory enforcement study on the same topic.

This meeting is free and open to the public. Any interested member of the public may attend. An open comment period will be provided beginning at 6:20 p.m. to allow members of the public to make a statement. Persons with disabilities requiring reasonable accommodations should contact the Regional Programs Unit at 312–353–8311 a minimum of ten days prior to the meeting to make arrangements.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=246.* Click on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Opening Remarks—10:30 a.m.–10:45 a.m.
- Panel 1: Academics & Advocates—10:45 a.m.–11:45 a.m.
- Panel 2: Community I—12:00 p.m.–1:15 p.m.

Break 1:15pm–2:15 p.m.
- Panel 3: Community II—2:15 p.m.–3:15 p.m.
- Panel 4: Industry—3:30 p.m.–4:45 p.m.
- Panel 5: Government—5:00 p.m.–6:15 p.m.

Open Forum: 6:20 p.m.–7:00 p.m. (40 mins)
Closing Remarks—7:00 p.m.–7:15 p.m.

DATES: The meeting will be held on Wednesday March 09, 2016, from 10:30 a.m.–7:15 p.m. CST

Meeting Location: National Museum of Mexican Art, 1852 W. 19th Street in Chicago, IL 60608.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

Dated February 12, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–03437 Filed 2–18–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an orientation and planning meeting of the Maryland State Advisory Committee to the Commission (MD State Advisory Committee) will convene at 12:30 p.m. (EST) on Friday, March 18, 2016, by conference call. The purpose of the orientation meeting is to inform the newly appointed members about the rules of operation for the advisory committee. The purpose of the planning meeting is to discuss project planning, the selection of additional committee officers and plans for future meetings.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number 1–888–364–3109 and conference call ID code: 8302334#. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and provide the operator with the conference call number: 1–888–364–3109 and conference call ID code: 8302334#.

Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, April 18, 2016. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=253* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Administrative Matters

Ivy L. Davis, Director, Director, Eastern Regional Office and Designated Federal Official

Welcome and Introductions

Thomas M. Mackall, Chair, MD State Advisory Committee

Orientation Meeting

MD State Advisory Committee

Planning Meeting

MD State Advisory Committee

DATES: Friday, March 18, 2016 at 12:30 p.m. (EST).

Public Call Information: Conference call number: 1–888–364–3109; Conference Call ID code: 8302334#. TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference call ID Code.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

Dated: February 12, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–03435 Filed 2–18–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an Orientation and Planning meeting of the West Virginia Advisory Committee to the Commission (WV State Advisory Committee) will convene at 10:00 a.m. (EST) on Thursday, March 17, 2016, by conference call. The purpose of the orientation meeting is to inform the newly appointed members about the rules of operation for the advisory committee. The purpose of the planning meeting is to discuss project planning, selection of additional committee officers and plans for upcoming meetings.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number 1–888–438–5525 and conference call ID code: 1446325#. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–438–5525 and provide the operator with the conference call number: And conference call ID code: 1446325#.

Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, April 18, 2016. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=281* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Administrative Matters

Ivy L. Davis, Director, Director, Eastern Regional Office and Designated Federal Official

Welcome and Introductions

Tara N. Martinez, Chair

Orientation Meeting

WV State Advisory Committee

Planning Meeting

WV State Advisory Committee

DATES: Thursday, March 17, 2016 at 10:00 a.m. (EST).

ADDRESSES: The meeting will be held via teleconference.

Public Call Information: Conference call number: 1–888–438–5525; conference call ID code: 1446325#. TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference call ID code.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

Dated: February 12, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–03436 Filed 2–18–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, March 3, 2016, 2:00–2:45 p.m. Eastern Time (ET) and Friday, March 4, 2016, 8:45 a.m.–12:00 p.m. ET. During this time, members will continue to work on various Council initiatives which include: Innovation, entrepreneurship and workforce talent.

DATES:

Thursday, March 3, 2016; Time: 2:00 p.m.–2:45 p.m. ET.

Friday, March 4, 2016; Time: 8:45 a.m.–12:00 p.m. ET.

ADDRESSES: Nashville Entrepreneur Center, 41 Peabody St., Nashville, TN 37210.

Teleconference: March 3–4, 2016, Dial-In: 1–800–593–8978, Passcode: 5807298.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: *NACIE@doc.gov;* telephone: 202–482–8001; fax: 202–273–4781. Please reference ''NACIE February 18th Meeting'' in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Those unable to attend the meetings in person but wishing to listen to the proceedings can do so through a conference call line 1–800–593–8978, passcode: 5807298. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: February 12, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–03484 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Viacheslav Zhukov, Register Number: 18963–021, D. Ray James Correctional Institution, P.O. Box 2000, Folkston, GA 31537

Order Denying Export Privileges

On December 5, 2014, in the U.S. District Court for the Southern District of Georgia, Viacheslav Zhukov (''Zhukov'') was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Zhukov knowingly and willfully combined, conspired, confederated and agreed to unlawfully export controlled firearm accessories from the United States to co-conspirators in Russia without obtaining an export license from the United States Department of Commerce. Zhukov was sentenced to 51 months in prison, three years of supervised release and a special assessment of $100.00.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. § 1701–1706); 18 U.S.C. §§ 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. § 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. § 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'')

[1] 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Zhukov's conviction for violating IEEPA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Zhukov to make a written submission to BIS. BIS has received a submission from Zhukov.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Zhukov's export privileges under the Regulations for a period of seven (7) years and three (3) months from the date of Zhukov's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Zhukov had an interest at the time of his conviction.

Accordingly, it is hereby ORDERED:

First, from the date of this Order until March 5, 2022, Viacheslav Zhukov, with a last known address of Viacheslav Zhukov, Register Number: 18963–021, D. Ray James Correctional Institution, P.O. Box 2000, Folkston, GA 31537, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Zhukov by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Zhukov may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Zhukov. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 5, 2022.

Issued this 11th day of February, 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–03467 Filed 2–18–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 122nd Scientific and Statistical Committee (SSC) meeting and its 165th Council meeting to take actions on fishery management issues in the Western Pacific Region. The Council will also convene meetings of the Pelagic and International Standing Committee, Program Planning and Research Standing Committee, and Executive and Budget Standing Committee.

DATES: The 122nd SSC meeting will be held between 8:30 a.m. and 5 p.m. on March 8–10, 2016. The Council's Pelagic and International Standing Committee will be held between 9 a.m. and 12 noon, Program Planning and Research Standing Committee between 1 p.m. and 3 p.m., and Executive and Budget Standing Committee between 3 p.m. and 5 p.m. on March 14, 2016. The 165th Council meeting will be held between 8:30 a.m. and 5 p.m. on March 15–17, 2016. In addition, the Council will host a Fishers Forum on March 15, 2016, between 6 p.m. and 9 p.m. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 122nd SSC, the Pelagic and International Standing Committee, Program Planning and Research Standing Committee, and Executive and Budget Standing Committee meetings will be held at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220. The 165th Council meeting will be held at Laniakea YWCA, Fuller Hall, 1040 Richards St., Honolulu, HI 96813, phone: (808) 538–7061. The Fishers Forum will be held at the Ala Moana Hotel, 410 Atkinson Dr., Honolulu, HI 96814; phone: (808) 956–4262.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment

periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business. Background documents will be available from, and written comments should be sent to, Mr. Edwin Ebisui Jr., Chair, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, phone: (808) 522–8220 or fax: (808) 522–8226.

Agenda for 122nd SSC Meeting

8:30 a.m.–5 p.m., Tuesday, March 8, 2016

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 121st SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Program Planning
   A. Coral Reef Program Project Updates
   1. American Samoa Reef Fish Connectivity Project
   B. Final Center for Independent Experts (CIE) Review Reports and Next Steps
   1. Integrated Data Poor Stock Assessment Model
   2. Kona Crab Stock Assessment
   C. West Hawaii Integrated Ecosystem Assessment Status and Trends
   D. Marianas Trench Marine National Monument Mapping Application
   E. The Science of Pelagic Marine Protected Areas
   F. SSC Work Session on Management Strategy Evaluation Priorities and CIE Review Comments on the Estimation of Bycatch in the Hawaii Deep-Set Longline Fishery
   G. Public Comment
   H. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Wednesday, March 9, 2016

6. Pelagic Fisheries
   A. Hawaii and American Samoa Longline Fisheries Reports
   B. Eastern Pacific Ocean (EPO) Bigeye Tuna (BET) Quota
   C. Overfishing of EPO Swordfish (ACTION ITEM)
   D. Feasibility of Yellowfin Tuna Stock Assessment Model for the Main Hawaiian Islands
   E. Measuring Productivity in a Shared Stock Fishery: A Case Study of the Hawaii Longline Fishery
   F. International Fisheries
   1. Outcomes from 12th Session of the Western and Central Pacific Fisheries Commission (WCPFC 12)
   G. Public Comment
   H. SSC Discussion and Recommendations
7. Protected Species
   A. Analysis on the 2013–14 Leatherback Sea Turtle Interactions in the Hawaii Deep-Set Longline Fishery Compared to Previous Years
   B. Report of the Joint and Pacific Scientific Review Group Meeting
   C. Rare Events Bycatch Workshop Plan
   D. Updates on Endangered Species Act (ESA) Consultations
   1. Re-consultation on the Hawaii Deep-Set Longline Fishery
   2. Monk Seal Critical Habitat
   E. Updates on ESA and Marine Mammal Protection Act (MMPA) Actions
   F. Public Comment
   G. SSC Discussion and Recommendations

8:30 a.m.–5 p.m., Thursday, March 10, 2016

8. Other Business
   A. SSC Operational Guidelines and Three-Year Research Plan
   B. 2015 Program Review and 2016 Program
   C. 123rd SSC Meeting
9. Summary of SSC Recommendations to the Council

Agenda for Pelagic and International Standing Committee

9 a.m.–12 noon, Monday, March 14, 2016

A. Hawaii and American Samoa Longline Fisheries Reports
B. EPO BET Quota
C. Overfishing of EPO Swordfish (ACTION ITEM)
D. International Work Program
E. International Fisheries Meetings
   1. WCPFC 12 Meeting Report
F. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. SSC
G. Public Comment
H. Standing Committee Recommendations

Agenda for Program Planning and Research Standing Committee

1 p.m.–3 p.m., Monday, March 14, 2016

A. CIE Review Reports
   1. Integrated data poor stock assessment model
   2. Kona Crab Stock Assessment
B. SSC Work Session Reports
   1. Management Strategy Evaluation Priorities
   2. CIE Review Comments on the Estimation of Bycatch in the Hawaii Deep-Set Longline Fishery
C. Fishery Ecosystem Plan Modification (ACTION ITEM)
D. National Bycatch Issues
   1. National Bycatch Strategy
   2. Standardized Bycatch Reporting Methodology
E. Updates on Marine National Monuments
F. Report on the Council's 2015 Program Review
G. National Council Communications Group
H. Regional, National and International Outreach & Education
I. NOAA Report on FAO Eco-Labeling Guidelines
J. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. Scientific & Statistical Committee
K. Public Comment
L. Standing Committee Discussion & Recommendations

Agenda for Executive and Budget Standing Committee

3 p.m.–5 p.m., Monday, March 14, 2016

A. Financial Reports
B. Administrative Reports
C. Council Family Changes
D. Report on Final Operating Guidelines
E. Update to Regional Operating Agreement
F. Statement of Organization Practices and Procedures
G. SSC Operational Guidelines and Three-Year Research Plan
H. Meetings and Workshops
I. Other Business
J. Public Comment
K. Standing Committee Discussion and Recommendations

Agenda for 165th Council Meeting

8:30 a.m.–5 p.m., Tuesday, March 15, 2016

1. Welcome and Introductions
2. Approval of the 165th Agenda
3. Approval of the 164rd Meeting Minutes
4. Executive Director's Report
5. Agency Reports
   1. National Marine Fisheries Service
   2. Pacific Islands Regional Office
   a. Status of Pending Management Actions
   3. Pacific Islands Fisheries Science Center
   B. NOAA Office of General Counsel, Pacific Islands Section
   C. U.S. Department of State
   D. U.S. Fish and Wildlife Service
   E. Enforcement
   1. U.S. Coast Guard
   2. NOAA Office of Law Enforcement
   3. NOAA Office of General Counsel, Enforcement Section
   F. Public Comment
   G. Council Discussion and Action
6. Hawaii Archipelago and Pacific Remote Island Areas (PRIA)
   A. Moku Pepa
   B. Legislative Report
   C. Enforcement Issues
   D. West Hawaii Integrated Ecosystem Assessment Status and Trends
   E. Report on State of Hawaii Fish Aggregation Devices
   F. Status of the Main Hawaiian Islands Deep-7 Bottomfish Workshops
   G. Education and Outreach Initiatives
   H. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. SSC
   I. Public Comment
   J. Council Discussion and Action
7. American Samoa Archipelago
   A. Motu Lipoti
   B. Fono Report
   C. Enforcement Issues
   D. Community Activities and Issues
   1. Report on the Governor's Fisheries Task Force Initiatives
   2. Fisheries Development
   3. Fisheries Disaster Relief
   E. Education and Outreach Initiatives
   F. Advisory Group Report and Recommendations
   1. Advisory Panel
   2. SSC
   G. Public Comment
   H. Council Discussion and Action
8. Protected Species
   A. Update on Leatherback Turtle Interactions in the Hawaii Deep-Set Longline Fishery
   B. Report of the Joint and Pacific Scientific Review Group Meeting
   C. Report on the Rare Events Bycatch Workshop Plan

D. Updates on ESA Consultations
E. Updates on ESA and MMPA Actions
F. Advisory Group Report and Recommendations
1. Advisory Panel
2. SSC
G. Public Comment
H. Council Discussion and Action

6 p.m.–9 p.m., Tuesday, March 15, 2016

Fishers Forum—Future of Main Hawaiian Island Bottomfish Research and Management

8:30 a.m.–5 p.m., Wednesday, March 16, 2016

9. Pelagic and International Fisheries
A. Hawaii and American Samoa Longline Fisheries Reports
B. EPO BET Quota
C. Overfishing of EPO Swordfish (ACTION ITEM)
D. Report on Hawaii Longline Vessel and Observer Electronic Reporting
E. International Work Program
F. International Fisheries Meetings
1. WCPFC 12 Meeting Report
G. Advisory Group Report and Recommendations
1. Advisory Panel
2. SSC
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
10. Program Planning and Research
A. CIE Review Reports
1. Integrated Data Poor Stock Assessment Model
2. Kona Crab Stock Assessment
B. SSC Work Session Reports
1. Management Strategy Evaluation Priorities
2. CIE Review Comments on the Estimation of Bycatch in the Hawaii Deep-Set Longline Fishery
C. Fishery Ecosystem Plan Modification (ACTION ITEM)
D. National Bycatch Issues
1. National Bycatch Strategy
2. Standardized Bycatch Reporting Methodology
E. Updates on Marine National Monuments
F. Report on the Council's 2015 Program Review
G. National Fishery Management Councils' Communications Group
H. Regional, National and International Outreach and Education
I. NOAA Report on FAO Eco-Labeling Guidelines
J. Advisory Group Report and Recommendations
1. Advisory Panel
2. SSC
K. Standing Committee Recommendations
L. Public Comment
M. Council Discussion and Action

4 p.m.–5 p.m., Wednesday, March 16, 2016

11. Public Comment on Non-agenda Items

8:30 a.m.–5 p.m., Thursday March 17, 2016

12. Mariana Archipelago
A. Guam
1. Isla Informe
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Report on the Yigo Community-Based Management Plan (CBMP)
b. Update on Malesso CBMP Plan
c. Participatory Mapping of Coral Reef Fishing Grounds
d. Festival of the Pacific Update
5. Education and Outreach Initiatives
B. Commonwealth of Northern Mariana Islands
1. Arongol Falú
2. Legislative Report
3. Enforcement Issues
4. Community Activities and Issues
a. Report on Northern Islands CBMP
b. Report on Fishery Development Projects
5. Education and Outreach Initiatives
C. Advisory Group Report and Recommendations
1. Advisory Panel
2. SSC
D. Public Comment
E. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Council Family Changes
D. Report on Final Operating Guidelines
E. Update to Regional Operating Agreement
F. Statement of Organization Practices and Procedures
G. SSC Operational Guidelines and Three-Year Research Plan
H. Meetings and Workshops
I. Other Business
J. Standing Committee Recommendations
K. Public Comment
L. Council Discussion and Action
14. Other Business

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 163rd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least days prior to the meeting date.

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

Dated: February 16, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–03471 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council (SAFMC); Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the: Protected Resources Committee; Joint Dolphin Wahoo and Snapper Grouper Committees; Advisory Panel Selection Committee (Partially Closed Session); Southeast Data, Assessment and Review (SEDAR) Committee (Partially Closed Session); Law Enforcement Committee; Snapper Grouper Committee; King and Spanish Mackerel Committee; Data Collection Committee; Executive Finance Committee; and a meeting of the Full Council. The Council will also hold a meeting of its Law Enforcement Advisory Panel. The Council will also hold a formal public comment session. The Council will take action as necessary.

DATES: The Council meeting will be held from 1:30 p.m. on Monday, March 7, 2016 until 12 p.m. on Friday, March 11, 2016.

ADDRESSES:

Meeting address: The meeting will be held at the Westin Jekyll Island, 110 Ocean Way, Jekyll Island, GA; phone: (888) 627–8316 or (912) 635–4545; fax: (912) 319–2838.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

Law Enforcement Advisory Panel Meeting, Monday, March 7, 2016, 1:30 p.m. until 5 p.m. and 8:30 a.m. until 12 p.m., Tuesday, March 8, 2016—Concurrent Sessions

1. The Law Enforcement Advisory Panel (AP) will receive updates on developing and recently implemented amendments and provide recommendations as appropriate. The AP will discuss enforcement of new fillet regulations, proposed hogfish

regulations, proposed for-hire reporting regulations, size and bag limit compliance in the South Atlantic Region, enforceability of Marine Protected Areas and Spawning Special Management Zones, review the System Management Plans for each and provide recommendations as appropriate. The AP will also discuss Turtle Excluder Device compliance in the shrimp fishery and provide recommendations. The AP will elect a new chair and vice chair during its meeting.

Protected Resources Committee, Monday, March 7, 2016, 1:30 p.m. until 2:30 p.m.

1. The Committee will receive updates on Protected Resources issues and the Right Whale Critical Habitat Final Rule and provide recommendations as appropriate.

2. The Committee will review the Endangered Species Act (ESA) and Magnuson-Stevens Act (MSA) Integration Agreement, discuss the agreement and provide recommendations relative to its approval. The Committee will also receive an update on issues relative to Protected Resources involving the Atlantic States Marine Fisheries Commission and the U.S. Fish and Wildlife Service and provide recommendations as appropriate.

Joint Dolphin Wahoo and Snapper Grouper Committees, Monday, March 7, 2016, 2:30 p.m. until 5 p.m.

1. The Committee will receive status updates from NOAA Fisheries on commercial and recreational catches versus annual catch limits (ACLs) for dolphin and wahoo and amendments currently under Secretarial review.

2. The Committee will receive an overview of Amendment 10 to the Dolphin Wahoo Fishery Management Plan (FMP)/Amendment 44 to the Snapper Grouper FMP addressing allocations for dolphin and yellowtail snapper and provide recommendations.

Advisory Panel Selection Committee (Partially Closed Session), Tuesday, March 8, 2016, 8:30 a.m. until 10 a.m.

1. The Committee will receive an overview of the non-government organization representation on species-specific advisory panels, discuss term limits, and other policy issues, and provide recommendations as appropriate.

2. The Committee will review applications for open advisory panel seats and provide recommendations as appropriate (Closed Session).

SEDAR Committee (Partially Closed Session), Tuesday, March 8, 2016, 10 a.m. until 12 p.m.

1. The Committee will recommend participants for the upcoming Blueline Tilefish Stock Identification Workshop (Closed Session).

2. The Committee will discuss the Blueline Tilefish Stock Assessment schedule and receive updates on SEDAR projects.

Law Enforcement Committee, Tuesday, March 8, 2016, 1:30 p.m. until 2:30 p.m.

1. The Committee will review recommendations from the Law Enforcement Advisory Panel and take action as appropriate.

Snapper Grouper Committee, Tuesday, March 8, 2016, 2:30 p.m. until 5 p.m. and Wednesday, March 9, 2016, 8:30 a.m. until 5:30 p.m.

1. The Committee will receive updates from NOAA Fisheries on the status of commercial and recreational catches versus quotas for species under ACLs, and the status of amendments currently under Secretarial review.

2. The Committee will receive a presentation on the results of a black sea bass pot selectivity study conducted by Dr. Paul Rudershausen, discuss and take action as appropriate.

3. The Committee will receive a report from its Scientific and Statistical Committee.

4. The Committee will receive an overview of Snapper Grouper Amendment 37 addressing measures for hogfish, consider public hearing comments, modify the document as appropriate, select preferred alternatives and approve all actions.

5. The Committee will review Snapper Grouper Amendment 41 addressing management measures for mutton snapper, consider public scoping comments, modify the document as appropriate and provide guidance to staff.

6. The Committee will receive an overview of the System Management Plan for Deepwater Marine Protected Areas, modify the document as necessary and approve the plan.

7. The Committee will review the Oculina Review Report, modify the report as necessary and approve the report.

8. The Committee will review Snapper Grouper Amendment 36 to establish Spawning Special Management Zones (SMZs) and the System Management Plan for Spawning SMZs, modify the document as necessary, and provide recommendations for approval for Secretarial Review.

9. The Committee will receive an overview of management items to be considered in developing Snapper Grouper Amendment 43 addressing red snapper, discuss and provide direction to staff.

10. The Committee will receive a summary of prioritized action items for development of the draft Fisheries Seasonality/Retention Regulatory Amendment, discuss and provide direction to staff.

Formal Public Comment, Wednesday, March 9, 2016, 5:30 p.m.—Public comment will first be accepted on items before the Council for final action: Snapper Grouper Amendment 36 (Spawning Special Management Zones), the Marine Protected Area System Management Plan, the Oculina Review Report, the ESA/MSA Integration Agreement, and Coastal Migratory Pelagic Amendment 26 (*king mackerel* measures). Public comment will then be accepted on any other items on the Council agenda. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

King and Spanish Mackerel Committee, Thursday, March 10, 2016, 8:30 a.m. until 10 a.m.

1. The Committee will receive a report from NOAA Fisheries on the recreational and commercial catches versus ACLs, a report from the Gulf of Mexico Fishery Management Council meeting, and a report from the King and Spanish Mackerel Advisory Panel.

2. The Committee will receive an overview of Amendment 26 to the Coastal Migratory Pelagic FMP addressing modifications to management boundaries, ACLs, allocations, and other management measures, consider public hearing comments, modify the document as appropriate, select preferred alternatives, and provide recommendations for approval for Secretarial review.

3. The Committee will also receive an overview of Atlantic *cobia* landings and the adjustments to the recreational season lengths, and a presentation on the 2016 recreational season for Atlantic cobia from NOAA Fisheries, discuss options for developing a framework amendment for *cobia,* and provide direction to staff.

Data Collection Committee, Thursday, March 10, 2016, 10 a.m. until 2:30 p.m.

1. The Committee will receive a report from NOAA Fisheries on Bycatch Monitoring and provide direction to staff.

2. The Committee will receive an update on the Commercial Logbook Pilot Study from NOAA Fisheries, discuss and take action as appropriate.

3. The Committee will receive an overview of the Implementation Plan for Commercial Logbook Electronic Reporting, the status of eTrips, discuss and provide direction to staff.

4. The Committee will also receive an overview of the Atlantic For-Hire Reporting Amendment, a demonstration of the South Carolina Department of Natural Resources' Electronic For-Hire Logbook reporting process, review public hearing input, discuss and modify the document as appropriate and approve all actions.

5. The Committee will receive an update on the Council's Citizen Science Workshop, an overview of the draft Citizen Science Blueprint, discuss and take action as appropriate.

Executive Finance Committee, Thursday, March 10, 2016, 2:30 p.m. until 3:30 p.m.

1. The Committee will receive an update on the Calendar Year (CY) 2015 budget expenditures, the Draft Activity Schedule, the Status of the CY 2016 budget, and the Council Follow-up and priorities, and take action as appropriate.

2. The Committee will discuss standards and procedures for participating in Council webinar meetings, receive a report from the Council Coordinating Committee meeting, address other issues, and take action as appropriate.

Council Session: Thursday, March 10, 2016, 3:45 p.m. until 5 p.m. and Friday, March 11, 2016, 8:30 a.m. until 12 p.m.

Council Session: March 10, 2016

3:45–4 p.m.: Call the meeting to order, adopt the agenda, and approve the December 2015 meeting minutes.

4–5 p.m.: The Council will receive a report from the Snapper Grouper Committee, approve/disapprove Snapper Grouper Amendment 36 (Spawning Special Management Zones) for formal Secretarial Review; approve/disapprove the Oculina Review Report, and approve/disapprove the System Management Plan for Marine Protected Areas. The Council will consider other Committee recommendations and take action as appropriate.

Council Session: March 11, 2016

8:30–9 a.m.: The Council will receive a report from the Mackerel Committee, approve/disapprove Amendment 26 to the Coastal Migratory Pelagics FMP for formal Secretarial review, consider other Committee recommendations, and take action as appropriate.

9–9:10 a.m.: The Council will receive a report from the Law Enforcement Committee, consider recommendations and take actions as appropriate.

9:10–9:30 a.m.: The Council will receive a report from the Joint Dolphin Wahoo and Snapper Grouper Committees, consider recommendations and take action as appropriate.

9:30–9:40 a.m.: The Council will receive a report from the Protected Resources Committee, approve/disapprove the ESA/MSA Integration Agreement, consider other recommendations and take action as appropriate.

9:40–9:50 a.m.: The Council will receive a report from the SEDAR Committee, consider Committee recommendations and take action as appropriate.

9:50–10 a.m.: The Council will receive a report from the Data Collection Committee, consider Committee recommendations and take action as appropriate.

10–10:10 a.m.: The Council will receive a report from the AP Selection Committee, consider committee recommendations and take action as appropriate.

10:10–10:30 a.m.: The Council will receive a report from the Executive Finance Committee, approve the Council activity schedule, approve the Council Follow-Up and Priorities, consider other Committee recommendations and take action as appropriate.

10:30–12 noon: The Council will receive a presentation on proposed scoping measures for the Monitor National Marine Sanctuary, status reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center; review and develop recommendations on Experimental Fishing Permits as necessary; receive agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 16, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–03470 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE201

Notice of Availability of the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the *Deepwater Horizon* Federal and State natural resource trustee agencies (Trustees) have prepared a Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS). As required by OPA, in this Final PDARP/PEIS, the Trustees present the assessment of impacts of the *Deepwater Horizon* oil spill on natural resources in the Gulf of Mexico and on the services those resources provide, and determine the restoration needed to compensate the public for these impacts. The Final PDARP/PEIS describes the Trustees' programmatic alternatives considered to restore natural resources, ecological services, and recreational use services injured or lost as a result of the *Deepwater Horizon* oil spill. The Trustees evaluate these alternatives under criteria set forth in the OPA natural resource damage assessment regulations, and also evaluate the environmental consequences of the restoration alternatives in accordance with NEPA. The purpose of this notice is to inform the public of the availability of the Final PDARP/PEIS.

ADDRESSES: *Obtaining Documents:* You may download the Final PDARP/PEIS at *http://www.gulfspillrestoration.noaa.gov.* Alternatively, you may request a CD of the Final PDARP/PEIS (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at *http://www.gulfspillrestoration.noaa.gov.* The Final PDARP/PEIS also will be available for download at *http://www.justice.gov/enrd/deepwater-horizon.*

FOR FURTHER INFORMATION CONTACT: Courtney Groeneveld at *gulfspill.restoration@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the *Deepwater Horizon* mobile drilling unit exploded, caught fire, and eventually sank in the Gulf of Mexico, resulting in a massive release of oil and other substances from BP's Macondo well. Tragically, 11 workers were killed and 17 injured by the explosion and fire. Initial efforts to cap the well following the explosion were unsuccessful, and for 87 days after the explosion, the well continuously and uncontrollably discharged oil and natural gas into the northern Gulf of Mexico. Approximately 3.19 million barrels (134 million gallons) of oil were released into the ocean, by far the largest offshore oil spill in the history of the United States.

Oil spread from the deep ocean to the surface and nearshore environment, from Texas to Florida. The oil came into contact with and injured natural resources as diverse as deep-sea coral, fish and shellfish, productive wetland habitats, sandy beaches, birds, endangered sea turtles, and protected marine life. The oil spill prevented people from fishing, going to the beach, and enjoying their typical recreational activities along the Gulf. Extensive response actions, including use of dispersants, cleanup activities, and actions to try to prevent the oil from reaching sensitive resources, were undertaken to try to reduce harm to people and the environment. However, many of these response actions had collateral impacts on the environment. The oil and other substances released from the well in combination with the extensive response actions together make up the *Deepwater Horizon* incident.

The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* incident under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use of those resources and the loss of services they provide from the time of injury until the time restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The Trustees [1] are as follows:

- National Oceanic and Atmospheric Administration, on behalf of the U.S. Department of Commerce;
- U.S. Department of the Interior, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- U.S. Department of Agriculture;
- U.S. Environmental Protection Agency;
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Background

Notice of availability of the Draft PDARP/PEIS was published in the **Federal Register** on October 5, 2015 (80 FR 60126). The Draft PDARP/PEIS presented the assessment of impacts of the *Deepwater Horizon* incident on natural resources in the Gulf of Mexico and on the services those resources provide, and determined the restoration needed to compensate the public for these impacts. The Trustees provided the public with 60 days to review and comment on the Draft PDARP/PEIS. The Trustees also held public meetings in Houma, LA; Long Beach, MS; New Orleans, LA; Mobile, AL; Pensacola, FL; St. Petersburg, FL; Galveston, TX; and Washington, DC, to facilitate public understanding of the document and provide opportunity for public comment. The Trustees considered the public comments received, which informed the Trustees' analysis of programmatic alternatives in the Final PDARP/PEIS. The Trustees actively solicited public input through a variety of mechanisms, including convening public meetings, distributing electronic communications, and using the Trustee-wide public Web site and database to share information and receive public input. A summary of the public comments received and the Trustees' responses to those comments are addressed in Chapter 8 of the Final PDARP/PEIS.

Overview of the Final PDARP/PEIS

The Final PDARP/PEIS is being released in accordance with the OPA, the Natural Resources Damage Assessment (NRDA) regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

In the Final PDARP/PEIS, the *Deepwater Horizon* Trustees present to the public their findings on the extensive injuries to multiple habitats, biological species, ecological functions, and geographic regions across the northern Gulf of Mexico that occurred as a result of the *Deepwater Horizon* incident, as well as their programmatic plan for restoring those resources and the services they provide. The injuries caused by the *Deepwater Horizon* incident cannot be fully described at the level of a single species, a single habitat type, or a single region. Rather, the injuries affected such a wide array of linked resources over such an enormous area that the effects of the *Deepwater Horizon* incident constitute an ecosystem-level injury. The Final PDARP/PEIS presents four programmatic alternatives evaluated in accordance with OPA and NEPA.

The four alternatives under the Final PDARP/PEIS are as follows:

- Alternative A (Preferred Alternative): Comprehensive Integrated Ecosystem Restoration Plan based on programmatic Trustee goals;
- Alternative B: Resource-Specific Restoration Plan based on programmatic Trustee goals;
- Alternative C: Continued Injury Assessment and Defer Comprehensive Restoration Plan; and
- Alternative D: No Action/Natural Recovery.

These programmatic alternatives are comprised of restoration types and

[1] Although a trustee under OPA by virtue of the proximity of its facilities to the *Deepwater Horizon* oil spill, the U.S. Department of Defense (DOD) is not a member of the Trustee Council and did not participate in development of this Final PDARP/PEIS.

approaches to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. The Trustees' preferred alternative for a restoration plan utilizes a comprehensive integrated ecosystem approach to best address these ecosystem-level injuries. The Trustees' evaluation determined this alternative is best, among several other alternatives, at compensating the public for the losses to natural resources and services caused by the *Deepwater Horizon* incident.

The Trustees' proposed decision is to select a comprehensive restoration plan to guide and direct subsequent restoration planning and implementation during the coming decades. The Final PDARP/PEIS is programmatic; it describes the framework by which subsequent project specific restoration plans will be identified and developed, and sets forth the types of projects the Trustees will consider in each of the described restoration areas. The subsequent restoration plans will identify, evaluate, and select specific restoration projects for implementation that are consistent with the restoration framework laid out by the Final PDARP/PEIS.

The Trustees considered this programmatic restoration planning decision in light of the proposed settlement among BP, the United States, and the States of Louisiana, Mississippi, Alabama, Florida, and Texas to resolve BP's liability for natural resource damages associated with the *Deepwater Horizon* incident. Under this proposed settlement, BP would pay a total of $8.1 billion for restoration to address natural resource injuries (this includes $1 billion already committed for early restoration), plus up to an additional $700 million to respond to natural resource damages unknown at the time of the settlement and/or to provide for adaptive management. The proposed Consent Decree for the proposed settlement was the subject of a separate public notice and comment process; the Notice of Lodging of the proposed Consent Decree under the Clean Water Act and Oil Pollution Act was published in the **Federal Register** on October 5, 2015 (80 FR 60180).

Next Steps

In accordance with NEPA, a Federal agency must prepare a concise public Record of Decision (ROD) at the time the agency makes a decision in cases involving an EIS (40 CFR 1505.2). The Trustees will issue a ROD pursuant to NEPA regulations at 40 CFR 1505.2 and OPA regulations at 15 CFR 990.23. Accordingly, the ROD for the Final PDARP/PEIS will provide and explain the Trustees' decisions regarding the selection of a preferred alternative. The Trustees will issue the ROD no earlier than 30 days after the Environmental Protection Agency publishes a notice in the **Federal Register** announcing the availability of the Final PDARP/PEIS (40 CFR 1506.10).

Administrative Record

The documents included in the Administrative Record can be viewed electronically at the following location: *http://www.doi.gov/deepwaterhorizon/adminrecord.*

The Trustees opened a publicly available Administrative Record for the NRDA for the *Deepwater Horizon* oil spill, including restoration planning activities, concurrently with publication of the 2011 Notice of Intent (NOI) to Begin Restoration Scoping and Prepare a Gulf Spill Restoration Planning PEIS (pursuant to 15 CFR 990.45). The Administrative Record includes the February 17, 2011, NOI for a 90-day formal scoping (76 FR 9327) and public comment period for this Final PDARP/PEIS. The Trustees conducted the scoping in accordance with OPA (15 CFR 990.14(d)), NEPA (40 CFR 1501.7), and State authorities. As part of the scoping process, the Trustees hosted public meetings across all the Gulf States during spring 2011.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing NRDA regulations found at 15 CFR part 990.

Dated: February 11, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–03299 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request: Socioeconomics of Recreational Fishing in Florida's Gulf Coast

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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 April 19, 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 Dr. Danielle Schwarzmann, 301–713–7254 *danielle.schwarzmann@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

Through a partnership with The Rosenstiel School of Marine and Atmospheric Science at the University of Miami, we will collect information from recreational fishers to complete quantitative economic valuations of ecosystem goods and services produced for recreational fisheries in Florida's Gulf Coast. The survey will utilize the stated choice method to estimate the marginal value of a change in catch rates and other biological or economic attributes of the recreational fishery. These may include; size, type of fish and/or method of fishing.

This information will be utilized by Florida Fish and Wildlife Conservation Commission (FFWCC) and the National Marine Fisheries Service, Southeast Fisheries Science Center (SEFSC) fisheries scientists and managers to enhance the scope of information used for stock assessment. Additionally, this economic data will be integrated into the recreational fisheries management decision-making processes. The information will directly benefit Office of National Marine Sanctuaries (ONMS), as it will help us to identify socioeconomic indicators for recreational fishing that we can incorporate into management process/decisions and future condition reports to evaluate the status and trends of the recreational fishing ecosystem service.

II. Method of Collection

Internet and mail.

III. Data

OMB Control Number: 0648–XXXX.
Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 333.

Estimated Total Annual Cost to Public: Other than labor costs, there will be no cost to the public.

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: February 12, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–03432 Filed 2–18–16; 8:45 am]

BILLING CODE 3510–NK–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agency.

Comments Must Be Received on or Before: 3/20/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s): MR 1188—Towel Set, Christmas, Includes Shipper 11188
Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO
Mandatory for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.
Contracting Activity: Defense Commissary Agency
Distribution: C-List

NSN(s)—Product Name(s):
8340–00–NIB–0019—Tarp, Standard, Polyethylene, 20′ × 25′, Grommets
8340–00–NIB–0020—Tarp, Heavy Duty, Polyethylene, 20′ × 25′, Grommets
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Mandatory for: Total Government Requirement
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: B-List

Services

Service Type: Grounds Maintenance Service
Mandatory for: FAA, Atlanta Air Route Surveillance Radar, 1890 Roswell Street SE, Smyrna, GA

Service Type: Grounds Maintenance and Janitorial Service
Mandatory for: FAA, Fulton County Air Traffic Control Tower, 3979 Aviation Circle NW, Atlanta, GA

Mandatory Source(s) of Supply: New Ventures Enterprises, Inc., LaGrange, GA
Contracting Activity: Dept of Trans/Federal Aviation Administration, College Park, GA

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 7530–00–160–8475—Index Sheet Set, Alphabetical, 8½″ × 11″, Buff 7530–00–160–8477—Index Sheet Set, Alphabetical, 11″ × 8½″, Buff
Mandatory Source(s) of Supply: Life'sWork of Western PA, Pittsburgh, PA
Contracting Activity: General Services Administration, New York, NY

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–03472 Filed 2–18–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, February 26, 2016.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2016–03595 Filed 2–17–16; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, February 24, 2016, 10:00 a.m.–12:00 p.m.

PLACE: Room 837–C, Enter on the Fourth Floor, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: Decisional Matters:

1. Fiscal Year 2016 Operating Plan
2. General Conformity Certificates for Adult Wearing Apparel

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 16, 2016.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2016–03561 Filed 2–17–16; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0019]

Agency Information Collection Activities; Comment Request; Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation

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 April 19, 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–0019. 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 Freddie Cross, 202–502–7489.

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: Higher Education Act (HEA) Title II Report Cards on State Teacher Credentialing and Preparation.

OMB Control Number: 1840–0744.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,780.

Total Estimated Number of Annual Burden Hours: 266,016.

Abstract: This request is to approve extension of the state and institution and program report cards required by the Higher Education Act of 1965, as amended in 2008 by the Higher Education Opportunity Act (HEOA). States must report annually on criteria and assessments required for initial teacher credentials using a State Report Card (SRC), and institutions of higher education (IHEs) with teacher preparation programs (TPP), and TPPs outside of IHEs, must report on key program elements on an Institution and Program Report Card (IPRC). IHEs and TPPs outside of IHEs report annually to their states on program elements, including program numbers, type, enrollment figures, demographics, completion rates, goals and assurances to the state. States, in turn, must report on TPP elements to the Secretary of Education in addition to information on assessment pass rates, state standards, initial credential types and requirements, numbers of credentials issued, TPP classification as at-risk or low-performing. The information from states, institutions, and programs is published annually in The Secretary's Report to Congress on Teacher Quality.

Dated: February 12, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–03308 Filed 2–18–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 9, 2016, 2:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico

Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

- Call to Order and Introductions
- Approval of Agenda
- Approval of Minutes from February 10, 2016
- Old Business
- New Business: Discussion on Draft Recommendation 2016–02, Fiscal Year 2017 Budget Priorities
- Update from DOE
- Presentation by DOE: LANL Transuranic Waste Program Corrective Actions Part II
- Public Comment Period
- Adjourn

Public Participation: The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://energy.gov/em/nnmcab/northern-new-mexico-citizens-advisory-board.*

Issued at Washington, DC, on February 12, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–03475 Filed 2–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 9, 2016, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *melyssa.noe@orem.doe.gov* or check the Web site at *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation: Fiscal Year 2018 Budget Formulation and Prioritization of Projects
- Additions/Approval of Agenda
- Motions/Approval of February 10, 2016 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

Issued at Washington, DC, on February 12, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–03476 Filed 2–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–892–000]

Red Horse III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Red Horse III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 1, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03315 Filed 2–18–16; 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 exempt wholesale generator filings:

Docket Numbers: EG16–53–000.

Applicants: Comanche Solar PV, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Comanche Solar PV, LLC.

Filed Date: 2/9/16.

Accession Number: 20160209–5208.

Comments Due: 5 p.m. ET 3/1/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1942–002.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance filing to remove rejected language for ministerial purpose to be effective 1/1/2013.

Filed Date: 2/9/16.

Accession Number: 20160209–5241.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER15–1333–003.

Applicants: Waverly Wind Farm LLC.

Description: Notice of Non-Material Change in Status of Waverly Wind Farm LLC.

Filed Date: 2/9/16.

Accession Number: 20160209–5256.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER15–2239–002.

Applicants: NextEra Energy Transmission West, LLC.

Description: Compliance filing: NextEra Energy Transmission West, LLC Compliance Filing to be effective 10/20/2015.

Filed Date: 2/9/16.

Accession Number: 20160209–5233.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER16–584–002.

Applicants: Otter Tail Power Company.

Description: Tariff Amendment: Amendment to BDRA and Request for Shortened Comment Period to be effective 12/19/2015.

Filed Date: 2/9/16.

Accession Number: 20160209–5231.

Comments Due: 5 p.m. ET 2/16/16.

Docket Numbers: ER16–915–000.

Applicants: Comanche Solar PV, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 3/25/2016.

Filed Date: 2/9/16.

Accession Number: 20160209–5197.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER16–916–000.

Applicants: TransCanada Power Marketing Ltd.

Description: Compliance filing: Notice of Succession to be effective 2/1/2016.

Filed Date: 2/9/16.

Accession Number: 20160209–5240.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER16–917–000.

Applicants: TC Ironwood LLC.

Description: Compliance filing: Notice of Succession to be effective 2/1/2016.

Filed Date: 2/9/16.

Accession Number: 20160209–5242.

Comments Due: 5 p.m. ET 3/1/16.

Docket Numbers: ER16–918–000.

Applicants: Rhode Island State Energy Center, LP.

Description: Compliance filing: Notice of Succession to be effective 1/28/2016.

Filed Date: 2/10/16.

Accession Number: 20160210–5025.

Comments Due: 5 p.m. ET 3/2/16.

Docket Numbers: ER16–919–000.

Applicants: Montana Generation, LLC.

Description: Tariff Cancellation: Notice of Cancellation of Market-Based Rate Tariff to be effective 2/11/2016.

Filed Date: 2/10/16.

Accession Number: 20160210–5037.

Comments Due: 5 p.m. ET 3/2/16.

Docket Numbers: ER16–920–000.

Applicants: Southwestern Public Service Company.

Description: Compliance filing: 2–10–16_ER13–1455 Comp Filing to be effective 1/1/2012.

Filed Date: 2/10/16.

Accession Number: 20160210–5050.

Comments Due: 5 p.m. ET 3/2/16.

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: February 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03319 Filed 2–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–895–000]

RDAF Energy Solutions; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RDAF Energy Solutions's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 1, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–03317 Filed 2–18–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9025–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 02/08/2016 Through 02/12/2016

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal Agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20160030, Draft, USFS, MT, Tenmile South Helena Project, Comment Period Ends: 04/05/2016, Contact: Allen Byrd 406–495–3903.

EIS No. 20160031, Final Supplement, BOEM, LA, Gulf of Mexico OCS Oil and Gas Lease Sale 2016 Western Planning Area Lease Sale 248, Review Period Ends: 03/21/2016, Contact: Micelle Nannen 504–731–6682.

EIS No. 20160032, Draft, USFS, ID, Middle Fork Weiser River Landscape Restoration Project, Comment Period Ends: 04/04/2016, Contact: Steve Penny 208–634–0801.

EIS No. 20160033, Draft, NRC, IL, Generic—License Renewal of Nuclear Power Plants Regarding LaSalle County Station, Units 1 and 2, Supplement 57, Comment Period Ends: 04/04/2016, Contact: David Drucker 301–415–6223.

EIS No. 20160034, Second Draft Supplemental, USFS, MT, Rock Creek Mine Project, Comment Period Ends: 04/04/2016, Contact: Michael Huffine 406–293–6211.

EIS No. 20160035, Final, USACE, PR, Cano Martin Pena Ecosystem Restoration Project, Review Period Ends: 03/21/2016, Contact: Jim L. Suggs 904–232–1018.

EIS No. 20160036, Draft, USFS, CO, Weminuche Landscape Grazing Analysis, Comment Period Ends: 04/04/2016, Contact: Cam Hooley 970–884–1414.

EIS No. 20160037, Draft, USFS, WA, Colville National Forest Plan Revision, Comment Period Ends: 05/19/2016, Contact: Amy Dillon 509–684–7211.

EIS No. 20160038, Final, NOAA, LA, PROGRAMMATIC—Deepwater Horizon Oil Spill Final Damage Assessment and Restoration Plan, Review Period Ends: 03/21/2016, Contact: Courtney Groeneveld 301–427–8666.

EIS No. 20160039, Final, USFS, CA, BEH Rangeland Allotments, Review Period Ends: 04/08/2016, Contact: Crispin Holland 209–532–3671 ext. 274.

EIS No. 20160040, Draft Supplement, AFS, OR, Ochoco Summit Trail System, Comment Period Ends: 04/04/2016, Contact: Marcy Anderson 541–416–6463.

Amended Notices

EIS No. 20150333, Draft, NMFS, USFWS, CA, Butte Regional Conservation Plan, Comment Period Ends: 05/16/2016, Contact: Dan Cox 916–414–6593; Revision to FR Notice Published 11/27/2015; Extending Comment Period from 02/16/2016 to 05/16/2016.

Dated: February 16, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–03482 Filed 2–18–16; 8:45 am]

BILLING CODE 6560–50–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 at 10:23 a.m. on Wednesday, February 17, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation

business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: February 17, 2016.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–03604 Filed 2–17–16; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Acting 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 reports:

1. Report title: Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB Control number: 7100–0286.

Effective Date: April 30, 2016.

Frequency: Semiannually.

Respondent type: U.S. dealers of over-the-counter derivatives.

Estimated annual burden hours: 3,776 hours.

Estimated average hours per response: 236 hours.

Number of respondents: 8.

Legal authorization and confidentiality: This information collection is voluntary and is authorized under section 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires the Federal Reserve Board and the Federal Open Market Committee (FOMC) to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a) and section 12A of the FRA requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country (12 U.S.C. 263). Because Federal Reserve System uses the information obtained from the FR 2436 to fulfill these obligations, these statutory provisions provide the legal authorization for the collection of information on the FR 2436.

Additionally, because all survey respondents are currently registered as bank holding companies, this survey is also authorized under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

Because the release of this information would cause substantial harm to the competitive position of the entity from whom the information was obtained, the information collected on the FR 2436 may be granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

Abstract: This collection of information complements the triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregates of national data.

Current Actions: On December 1, 2015 the Federal Reserve published a notice in the **Federal Register** (80 FR 75102) requesting public comment for 60 days on the extension, without revision, of the Semiannual Report of Derivatives Activity. The comment period for this notice expired on February 1, 2016. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

2. Report title: Central Bank Survey of Foreign Exchange and Derivative Market Activity.

Agency form number: FR 3036.

OMB Control number: 7100–0285.

Effective Date: June 30, 2016.

Frequency: Triennially.

Respondent types: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Estimated annual burden hours: 1,320 hours.

Estimated average hours per response: 55 hours.

Number of respondents: 24.

Legal authorization and confidentiality: This information collection is voluntary and is implicitly authorized under section 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires the Federal Reserve Board and the Federal Open Market Committee (FOMC) to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates (12 U.S.C. 225a) and section 12A of the FRA requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country (12 U.S.C. 263). Because Federal Reserve System uses the information obtained from the FR 3036 to fulfill these obligations, these statutory provisions provide the legal

authorization for the collection of information on the FR 3036.[1]

Because the Federal Reserve believes the release of this information would cause substantial harm to the competitive position of the entity from whom the information was obtained, the information collected on the FR 3036 may be granted confidential treatment under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which protects from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks once every three years. More than 50 central banks plan to conduct the survey in 2016. The Bank for International Settlements (BIS) compiles aggregate national data from each central bank to produce global market statistics. The Federal Reserve Bank of New Your (FRBNY) uses the survey to monitor activity in the foreign exchange and derivatives markets. Survey results also provide perspective on market developments for the Manager of the System Open Market Account, on the Desk's trading relationships, and for planning Federal Reserve and U.S. Treasury foreign exchange operations. Respondents also use the published data to gauge their market share.

Current Actions: On December 1, 2015 the Federal Reserve published a notice in the **Federal Register** (80 FR 75102) requesting public comment for 60 days on the extension, without revision, of the Semiannual Report of Derivatives Activity. The comment period for this notice expired on February 1, 2016. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, February 16, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–03480 Filed 2–18–16; 8:45 am]

BILLING CODE 6210–01–P

[1] Additionally, depending upon the survey respondent, the information collection may be authorized under a more specific statute. Specifically, the Federal Reserve is authorized to collect information from state member banks under section 9 of the Federal Reserve Act (12 U.S.C. 324); from bank holding companies (and their subsidiaries) under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)); from Edge and agreement corporations under section 25 and 25A of the Federal Reserve Act (12 U.S.C. 602 and 625); and from U.S. branches and agencies of foreign banks under section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)) and under section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)).

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.

DATES: Comments must be submitted on or before April 19, 2016.

ADDRESSES: You may submit comments, identified by Reg Z, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.,)Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: Recordkeeping and disclosure requirements associated with the Truth in Lending Act (TILA) (Regulation Z).

Agency form number: Reg Z.

OMB control number: 7100–0199.

Frequency: Event-generated.

Respondent types: State member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Estimated annual burden hours: Open-end (not home-secured credit): Applications and solicitations, 16,896 hours; Account opening disclosures, 5,060 hours; Periodic statements, 95,232 hours; Change-in-terms disclosures, 62,000 hours; Timely settlement of estate debts policies (one-time), 7,936 hours; Timely settlement of estate debts policies (ongoing), 744 hours; Ability to pay policies (one-time), 1,408 hours; Ability to pay policies (ongoing), 132 hours; and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 5,632 hours; Open-end credit (Home Equity Plans): Application disclosures, 12,522 hours; Account opening disclosures, 18,228 hours; Periodic statements, 60,864 hours; Change-in-terms disclosures, 39,625 hours; and Notices to restrict credit, 317 hours; All open-end credit: Error resolution—credit cards, 12,760 hours and other open-end credit, 992 hours; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 265,658 hours; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, 304,320 hours; ARM disclosure (one-time), 951 hours; ARM disclosures (ongoing), 107,780 hours; Initial rate adjustment notice (one-time), 1,268 hours; Initial rate adjustment notice (ongoing), 53,890 hours; Periodic statements (one-time), 845 hours; Periodic statements (ongoing), 224,013 hours; Credit check for loan originators (one-time), 2,536 hours; Credit check for loan originators (ongoing), 9,510 hours; and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 444 hours; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), 528 hours; Payoff statements (ongoing), 42,267 hours; and Mortgage transfer disclosure, 60,864 hours; Certain home mortgage types: Reverse mortgage disclosures, 188 hours; HOEPA disclosures (one-time), 500 hours; HOEPA disclosures (ongoing), 4,200 hours; HOEPA receipt of certification of counseling for high-cost mortgages (one-time), 19 hours; HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), 25 hours; Appraisals for higher-priced mortgage loans: Order and review initial appraisal, 150 hours; Order and review additional appraisal, 150 hours; and Provide copy of initial and additional appraisals, 1 hour; Private education loans: Private student loan disclosures, 1,836 hours; Advertising rules (all credit types): Advertising rules, 2,067 hours; and Record retention (one-time), 190 hours.

Estimated average hours per response: Open-end (not home-secured credit): Applications and solicitations, 8 hours; Account opening disclosures, 1.5 minutes; Periodic statements, 8 hours; Change-in-terms disclosures, 1 minute; Timely settlement of estate debts policies (one-time), 8 hours; Timely settlement of estate debts policies (ongoing), 45 minutes; Ability to pay policies (one-time), 8 hours; Ability to pay policies (ongoing), 45 minutes; and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 8 hours; Open-end credit (Home Equity Plans): Application disclosures, 1.5 minutes; Account opening disclosures, 1.5 minutes; Periodic statements, 8 hours; Change-in-terms disclosures, 1 minute; and Notices to restrict credit, 3 minutes; All open-end credit: Error resolution—credit cards, 30 minutes and other open-end credit, 30 minutes; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 6.5 minutes; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, 40 hours; ARM disclosure (one-time), 1.5 hours; ARM disclosures (ongoing), 17 minutes; Initial rate adjustment notice (one-time), 2 hours; Initial rate adjustment notice (ongoing), 17 minutes; Periodic statements (one-time), 1 hour, 20 minutes; Periodic statements (ongoing), 0.5 minutes; Credit check for loan originators (one-time), 4 hours; Credit check for loan originators (ongoing), 15 hours; and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 42 minutes; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), 50 minutes; Payoff statements (ongoing), 5 minutes; and Mortgage transfer disclosure, 8 hours; Certain home mortgage types: Reverse mortgage disclosures, 3 minutes; HOEPA disclosures (one-time), 20 hours; HOEPA disclosures (ongoing), 14 hours; HOEPA receipt of certification of counseling for high-cost mortgages (one-time), 45 minutes; HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), 1 hour; Appraisals for higher-priced mortgage loans: Order and review initial appraisal, 15 minutes; Order and review additional appraisal, 15 minutes; and Provide copy of initial and additional appraisals, 15 minutes; Private education loans: Private student loan disclosures, 17 hours; Advertising rules (all credit types): Advertising rules, 25 minutes; and Record retention (one-time), 18 minutes.

Number of respondents: Open-end (not home-secured credit): Applications and solicitations and Account opening disclosures, 176 respondents; Periodic statements, Change-in-terms disclosures, Timely settlement of estate debts policies (one-time), and Timely settlement of estate debts policies (ongoing), 992 respondents; Ability to pay policies (one-time), Ability to pay policies (ongoing), and Reporting and marketing rules for college student open-end credit and Internet posting of credit card agreements, 176 respondents; Open-end credit (Home Equity Plans): Application disclosures, Account opening disclosures, Periodic statements, Change-in-terms disclosures, and Notices to restrict credit, 634 respondents; All open-end credit: Error resolution—credit cards, 176 respondents and other open-end credit, 992 respondents; Closed-end credit (Non-mortgage): Closed-end credit disclosures, 992 respondents; Closed-end credit (Mortgage): Interest rate and payment summary and ''No guarantee-to-refinance'' statement, ARM disclosure (one-time), ARM disclosures (ongoing), Initial rate adjustment notice (one-time), Initial rate adjustment notice (ongoing), Periodic statements (one-time), Periodic statements (ongoing), Credit check for loan originators (one-time), Credit check for loan originators (ongoing), and Verification of documents for Qualified Mortgage (QM) and non-QM determination (one-time), 634 respondents; Open and closed-end mortgage: Prompt crediting & payoff statement (one-time), Payoff statements (ongoing), and Mortgage transfer disclosure, 634 respondents; Certain home mortgage types: Reverse mortgage disclosures, 15 respondents; HOEPA disclosures (one-time), HOEPA

disclosures (ongoing), HOEPA receipt of certification of counseling for high-cost mortgages (one-time), HOEPA receipt of certification of counseling for high-cost mortgages (ongoing), Appraisals for higher-priced mortgage loans: Order and review initial appraisal, Order and review additional appraisal, and Provide copy of initial and additional appraisals, 25 respondents; Private education loans: Private student loan disclosures, 9 respondents; Advertising rules (all credit types): Advertising rules, 992 respondents; and Record retention (one-time), 634 respondents.

Legal authorization and confidentiality: The disclosure, record-keeping, and other requirements of Regulation Z are authorized by the TILA, which directs the Consumer Financial Protection Bureau (CFPB) and, for certain lenders, the Federal Reserve to issue regulations implementing the statute. Covered lenders are required to comply with the recordkeeping, reporting, and disclosure provisions of Regulation Z. Regulation Z is chiefly a disclosure regulation, so the issue of confidentiality does not normally arise. One aspect of the rule requires certain card issuers to submit annual reports to the CFPB, but no reports are filed with the Federal Reserve.

Abstract: TILA and Regulation Z ensure adequate disclosure of the costs and terms of credit to consumers. For open-end credit, such as credit cards and home-equity lines of credit (HELOCs), creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. For closed-end loans, such as mortgage and installment loans, cost disclosures are required prior to and at consummation. Special disclosures are required for certain products, such as reverse mortgages and high cost mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.[1]

Creditors are required to comply with Regulation Z's disclosure and other requirements unless the transaction is exempt.[2] Regulation Z generally does not apply to consumer credit transactions that exceed a threshold amount, adjusted annually for inflation.[3] The threshold amount for credit extended during 2015 was $54,600; this threshold will remain the same in 2016. However, regardless of the amount of credit extended, Regulation Z applies to: (1) Consumer credit secured by real property; (2) consumer credit secured by personal property used or expected to be used as the principal swelling of the consumer; and (3) private student loans.

Current Actions: The Federal Reserve proposes to modify and update Reg Z to account for preexisting regulatory requirements that were not included separately in prior notices and to account for the requirements of new rules issued during the past three years. A summary of the changes is as follows:

First, the Federal Reserve proposes to modify Reg Z to account for new required rules issued by the CFPB to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[4] These include:

- Combined closed-end mortgage disclosures under TILA and the Real Estate Settlement Procedures Act (RESPA);[5]
- A requirement that creditors must run a credit check on loan originators;
- Requirements that creditors verify documents used to determine ''qualified mortgage'' status;
- Mortgage payoff statement requirements;
- Revised and additional adjustable rate mortgage (ARM) disclosures;
- Periodic statements for closed-end residential mortgages;
- Revised and additional disclosures for high-cost mortgages under the Home Ownership Equity Protection Act[6] (HOEPA).

Second, the Federal Reserve proposes to clarify and add several information collection elements for regulatory requirements that previously were accounted for as part of a more general category of information collections or were not previously included because institutions for whose burden the Federal Reserve accounts did not engage in the relevant line of business to a material degree.

These include:

- A requirement that creditors of open-end (not home-secured) credit have policies to comply with requirements for the timely settlement of estate debts;
- A requirement that creditors of open-end (not home-secured) credit have policies to comply with requirements to account for a consumer's ability to repay a the debt;
- Separate disclosures for open-end (not home-secured) and open-end (home-secured) credit;
- Reverse mortgage disclosures.

Other proposed changes to Reg Z are non-substantive and intended for clarity.

Board of Governors of the Federal Reserve System, February 12, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–03445 Filed 2–18–16; 8:45 am]

BILLING CODE 6210–01–P

[1] In addition, Regulation Z contains requirements that are not considered information collections and thus are not addressed here.

[2] Exemptions include business credit, credit over applicable threshold amounts, public utility credit, securities or commodities accounts, home fuel budget plans, certain student loan programs, and employer-sponsored retirement plans. *See* 12 CFR 1026.3.

[3] 12 CFR 1026.3(b).

[4] Public Law 111–203, 124 Stat. 1376.

[5] 12 U.S.C. 2601 *et seq.*

[6] 15 U.S.C. 1639, 1640.

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.

DATES: Comments must be submitted on or before April 19, 2016.

ADDRESSES: You may submit comments, identified by *Reg Y–1, Form MSD–4, or Form MSD–5* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Reporting Requirements Associated with Regulation Y (Extension of Time to Conform to the Volcker Rule).

Agency form number: Reg Y–1.

OMB control number: 7100–0333.

Frequency: Event-generated.

Reporters: Insured depository institution (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing, and nonbank financial companies designated by the Financial Stability Oversight Council that engage in proprietary trading activities or make investments in covered funds.

Estimated annual reporting hours: 774 hours.

Estimated average hours per response: 3 hours.

Number of respondents: 258 respondents.

General description of report: The Board's Legal Division has determined that section 13 of the BHC Act specifically authorizes the Board to issue rules to permit entities covered by the Volcker Rule to seek extensions of time of the conformance period. 12 U.S.C. 1851(c)(6). The information collections in sections 225.181(c) and 225.182(c) of Regulation Y are required for covered entities that decide to seek an extension of time to conform their activities to the Volcker Rule or divest their interest in an illiquid hedge fund or private equity fund. The obligation to respond, therefore, is required to obtain a benefit. As noted above, the information collected under the provisions of section 13 of the BHC Act and subpart K of Regulation Y is required to be submitted in order to obtain an extension of time to conform a covered entity's assets and activities to the Volcker Rule. As provided in sections 221.181(d) and 221.182(d) of subpart K, such information includes:

• The terms of private contractual obligations;

• The liquid or illiquid nature of assets proposed to be divested by the regulated entity;

• The total exposure of the covered entity to the activity or investment, and its materiality to the institution;

• The risks and costs of disposing of, or maintaining, the activity or investment; and

• The impact of divestiture or conformance of the activity or investment on any duty owed by the institution to a client, customer, or counterparty.

This information is the type of confidential commercial and financial information that may be withheld under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4). As *required* information, it may be withheld under Exemption 4 only if public disclosure could result in substantial competitive harm to the submitting institution.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') was enacted on July 21, 2010.[1] Section 619 of the Dodd-Frank Act, also known as the Volcker Rule, adds a new section 13 to the Bank Holding Company Act of 1956 (the ''BHC Act'')[2] that generally prohibits any banking entity[3] from engaging in proprietary trading or from investing in, sponsoring, or having certain relationships with a hedge fund or private equity fund (together, a covered fund). Section 13 of the BHC Act also provides that nonbank financial companies designated by the Financial Stability Oversight Council (the ''Council'') that engage in proprietary trading activities or make investments in covered funds may be made subject

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 1851.

[3] The term ''banking entity'' is defined in section 13(h)(1) of the BHC Act. *See* 12 U.S.C. 1851(h)(1). The term means any insured depository institution (other than certain limited-purpose trust institutions), any company that controls an insured depository institution, any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106), and any affiliate or subsidiary of any of the foregoing.

by rule to additional capital requirements or quantitative limits.[4] In December 2013, the Board, OCC, FDIC, SEC and CFTC (the ''Agencies'') approved final regulations implementing the provisions of section 13 of the BHC Act (the ''final rule'').[5]

The restrictions and prohibitions of section 13 of the BHC Act became effective on July 21, 2012,[6] however, the statute provided banking entities a grace period until July 21, 2014, to conform their activities and investments to the requirements of the statute and any rule issued by the Agencies. The statute also granted exclusively to the Board authority to provide banking entities additional time to conform or divest their investments and activities covered by section 13. The statute provides that the Board may, by rule or order, extend the conformance period ''for not more than one year at a time,'' up to three times, if in the judgment of the Board, an extension is consistent with the purposes of section 13 and would not be detrimental to the public interest.[7] This would allow extensions of the conformance period until July 21, 2017.[8] Section 13 also permits the Board, upon application by a banking entity, to provide up to an additional five-year transition period to conform certain illiquid funds.[9]

Section 13 also gives nonbank financial companies supervised by the Board the same general two-year conformance period with the potential of up to three, one-year extensions to bring their activities into compliance with any requirements or limits established. Consistent with the conformance period available to banking entities, the Board has the ability to extend this two-year period by up to three additional one-year periods, if the Board determines that such an extension is consistent with the purpose of the Volcker Rule and would not be detrimental to the public interest.[10]

On February 2011, the Board adopted a final rule to implement the conformance period provisions of section 13 (''Conformance Rule'') during which banking entities and nonbank financial companies supervised by the Board must bring their activities and investments into compliance with the Volcker Rule and implementing regulations. The information collections associated with the Conformance Rule are located in sections 225.181(c) and 225.182(c) of Regulation Y. Sections 225.181(c) and 225.182(c) permit a banking entity and nonbank financial company, respectively, to request an extension of time to conform their activities to the Volcker Rule. The Conformance Rule became effective April 1, 2011.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer.

Agency form number: Form MSD–4; Form MSD–5.

OMB control number: 7100–0100; 7100–0101.

Frequency: On occasion.

Reporters: State member banks, bank holding companies, and foreign dealer banks that are municipal securities dealers.

Estimated annual reporting hours: Form MSD–4, 20 hours; Form MSD–5, 13 hours.

Estimated average hours per response: Form MSD–4, 1 hour; Form MSD–5, 0.25 hours.

Number of respondents: Form MSD–4, 20; Form MSD–5, 50.

General description of report: The Board's Legal Division has determined that sections 15B(a)–(b) and 17 of the Securities Exchange Act (15 U.S.C. 78o–4(a)–(b) and 78q) authorize the SEC and MSRB to promulgate rules requiring municipal security dealers to file registration reports about associated persons with the SEC and the ARA. In addition, section 15B(c) of the Act provides that ARAs may enforce compliance with the SEC's and MSRB's rules. 15 U.S.C. 78o–4(c). Section 23(a) of the Act also authorizes the SEC, the Board, and the other ARAs to make rules and regulations in order to implement the provisions of the Act. 15 U.S.C. 78w(a). The Board is the ARA for bank municipal securities dealers that are savings and loan holding companies, state member banks (including their divisions or departments), and bank holding companies (including a subsidiary bank of the bank holding company if the subsidiary does not already report to another ARA or to the SEC, and any divisions, departments or subsidiaries of that subsidiary).[11] 15 U.S.C. 78c(a)(34)(A)(ii). The Board is also the ARA for state branches or agencies of foreign banks that are municipal securities dealers.[12] Accordingly, the Board's collection of Form MSD–4 and Form MSD–5 for these institutions is authorized pursuant to 15 U.S.C. 78o–4, 78q and 78w.

The Board is also authorized to require that state member banks and their departments file reports with the Board pursuant to section 11(a)(1) of the Federal Reserve Act, 12 U.S.C. 248(a)(1). Branches and agencies of foreign banks are also subject to the reporting requirements of section 11(a)(1) of the Federal Reserve Act pursuant to section 7(c)(2) of the International Banking Act, 12 U.S.C. 3105(c)(2). In addition, section 10(b)(2) of the Home Owners' Loan Act authorizes the Board to require SLHCs to file ''such reports as may be required by the Board'' and instructs that such reports ''shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.'' 12 U.S.C. 1467a(b)(2), as

[4] *See* 12 U.S.C. 1851(a)(2) and (f)(4).

[5] *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Fund and Private Equity Funds, 79 FR 5536 (Jan. 31, 2014); 79 FR 5808 (Jan. 31, 2014). At the time of the final rule, the Agencies explained they would explore whether a nonbank financial company designated by the Council that was not also a banking entity engages in any activity subject to section 13 of the BHC Act and what, if any, requirements to apply under section 13.

[6] *See* 12 U.S.C. 1851(c)(1).

[7] *See* 12 U.S.C. 1851(c)(2).

[8] At the time of issuance of the final rule in December 2013, the Board exercised authority under the statute to extend this period for one year, until July 21, 2015. *See* Board Order Approving Extension of Conformance Period (Dec. 10. 2013), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131210b1.pdf.* In addition, in December 2014, the Board extended the conformance period until July 21, 2016 for banking entities to conform investments in and relationships with covered funds and foreign funds that were in place prior to December 31, 2013 (''legacy covered funds'') and stated its intention to act next year to give banking entities until July 21, 2017 to conform legacy covered funds. *See* Board Order Approving Extension of Conformance Period under Section 13 of the Bank Holding Company Act (December 18, 2014), *available at http://www.federalreserve.gov/newsevents/press/bcreg/20141218a.htm.*

[9] *See* 12 U.S.C. 1851(c)(3)–(4).

[10] *See* 12 U.S.C. 1851(c)(2).

[11] Currently, the instructions to Form MSD–4 and to Form MSD–5 do not explicitly state that a savings and loan holding company (''SLHC'') or a bank holding company (''BHC'') is required to file these forms with the Board. These instructions will be amended to make this requirement explicit, and the forms will be revised to include a Privacy Act notice.

[12] Although Section 3(a)(34) of the Act, 15 U.S.C. 78c(a)(34), does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by a foreign bank, or Edge Act corporations (collectively referred to as foreign dealer banks), the Division of Market Regulation of the SEC has agreed that the Federal Reserve should examine the municipal securities dealer activities of foreign dealer banks. *See* Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director, Federal Reserve Board's Division of Banking Supervision and Regulation, June 14, 1994.

amended by section 369 of the Dodd-Frank Act.

The obligation to file the forms with the Board is mandatory for those financial institutions for which the Board serves as the ARA, and the filing of both forms is event generated.

The data collected on Forms MSD–4 and MSD–5 is compiled in a ''system of records'' within the meaning of the Privacy Act. 5 U.S.C. 552a(a)(5). In 1977, the Board formally designated a system of records for Forms MSD–4 and MSD–5. *See* 4 Fed. Res. Reg. Service ¶ 8–350 (42 FR 16,854 (Mar. 30, 1977)).[13] The Privacy Act prohibits the Board from disclosing the information collected on the forms unless certain exceptions apply that would permit disclosure. 5 U.S.C. 552a(b).

Abstract: These mandatory information collections are submitted on occasion by state member banks (SMBs), bank holding companies (BHCs), savings and loan holding companies (''SLHCs''), and foreign dealer banks that are municipal securities dealers.[14] The Form MSD–4 collects information (such as personal history and professional qualifications) on an employee whom the bank wishes to assume the duties of municipal securities principal or representative. The Form MSD–5 collects the date of, and reason for, termination of such an employee.

On August 4, 2014, the Municipal Securities Rulemaking Board (MSRB) (MSRB Notice 2014–13) announced the creation of a new designation of registered person—Limited Representative—Investment Company and Variable Contracts Products—which is a sub-category of Municipal Securities Representative.[15] To conform to MSRB Notice 2011–54, the Board staff proposes to make a minor revision to the Form MSD–4 to add the Limited Representative—Investment Company and Variable Contracts Products as a new type of qualification. The Board staff also proposes to require electronic submission of both the Form MSD–4 and Form MSD–5 to a secure Federal Reserve Board email address.

[13] In 2008, the Board updated all of the Board's existing systems of records, including the system of records for Forms MSD–4 and MSD–5 (BGFRS–17). *See* 73 FR 24,984, 24,999 (May 6, 2008).

[14] At this time, there are no SLHCs or foreign dealer banks that are registered as municipal securities dealers.

[15] See *http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2014-13.ashx?n=1.*

Board of Governors of the Federal Reserve System, February 12, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–03444 Filed 2–18–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10325 and CMS–10330]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *March 21, 2016.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: 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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Enrollment Opportunity Notice Relating to Lifetime Limits; Required Notice of Rescission of Coverage; and Disclosure Requirements for Patient Protection Under the Affordable Care Act; *Use:* Section 1251 of the Affordable Care Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. The final regulations titled ''Final Rules Under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections'' require that, to maintain its status as a grandfathered health plan, a plan must maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify,

explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official. A grandfathered health plan is also required to include a statement in any summary of benefits under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, and providing contact information for participants to direct questions and complaints. In addition, a grandfathered group health plan that is changing health insurance issuers is required to provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) of the interim final regulations are exceeded. It is also required that, for an insured group health plan (or a multiemployer plan) that is a grandfathered plan, the relevant policies, certificates, or contracts of insurance, or plan documents must disclose in a prominent and effective manner that employers, employee organizations, or plan sponsors, as applicable, are required to notify the issuer (or multiemployer plan) if the contribution rate changes at any point during the plan year. *Form Number:* CMS–10325 (OMB Control Number: 0938–1093); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments, Private Sector; *Number of Respondents:* 55,378; *Total Annual Responses:* 6,858,135; *Total Annual Hours:* 248. (For policy questions regarding this collection contact Russell Tipps at (301) 492–4371).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Enrollment Opportunity Notice Relating to Lifetime Limits; Required Notice of Rescission of Coverage; and Disclosure Requirements for Patient Protection Under the Affordable Care Act; *Use:* Sections 2711, 2712 and 2719A of the Public Health Service Act, as added by the Affordable Care Act, and the interim final regulations titled ''Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections'' (75 FR 37188, June 28, 2010) contain enrollment opportunity, rescission notice, and patient protection disclosure requirements that are subject to the Paperwork Reduction Act of 1995. The enrollment opportunity notice was to be used by health plans to notify certain individuals of their right to re-enroll in their plan. This notice was a one-time requirement and has been discontinued. The rescission notice will be used by health plans to provide advance notice to certain individuals that their coverage may be rescinded as a result of fraud or intentional misrepresentation of material fact. The patient protection notification will be used by health plans to inform certain individuals of their right to choose a primary care provider or pediatrician and to use obstetrical/gynecological services without prior authorization.

The related provisions are finalized in the final regulations titled ''Final Rules Under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections''. The final regulations also require that, if State law prohibits balance billing, or a plan or issuer is contractually responsible for any amounts balanced billed by an out-of-network emergency services provider, a plan or issuer must provide a participant, beneficiary or enrollee adequate and prominent notice of their lack of financial responsibility with respect to amounts balanced billed in order to prevent inadvertent payment by the individual. *Form Number:* CMS–10330 (OMB Control Number: 0938–1094); *Frequency:* Occasionally; *Affected Public:* Private Sector, State, Local, or Tribal Governments; *Number of Respondents:* 3,171; *Total Annual Responses:* 238,244; *Total Annual Hours:* 897. (For policy questions regarding this collection contact Russell Tipps at 301–492–4371).

Dated: February 16, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–03473 Filed 2–18–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–484; CMS–846–849, 854, 10125 and 10126; CMS–10379; and CMS–10418]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 19, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB

Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–484 Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations

CMS–846–849, 854, 10125 and 10126 Durable Medical Equipment Medicare Administrative Contractors (MAC) Regional Carrier, Certificate of Medical Necessity and Supporting Documentation

CMS–10379 Rate Increase Disclosure and Review Reporting Requirements

CMS–10418 Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy and Supporting Regulations; *Use:* Under Section 1862(a)(1)(A) of the Social Security Act (the Act), 42 U.S.C. 1395y(a), the Secretary may only pay for items and services that are ''reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.'' In order to assure this, CMS and its contractors develop Medical policies that specify the circumstances under which an item or service can be covered. The certificate of medical necessity (CMN) provides a mechanism for suppliers of Durable Medical Equipment, defined in 42 U.S.C. 1395x (n), and Medical Equipment and Supplies defined in 42 U.S.C. 1395j(5), to demonstrate that the item being provided meets the criteria for Medicare coverage. Section 1833(e), 42 U.S.C. 1395l(e), provides that no payment can be made to any provider of services, or other person, unless that person has furnished the information necessary for Medicare or its contractor to determine the amounts due to be paid. Certain individuals can use a CMN to furnish this information, rather than having to produce large quantities of medical records for every claim they submit for payment. Under Section 1834(j)(2) of the Act, 42 U.S.C. 1395m(j)(2), suppliers of DME items are prohibited from providing medical information to physicians when a CMN is being completed to document medical necessity. The physician who orders the item is responsible for providing the information necessary to demonstrate that the item provided is reasonable and necessary and the supplier shall also list on the CMN the fee schedule amount and the suppliers charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician. Any supplier of medical equipment who knowingly and willfully distributes a CMN in violation of this restriction is subject to penalties, including civil money penalties (42 U.S.C. 1395m (j)(2)(A)(iii)). Under Section 42 Code of Federal Regulations § 410.38 and § 424.5, Medicare has the legal authority to collect sufficient information to determine payment for oxygen, and oxygen equipment. Oxygen and oxygen equipment is by far the largest single total charge of all items paid under durable medical equipment coverage authority. Detailed criteria concerning coverage of home oxygen therapy are found in Medicare Carriers Manual Chapter II—Coverage Issues Appendix, Section 60–4. For Medicare to consider any item for coverage and payment, the information submitted by the supplier (*e.g.,* claims and CMNs), including documentation in the patient's medical records must corroborate that the patient meets Medicare coverage criteria. The patient's medical records may include: Physician's office records; hospital records; nursing home records; home health agency records; records from other healthcare professionals or test reports. This documentation must be available to the DME MACs upon request. *Form Number:* CMS–484 (OMB Control Number: 0938–0534); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits, Not-for-profits; *Number of Respondents:* 8,880; *Total Annual Responses:* 1,632,000; *Total Annual Hours:* 326,500. (For policy questions regarding this collection contact Paula Smith at 410–786–4709.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Medicare Administrative Contractors (MAC) Regional Carrier, Certificate of Medical Necessity and Supporting Documentation; *Use:* The certificates of medical necessity (CMNs) collect information required to help determine the medical necessity of certain items. CMS requires CMNs where there may be a vulnerability to the Medicare program. Each initial claim for these items must have an associated CMN for the beneficiary. Suppliers (those who bill for the items) complete the administrative information (*e.g.,* patient's name and address, items ordered, etc.) on each CMN. The 1994 Amendments to the Social Security Act require that the supplier also provide a narrative description of the items ordered and all related accessories, their charge for each of these items, and the Medicare fee schedule allowance (where applicable). The supplier then sends the CMN to the treating physician or other clinicians (*e.g.,* physician assistant, LPN, etc.) who completes questions pertaining to the beneficiary's medical condition and signs the CMN. The physician or other clinician returns the CMN to the supplier who has the option to maintain a copy and then submits the CMN (paper or electronic) to CMS, along with a claim for reimbursement. This clearance request is for CMNs with the form numbers, CMS CMS–846–849, 854, 10125 and 10126. *Form Number:* CMS–846–849, 854, 10125 and 10126

(OMB Control Number: 0938–0679); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 462,000; *Total Annual Responses:* 462,000; *Total Annual Hours:* 418,563. (For policy questions regarding this collection contact Paula Smith at 410–786–4709.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements; *Use:* Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act which directs the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with the states, to establish a process for the annual review of ''unreasonable increases in premiums for health insurance coverage.'' The statute provides that health insurance issuers must submit to the Secretary and the applicable state justifications for unreasonable premium increases prior to the implementation of the increases. Section 2794 also specifies that beginning with plan years beginning in 2014, the Secretary, in conjunction with the states, shall monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange.

Section 2794 directs the Secretary to ensure the public disclosure of information and justification relating to unreasonable rate increases. Section 2794 requires that health insurance issuers submit justification for an unreasonable rate increase to CMS and the relevant state prior to its implementation. Additionally, section 2794 requires that rate increases effective in 2014 (submitted for review in 2013) be monitored by the Secretary, in conjunction with the states. To those ends, Section 154 of the CFR establishes various reporting requirements for health insurance issuers, including a Preliminary Justification for a proposed rate increase, a Final Justification for any rate increase determined by a state or CMS to be unreasonable, and a notification requirement for unreasonable rate increases which the issuer will not implement.

In order to obtain the information necessary to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange, 45 CFR 154.215 would require health insurance issuers to submit the Unified Rate Review Template for all single risk pool coverage products in the individual or small group (or merged) market, regardless of whether any plan within a product is subject to a rate increase. That regulation would also require health insurance issuers to submit an Actuarial Memorandum (in addition to the Unified Rate Review Template) when a plan within a product is subject to a rate increase. Although the two required documents are submitted at the risk pool level, the requirement to submit is based on increases at the plan level.

In order to conduct a review to assess reasonableness when a plan within a product has a rate increase that is subject to review, health insurance issuers would be required to submit a written description justifying the increase (in addition to the Unified Rate Review Template and Actuarial Memorandum). Although the required documents are submitted at the risk pool level, the requirement to submit is based on increases at the plan level. *Form Number:* CMS–10379 (OMB Control Number: 0938–1141); *Frequency:* Yearly; *Affected Public:* State and Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 1,081; *Total Annual Responses:* 1,621; *Total Annual Hours:* 17,837. (For policy questions regarding this collection contact Lisa Cuozzo at 410–786–1746.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulation at 45 CFR part 158, a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing and regulatory fees, the amount of earned premium, and beginning with the 2014 reporting year, the amounts related to the transitional reinsurance, risk adjustment, and risk corridors. An issuer must provide an annual rebate if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). Each issuer is required to submit annually MLR data, including information about any rebates it must provide, on a form prescribed by CMS, for each State in which the issuer conducts business. Each issuer is also required to provide a rebate notice to each policyholder that is owed a rebate and each subscriber of policyholders that are owed a rebate for any given MLR reporting year. Additionally, each issuer is required to maintain for a period of seven years all documents, records and other evidence that support the data included in each issuer's annual report to the Secretary. Under Section 1342 of the Patient Protection and Affordable Care Act and implementing regulation at 45 CFR part 153, issuers of qualified health plans (QHPs) must participate in a risk corridors program. A QHP issuer is required to pay charges to or receive payments from CMS based on the ratio of the issuer's allowable costs to the target amount. Each QHP issuer is required to submit an annual report to CMS concerning the issuer's allowable costs, allowable administrative costs, and the amount of premium.

The 2015 MLR Reporting Form and Instructions reflect changes for the 2015 reporting/benefit year and beyond. In 2016, it is expected that issuers will submit fewer reports and send fewer notices to policyholders and subscribers, which will reduce burden on issuers. On the other hand, it is expected that issuers will send more rebate checks in the mail to individual market policyholders, which will increase burden for some issuers. It is estimated that there will be a net reduction in total burden from 271,600 to 235,148. *Form Number:* CMS–10418 (OMB Control Number: 0938–1164); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 538; *Number of Responses:* 2,818; *Total Annual Hours:* 235,148. (For policy questions regarding this collection contact Christina Whitefield at 301–492–4172.)

Dated: February 16, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–03474 Filed 2–18–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Native Employment Works (NEW) Program Plan Guidance and Native Employment Works (NEW) Program Report.

OMB No.: 0970–0174.

Description: The Native Employment Works (NEW) program plan is the

application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance provides instructions for preparing a NEW program plan and explains the process for plan submission every third year. There are two versions of this plan guidance: One for tribes that include their NEW program in a Public Law 102–477 project, and one for tribes that do not. The primary difference between the guidance documents is in the instructions for how to submit the plan. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents: Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW program plan guidance for non-477 Tribes	[1] 15	1	29	435
NEW program plan guidance for 477 Tribes	[2] 11	1	29	319
NEW program report	[3] 44	1	15	660

Estimated Total Annual Burden Hours: 1,414.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–03460 Filed 2–18–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0310]

Guidance for Industry on Immunogenicity-Related Considerations for Low Molecular Weight Heparin; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Immunogenicity-Related Considerations for Low Molecular Weight Heparin.'' This guidance discusses how applicants for low molecular weight heparin (LMWH) products should provide information on impurities and their potential impact on immunogenicity.

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–2014–D–0310 for ''Immunogenicity-Related Considerations for Low Molecular Weight Heparin.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Daniela Verthelyi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–7450.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Immunogenicity-Related Considerations for Low Molecular Weight Heparin.'' It finalizes the draft guidance entitled ''Immunogenicity-Related Considerations for the Approval of Low Molecular Weight Heparin for New Drug Applications and Abbreviated New Drug Applications'' that published on April 9, 2014 (79 FR 19621). FDA has considered the comments submitted to the public docket and modified statements and added terms for clarity.

This guidance provides recommendations to applicants for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) regarding impurities and their potential effect on immunogenicity for LMWH. This guidance also includes recommendations for ANDA applicants on meeting the requirement for active ingredient sameness, because a demonstration of active ingredient sameness helps to address immunogenicity considerations in this context. In addition, this guidance discusses how to address changes in the source material or other component, or when there are modifications to the manufacturing process after completion of supporting clinical studies, either before or after approval of the application.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the Agency's current thinking on immunogenicity considerations for low molecular weight heparin. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act

This guidance refers to a previously approved collection of information that is 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 collection of information in 21 CFR part 314 has been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03461 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0584]

Anesthetic and Analgesic Drug Products Advisory Committee, the Drug Safety and Risk Management Advisory Committee, and the Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

This notice announces a forthcoming meeting of public advisory committees of the Food and Drug Administration (FDA). The meeting will be open to the public.

Names of Committees: Anesthetic and Analgesic Drug Products Advisory Committee, the Drug Safety and Risk Management Advisory Committee, and the Pediatric Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 15, 2016, from 8 a.m. to 5 p.m. and September 16, 2016, from 8 a.m. to 5 p.m.

Addresses: FDA is opening a docket for public comment on this meeting. The docket number is FDA–2016–N–0584. The docket will open for public comment on February 19, 2016. The docket will close on September 30, 2016. Interested persons may submit either electronic or written comments regarding this meeting. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments received will be posted without change, including any personal information provided. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments received on or before August 31, 2016, will be provided to the committee before the meeting.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due

to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Stephanie L. Begansky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The purpose of this public advisory committee meeting is to discuss the appropriate development plans for establishing the safety and efficacy of prescription opioid analgesics for pediatric patients, including obtaining pharmacokinetic data and the use of extrapolation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions submitted to the docket (see **ADDRESSES**) on or before August 31, 2016, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 10:30 a.m. on September 16, 2016. 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 August 23, 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 August 24, 2016.

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 Stephanie L. Begansky 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: February 16, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–03468 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1698]

Food and Drug Administration Activities for Patient Participation in Medical Product Discussions; Report on Stakeholder Views; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is making available the summary report of the public comments received during the open period from November 4 to December 4, 2014, on FDA activities under the Food and Drug Administration Safety and Innovation Act (FDASIA), Patient Participation in Medical Product Discussions. The purpose of this notice is to announce the public availability of the report on stakeholder views based on the comments received in the docket.

ADDRESSES: An electronic copy of the summary report is available at *http://www.fda.gov/ForPatients/About/ucm483931.htm.*

The summary report is also available in Docket No. FDA–2014–N–1698.

FOR FURTHER INFORMATION CONTACT: Andrea Furia-Helms, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5319, Silver Spring MD 20993–0002, *Andrea.Furia@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2012, the President signed into law FDASIA (Pub. L. 112–144). FDASIA expands FDA's authorities and strengthens the Agency's ability to safeguard and advance public health in several areas including increasing stakeholder involvement in FDA regulatory processes. Specifically, section 1137 of FDASIA directs the Secretary of Health and Human Services to develop and implement strategies to solicit the views of patients during the medical product development process and consider the perspectives of patients during regulatory discussions, including by fostering participation of a patient representative who may serve as a special government employee in appropriate Agency meetings with medical product sponsors and investigators and exploring means to provide for identification of patient representatives who do not have any, or have minimal, financial interests in the medical products industry.

FDA formed an Agency-wide working group to explore approaches and procedures as well as to align strategies across the Agency for patient participation in accordance with the statute.

Dated: February 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03479 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0545]

Recommendations for Donor Screening, Deferral, and Product Management To Reduce the Risk of Transfusion-Transmission of Zika Virus; 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 document entitled ''Recommendations for Donor Screening, Deferral, and Product Management to Reduce the Risk of Transfusion-Transmission of Zika Virus: Guidance for Industry.'' The guidance document provides blood establishments that collect blood and blood components with recommendations for donor screening, donor deferral, and product management to reduce the risk of transfusion-transmitted Zika virus (ZIKV). The guidance applies to the collection of Whole Blood and blood components intended for transfusion. The guidance does not apply to the collection of Source Plasma.

DATES: The Agency is soliciting public comment, but is implementing this guidance immediately because the Agency has determined that prior public participation is not feasible or appropriate. 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–2016–D–0545 for ''Recommendations for Donor Screening, Deferral, and Product Management to Reduce the Risk of Transfusion-Transmission of Zika Virus; Guidance for Industry.'' 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 draft guidance 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 the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Valerie Butler, 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

FDA is announcing the availability of a guidance document entitled ''Recommendations for Donor Screening, Deferral, and Product Management to Reduce the Risk of Transfusion-Transmission of Zika Virus; Guidance for Industry.'' The guidance document provides blood establishments that collect blood and blood components with recommendations for donor screening, donor deferral, and product management to reduce the risk of transfusion-transmitted ZIKV. The guidance applies to the collection of Whole Blood and blood components intended for transfusion. The guidance does not apply to the collection of Source Plasma, which is used for further manufacture of plasma-derived products. Viral inactivation and removal methods are currently used to clear

viruses in the manufacturing process for such plasma-derived products.

ZIKV is an arbovirus from the Flaviviridae family, genus *Flavivirus.* It is transmitted to humans primarily by the *Aedes aegypti* mosquito, but it may also be transmitted by the *Aedes albopictus* mosquito. In addition, intrauterine, perinatal, and sexual transmission of ZIKV has been reported. Two instances of possible transfusion-transmission of ZIKV in Brazil have been described in media announcements.

The most common ZIKV disease symptoms include fever, arthralgia, maculopapular rash, and conjunctivitis. Neurological manifestations and congenital anomalies have been associated with ZIKV disease outbreaks. Association of ZIKV infection with Guillain-Barré syndrome cases has been reported during outbreaks in Polynesia and in Brazil. In Brazil there has also been a marked increase in the incidence of microcephaly in regions most affected by the ZIKV epidemic.

ZIKV reached the Americas in early 2015 with local transmission first reported in Brazil and as of February 10, 2016, there are 30 countries and territories worldwide with active local transmission of the virus. As of February 10, 2016, local mosquito-borne transmission of ZIKV has not been reported in the continental United States, but cases have been reported in travelers returning to the United States from areas with local transmission.

Consistent with existing regulations and applicable guidance, donors must be in good health at the time of donation § 640.3(b) (21 CFR 640.3(b)) as indicated by, among other things, freedom from any disease transmissible by blood transfusion, as can be determined by history and examination (§ 640.3(b)(6)). Standard operating procedures that are already in place should result in the deferral of individuals who have symptoms consistent with ZIKV infection at the time of donation. The recommendations in the guidance are intended to reduce the risk of collecting blood and blood components from at-risk donors who could be potentially infected with ZIKV and do not display clinical symptoms during the incubation period or have an asymptomatic infection.

The guidance recommends that blood collection establishments in areas without active transmission of ZIKV defer donors at risk for ZIKV infection as follows: Defer for 4 weeks after the resolution of symptoms a donor with a history of ZIKV infection or a donor who reports symptoms suggestive of ZIKV within 2 weeks of departure from an area with active transmission of ZIKV; defer for 4 weeks after the last sexual contact a donor who has had sexual contact with a man who has been diagnosed with ZIKV or who traveled to or resided in an area with active transmission of ZIKV in the 3 months prior to that instance of sexual contact; and defer for 4 weeks from the date of his or her departure, a donor who has been a resident of or has travelled to an area with active transmission of ZIKV.

For areas with active transmission of ZIKV, the guidance recommends that blood collection establishments obtain blood and blood components from areas of the United States without active transmission of ZIKV to fulfill orders. However, a blood establishment may collect platelets and plasma locally if the blood establishment implements FDA-approved pathogen reduction technology for platelets and plasma. Further, blood establishments in areas of active transmission may collect blood components locally provided the establishment tests blood donations with an FDA-licensed blood donor screening test for ZIKV, when such a test becomes available.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). FDA is issuing this guidance for immediate implementation in accordance with 21 CFR 10.115(g)(2) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate. The guidance represents the current thinking of FDA on ''Recommendations for Donor Screening, Deferral, and Product Management to Reduce the Risk of Transfusion-Transmission of Zika Virus.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance 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 601.12 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR 606.100(b), 606.160(b)(1), and 640.3(a) have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03393 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0190]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on submission of rotational plans for health warning label statements for smokeless tobacco products.

DATES: Submit either electronic or written comments on the collection of information by April 19, 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–2013–N–0190 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act.'' 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.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act (OMB Control Number 0910–0671)–Extension

The Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) was enacted on June 22, 2009, amending the Federal Food, Drug, and Cosmetic Act (FD&C Act) and providing FDA with the authority to regulate tobacco products (Pub. L. 111–31; 123 Stat. 1776). Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (the Smokeless Tobacco Act) (15 U.S.C. 4402), as amended by section 204 of the Tobacco Control Act, requires, among other things, that all smokeless tobacco product packages and advertisements bear one of four required warning statements. Section 3(b)(3)(A) of the Smokeless Tobacco Act requires that the warnings be displayed on packaging and advertising for each brand of smokeless tobacco ''in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer'' to, and approved by, FDA.

This information collection—the submission to FDA of warning plans for smokeless tobacco products—is statutorily mandated. The warning plans will be reviewed by FDA, as required by the Smokeless Tobacco Act, to determine whether the companies' plans for the equal distribution and display of warning statements on packaging and the quarterly rotation of warning statements in advertising for each brand of smokeless tobacco products comply with section 3 of the Smokeless Tobacco Act, as amended.

Based on the Federal Trade Commission's (FTC's) previous experience with the submission of warning plans and FDA's experience, FDA estimates that there are 52 companies affected by this information collection. To account for the entry of new smokeless tobacco companies that may be affected by this information

collection, FDA is conservatively estimating the total number of annual respondents to this collection of information to be 100.

When the FTC requested an extension of their approved warning plan information collection in 2007, based on over 20 years implementing the warning plan requirements and taking into account increased computerization and improvements in electronic communication, the FTC estimated submitting an initial plan would take 60 hours. Based on FDA's experience over the past several years, FDA believes the estimate of 60 hours to complete an initial rotational plan continues to be reasonable.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Numbers of respondents	Numbers of responses per respondent	Total annual responses	Average burden per response	Total hours	Total capital costs
Submission of rotational plans for health warning statements	100	1	100	60	6,000	$1,200

[1] There are no operating and maintenance costs associated with this collection of information.

FDA estimates a total of 100 respondents will respond to this collection of information and take 60 hours to complete a rotational warning plan for a total of 6,000 burden hours. In addition, capital costs are based on 100 respondents mailing in their submission at a postage rate of $12 for a 5-pound parcel (business parcel post mail delivered from the furthest delivery zone). Therefore, FDA estimates that the total postage cost for mailing the rotational warning plans to FDA to be $1,200.

Dated: February 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03478 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0429 (formerly Docket No. 2007D–0496)]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application 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 (the PRA).

DATES: Fax written comments on the collection of information by March 21, 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 title. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Questions and Answers Regarding the Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; OMB Control Number 0910–0641—Extension

Section 502(x) of the FD&C Act (21 U.S.C. 352(x)), which was added by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Pub. L. 109–462), requires the label of a nonprescription drug product marketed without an approved application in the United States to include a domestic address or domestic telephone number through which a manufacturer, packer, and distributor may receive a report of a serious adverse event associated with the product. The guidance document contains questions and answers relating to this labeling requirement and provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the labeling requirements of section 502(x) of the FD&C Act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or phone number that is required to appear on the product label under section 502(x) of the FD&C Act; and (3) FDA's intent regarding enforcing the labeling requirements of section 502(x) of the FD&C Act.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors whose name (issued in section 502(b)(1) of the FD&C Act) appears on the label of a nonprescription drug product marketed in the United States without an approved application.

In the **Federal Register** of July 17, 2015 (80 FR 42502), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment. However, these comments did not address the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Including a domestic address or phone number and a statement of its purpose on OTC drug labeling (21 U.S.C. 502(x))	300	3	900	4	3,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03457 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0567]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric 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 April 12, 2016, from 8 a.m. to 5:30 p.m.

ADDRESSES: FDA is establishing a public docket [Docket No. FDA–2016–N–0567] to receive input on pediatric-focused safety reviews and appropriate pediatric development plans for prescription opioid drugs. Comments about the upcoming September advisory committee meeting should not be submitted to the docket number listed at the top of this **Federal Register** notice [Docket No. FDA–2016–N–0567], which is to provide an opportunity for the public to provide input concerning the products before the Committee on April 12, 2016.

Location: Double Tree by Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://doubletree3.hilton.com/en/hotels/maryland/doubletree-by-hilton-hotel-washington-dc-silver-spring-DCASSDT/index.html.*

Contact Person: Marieann Brill, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 240–402–3838, email: *marieann.brill@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 April 12, 2016, the Pediatric Advisory Committee (PAC) will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act (Pub. L. 107–109) and the Pediatric Research Equity Act (Pub. L. 108–155). See the list of the products in this document to be discussed.

In addition, FDA will be providing information on a proposed public advisory committee meeting for September 15 and 16, 2016, on appropriate pediatric development plans for prescription opioid drugs. Prior to the safety reviews and the open public hearing (see later in this section for further information), FDA will present, from approximately 8:30 to 9:30 a.m., a framework of current plans for a 2-day joint meeting of the PAC, the Anesthetic and Analgesic Drug Products Advisory Committee, and the Drug Safety and Risk Management Advisory Committees.

Elsewhere in this issue of the **Federal Register**, FDA is publishing an announcement of this advisory committee meeting to be held on September 15 and 16, 2016, on the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Following the presentation on the proposed framework for the September meeting, there will be an hour of open public hearing from 9:30 a.m. to 10:30 a.m. to provide an opportunity for the public to provide input concerning the topics before the PAC, including the use of opioids for control of severe pain in the pediatric population. To assist with the planning of this advisory committee meeting, FDA is establishing a public docket [Docket No. FDA–2016–N–0584] to receive input on appropriate pediatric development plans for prescription opioid drugs. The docket will remain open following the September advisory committee meeting. Comments about the upcoming September advisory committee meeting should *not* be submitted to the docket number listed at the top of this **Federal Register** notice [Docket No. FDA–2016–N–0567]. Please also see the **ADDRESSES** section of this notice for further docket information.

The pediatric-focused safety reviews for the Centers will then occur. The PAC will meet to discuss the following products (listed by FDA Center):

- Center for Biologics Evaluation and Research (CBER):
  - FLULAVAL QUADRIVALENT (influenza virus vaccine)
  - FLULAVAL TRIVALENT (influenza virus vaccine)
  - FLUZONE QUADRIVALENT (influenza virus vaccine)
- Center for Drug Evaluation and Research (CDER):
  - ACIPHEX SPRINKLES (rabeprazole sodium)
  - SKYLA (levonorgestrel-releasing intrauterine system)
  - MYCAMINE (micafungin sodium)
  - NOXAFIL (posaconazole)
  - PRECEDEX (dexmedetomidine hydrocholoride)
  - SABRIL (vigabatrim)
  - SEROQUEL (quetiapine fumarate) and SEROQUEL XR (quetiapine fumarate extended-release)

- SKYLA (levonorgestrel-releasing intrauterine system)
- SYMBAX (fluoxetine hydrocholoride and olanzapine)
- VYVANSE CAPSULES (lisdexamfetamine dimesylate)
- XELODA (capecitabine)

• Center for Devices and Radiological Health (CDRH):
- IMPELLA RP SYSTEM (humanitarian use device (HUD))
- LIPSORBER LA-15 SYSTEM (HUD)
- MEDTRONIC ACTIVA DYSTONIA THERAPY (HUD)

In addition to the agenda items, the PAC will remain in public session over the lunch hour on April 12, 2016, to hear a presentation and provide feedback on an FDA proposal for a risk-based approach to the pediatric-focused safety reviews mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act. The working lunch currently is scheduled between approximately 12:30 p.m. and 1:15 p.m.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 5, 2016. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.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 March 28, 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 March 29, 2016.

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 Marieann Brill 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: February 16, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–03469 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0096]

Determining the Extent of Safety Data Collection Needed in Late-Stage Premarket and Postapproval Clinical Investigations; 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 entitled ''Determining the Extent of Safety Data Collection Needed in Late-Stage Premarket and Postapproval Clinical Investigations.'' The guidance is intended to help sponsors determine the amounts and types of safety data to collect in late-stage premarket and postapproval clinical investigations based on what is already known about a drug's safety profile. Sponsors collect extensive safety data in clinical investigations of drug and biological products conducted to support marketing approval (premarket) and after approval (postapproval). FDA believes that selective safety data collection may be possible for some late-stage premarket and postapproval clinical investigations because certain aspects of a drug's safety profile will be sufficiently well-established and comprehensive data collection is not needed. This guidance finalizes the draft guidance issued in February 2012.

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–2012–D–0096 for ''Determining the Extent of Safety Data Collection Needed

in Late-Stage Premarket and Postapproval Clinical Investigations; Guidance for Industry; 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.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or 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 the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ebla Ali Ibrahim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6302, Silver Spring, MD 20993–0002, 301–796–3691; 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

FDA is announcing the availability of a guidance for industry entitled ''Determining the Extent of Safety Data Collection Needed in Late-Stage Premarket and Postapproval Clinical Investigations.'' The guidance is intended to help sponsors determine the amounts and types of safety data to collect during late-stage premarket and postapproval clinical investigations (*e.g.*, phase 3 clinical trials, studies of new uses, long-term outcomes) based on what is already known about a drug's safety profile.

If the drug's safety profile is well-established before completion of clinical development or for marketed drugs used in postmarketing clinical trials, it may no longer be necessary in some cases to collect certain types of safety data. In some cases, collection of data that do not contribute to better characterizing the safety profile of a drug may have negative consequences. Additionally, excessive safety data collection practices may discourage the conduct of certain types of trials by increasing the resources needed to perform the trials and may also be a disincentive to investigator and patient participation in clinical trials. FDA believes that selective safety data collection may: (1) Facilitate the conduct of larger trials without compromising the integrity and the validity of trial results or losing important information, (2) facilitate investigators' and patients' participation in clinical trials, and (3) help contain costs by making more-efficient use of clinical trial resources.

The guidance outlines the circumstances where selective data collection may be appropriate and the types of safety data that may be eligible for selective collection. The guidance provides recommendations on maintaining a balance between eliminating the collection of data that will not be useful and collecting sufficient data to allow adequate characterization of the safety profile of a drug in scenarios where selective safety data collection is appropriate. The guidance also strongly encourages sponsors to work closely with the relevant FDA review division or divisions to establish and implement selective safety data collection.

In the **Federal Register** of February 10, 2012 (77 FR 7166), FDA announced the availability of a draft guidance for industry of the same title. The public comment period closed on April 10, 2012. FDA carefully considered all comments received in developing the guidance. In response to public comments requesting more detail and examples, the guidance was revised and reorganized to clarify what types of safety data and what circumstances may be appropriate for selective collection, add detail regarding the draft guidance topics, and provide additional information on safety data reporting issues. This guidance finalizes the draft guidance issued in February 2012.

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 determining the extent of safety data collection needed in late-stage premarket and postapproval clinical investigations. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance 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 312.32 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR 312.47 have been approved under OMB control numbers 0910–0014 and 0910–0429; the collections of information in 21 CFR 314.80 have been approved under OMB control number 0910–0230; and the collections of information in 21 CFR 600.80 have been approved under OMB control number 0910–0308.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: February 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03462 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0717]

Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaigns

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on (1) an extension of the study conducted with the original longitudinal youth cohort developed and surveyed for the outcome evaluation of FDA's General Market Youth Tobacco Prevention Campaign, (2) the development of a second longitudinal cohort for the purpose of continuing the evaluation, (3) an extension of the time period for the outcome evaluation of the Rural Male Youth Smokeless Tobacco Campaign, (4) and an extension of the media tracking survey.

DATES: Submit either electronic or written comments on the collection of information by April 19, 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–2013–N–0717 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluation of the Food and Drug Administration's General Market Youth Tobacco Prevention Campaigns''. 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.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an

existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Evaluation of FDA's General Market Youth Tobacco Prevention Campaigns—OMB Control Number 0910–0753—Extension

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. Accordingly, FDA is currently developing and implementing youth-targeted public education campaigns to help prevent tobacco use among youth and thereby reduce the public health burden of tobacco. The campaigns feature televised advertisements along with complementary ads on radio, on the Internet, in print, and through other forms of media.

Evaluation is an essential organizational practice in public health and a systematic way to account for and improve public health actions. Comprehensive evaluation of FDA's public education campaigns will be used to document whether the intended audience is aware of and understands campaign messages; and whether campaign exposure influences beliefs about tobacco, susceptibility to tobacco use, and tobacco use behavior. All of the information collected is integral to that evaluation.

FDA is in the process of conducting three studies to evaluate the effectiveness of its youth tobacco prevention campaigns: (1) An outcome evaluation study of its General Market Youth Tobacco Prevention Campaign, (2) an outcome evaluation of the Rural Male Youth Smokeless Tobacco Campaign, and (3) a media tracking survey. The timing of these studies follows the multiple, discrete waves of media advertising planned for the campaigns.

Evaluation of the General Market Youth Tobacco Prevention Campaign

The General Market Youth Tobacco Prevention Campaign targets youth who are at-risk for smoking, or who have experimented with but not progressed to regular smoking. The outcome evaluation of the campaign consists of an initial baseline survey of youth aged 11 to 16 before campaigns launch, followed by a number of longitudinal follow-up surveys of the same youth at approximate 8 month intervals. To date, the baseline and three follow-up surveys have been conducted. A baseline survey was also conducted with the parent or legal guardian of each youth, to collect data on household characteristics and media use. Because the cohort aged over the study period, data have been collected from youth aged 11 to 18. Information has been collected about youth awareness of and exposure to campaign advertisements and about youth knowledge, attitudes, and beliefs related to tobacco use. In addition, the surveys have measured tobacco use susceptibility and current use. Information has been collected on demographic variables including age, sex, race/ethnicity, grade level, and primary language.

Evaluation of the Rural Male Youth Smokeless Tobacco Campaign

Baseline data collection for the Rural Male Youth Smokeless Campaign evaluation will begin in January 2016. The three follow up surveys will begin in August 2016, March 2017, and October 2017. The evaluation of the Rural Male Youth Smokeless Campaign differs from the General Market Campaign evaluation, in that only males in the age range will be considered eligible.

Media Tracking Survey

The media tracking survey consists of assessments of youth aged 13 to 18 conducted periodically during the campaign period. The tracking survey assesses awareness of the campaign and receptivity to campaign messages. These data provide critical evaluation feedback to the campaigns and are conducted with sufficient frequency to match the cyclical patterns of media advertising and variation in exposure to allow for mid-campaign refinements.

All information is being collected through in-person and web-based questionnaires. Youth respondents were recruited from two sources: (1) A probability sample drawn from 90 U.S. media markets gathered using an address-based postal mail sampling of U.S. households for the outcome evaluations, and (2) an Internet panel for the media tracking survey. Participation in the studies is voluntary.

The studies are being conducted in support of the provisions of the Tobacco Control Act, which require FDA to protect the public health and to reduce tobacco use by minors. The information being collected is necessary to inform FDA's efforts towards those goals and to measure the effectiveness and public health impact of the campaigns. Data from the outcome evaluation of the General Market and Rural Male Youth Smokeless campaigns is being used to examine statistical associations between exposure to the campaigns and subsequent changes in specific outcomes of interest, which will include knowledge, attitudes, beliefs, and intentions related to tobacco use, as well as behavioral outcomes including tobacco use. Data from the media tracking survey is being used to estimate awareness of and exposure to the campaigns among youth nationally as well as among youth in geographic areas targeted by the campaign.

FDA requests OMB approval to collect additional information for the purpose of extending the evaluation of FDA's general market youth tobacco prevention campaign. Specifically, FDA requests approval to conduct a fourth follow-up survey with youth who are part of the first longitudinal cohort, and who participated in the baseline and first through third follow-up surveys. Based on earlier response rates, we estimate that 1,607 will participate in this survey, for a total of 6,666 annualized participants (including 5,059 previously approved). At 0.75 hours per survey, this adds 1,205 annualized burden hours to the 3,794 previously approved hours for a total of 5,000 annualized burden hours. Baseline data collection for this cohort, approved for 2,288 participants (1,144 burden hours at 30 minutes per survey) is complete.

FDA also requests approval to develop and survey a second longitudinal cohort which will consist of an entirely new sample of youth, ages 11–16 at baseline. Development of the

second cohort will involve screening 52,401 individuals in the general population for a total of 65,814 participants, including 13,413 previously approved. At 10 minutes per screening, this adds 8,908 burden hours to the already approved 2,280 hours for a total of 11,188 annualized burden hours.

We expect this screening to yield 2,667 youth annually who will complete the baseline survey for the new cohort, resulting in a total of 1,334 burden hours for youth. Three follow up surveys are planned for this cohort. We expect a total of 6,270 participants to complete follow up surveys for a total burden of 4,703 annualized burden hours. As was done with the first cohort, parents of the 2,667 youth will also complete surveys for a total of 6,009 parent surveys including the 3,342 previously approved. At 10 minutes per survey, this adds 453 hours to the previously approved 568 hours for a total of 1,021 annualized burden hours.

FDA also requests approval to extend the media tracking survey. This survey is cross sectional and thus necessitates brief screening prior to data collection. We expect 20,000 participants to complete screener for a total of 60,000 participants (including 40,000 previously approved). At two minutes per screener, this adds 600 burden hours to the previously approved 1,200 hours for a total of 1,800 annualized burden hours. We expect the screening process to yield 2,000 participants, for a total of 6,000 including 4,000 previously approved. At 30 minutes per survey, this adds 1,000 burden hours to the already-approved 2,000 for a total of 3,000 annualized burden hours.

FDA also requests approval to extend the time period of the evaluation of the Male Rural Youth Smokeless Campaign. No new burden hours will be required to complete this study. Previously approved burden for the evaluation of the Rural Male Youth Smokeless Campaign include 656 participants (328 burden hours at 30 minutes per questionnaire) for the baseline questionnaire and 1,281 participants (961 burden hours at 0.75 hours per questionnaire).

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
General Population	Screener and Consent Process (Youth and Parent).	65,814	1	65,814	0.17 (10 minutes)	11,188
Parent of Youth Baseline Survey Participants.	Parent Baseline Questionnaire.	6,009	1	6,009	0.17 (10 minutes)	1,022
Youth Aged 11 to 18 (Experimenters and Non-Triers).	Youth Baseline Questionnaire (Experimenters & Non-Triers).	2,288	1	2,288	0.50 (30 minutes)	1,144
	Youth 1st, 2nd, 3rd, 4th Follow-up Questionnaire (Experimenters and Non-Triers).	6,666	1	6,666	0.75 (45 minutes)	5,000
Youth Aged 13 to 17	Media Tracking Screener.	60,000	1	60,000	0.03 (2 minutes)	1,800
	Media Tracking Questionnaires 1st, 2nd, and 3rd.	6,000	1	6,000	0.50 (30 minutes)	3,000
Male Youth Aged 11 to 18 in U.S. Rural Markets (Male Rural Smokeless).	Youth Baseline Questionnaire (Male Rural Smokeless).	656	1	656	0.50 (30 minutes)	328
	Youth 1st, 2nd, 3rd (Male, Rural Smokeless) Follow-up Questionnaire.	1,281	1	1,281	0.75 (45 minutes)	961
Cohort 2—Youth Aged 11 to 18.	Cohort 2—Youth Baseline Questionnaire.	2,667	1	2,667	0.50 (30 minutes)	1,334
	Cohort 2—Youth 1st, 2nd, 3rd Follow-Up Questionnaire.	6,270	1	6,270	0.75 (45 minutes)	4,703
Totals	.....	.....	.....	157,651	.....	30,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03458 Filed 2–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Nominations, Technical Review Panel on the Medicare Trustees Reports

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice of Reestablishment of the Technical Review Panel on the Medicare Trustees Reports and Request for Nominations.

SUMMARY: In accordance with the provisions of FACA, and after consultation with the General Services Administration (GSA), the Secretary of Health and Human Services (HHS) has determined that the reestablishment of the Technical Review Panel on the Medicare Trustees Reports is in the public interest. This Panel shall advise the HHS Secretary about the econometric and actuarial techniques and economic assumptions utilized in the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Fund reports, thus enhancing her ability to fulfill duties and responsibilities imposed by the PHSA (42 U.S.C. 201 *et seq.*)

DATES: Submit nominations on or before March 7, 2016.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 405–F, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Donald T. Oellerich, Ph.D., Department of Health and Human Services; Telephone (202) 690–8410, email *Don.Oellerich@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds report annually on the financial condition of the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds. These reports describe the trust funds' current and projected financial condition over the ''short term,'' or next decade, and the ''long term'' (75+ years). The Medicare Board of Trustees has requested that the Secretary of Health and Human Services (who is one of the Trustees) establish a panel of technical experts to review the methods used in the HI and SMI annual reports. The Secretary reestablished the Technical Review Panel on the Medicare Trustees Reports when she signed the charter on February 3, 2016.

Objectives and Scope of Activities

The Technical Review Panel on the Medicare Trustees Reports shall counsel the HHS Secretary regarding the Hospital Insurance and Supplementary Medical Insurance Trust Fund annual reports. The panel's duties shall include, but not be limited to, a review of the following topics: The long-term rate of growth, the sustainability of key Medicare cost growth factors under current law, future changes in utilization of care, the transition of short term to long range projections and current and alternate projection methodologies including the high and low cost options. The panel may also examine other methodological issues identified by panelists. The Panel's final report and its recommendations to the Secretary shall be only advisory in nature.

Membership and Designation

The Secretary is soliciting nominations for appointment to the 9-member Technical Review Panel from among members of the general public who are experts in health economics, actuarial science, statistics, public policy, or other fields that could inform and substantively contribute to panel deliberations. Each member of the panel shall be appointed for a term of 2 years.

Nominations should be submitted to Donald T. Oellerich, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue SW., Room 405F, Washington, DC 20201 no later than <insert 15 days after publication>. When selecting members for this Technical Review Panel, HHS will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Panel is not impaired. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status.

The Secretary, or her designee, shall appoint one of the members to serve as the Chair. Members shall be invited to serve for the duration of the panel. If members are selected from the Federal sector, they will be classified as regular government employees. Members who are selected from the public and/or private sector will be classified as special government employees. Any vacancy on the Technical Review Panel shall not affect its powers, but shall be filled in the same manner as the original appointment was made. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member that is replaced.

Administrative Management and Support

HHS will provide funding and administrative support for the Technical Review Panel to the extent permitted by law within existing appropriations. Staff will be assigned to support the activities of the Panel. Management and oversight for support services provided to the Panel will be the responsibility of the Office of the Assistant Secretary for Planning and Evaluation and the Office of the Actuary, Centers for Medicare & Medicaid Services (CMS). All executive departments and agencies and all entities within the Executive Office of the President shall provide information and assistance to the Panel as the Chair may request for purposes of carrying out the Panel's functions, to the extent permitted by law.

A copy of the Panel's charter can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is *http://facadatabase.gov/.*

Authority: The Technical Review Panel on the Medicare Trustees Reports is authorized by Sec. 222 of the Public Health Service Act (PHSA), Public Law 92–463. The Panel is governed by provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C., App. 2), which sets forth standards for the formation and use of advisory committees.

Dated: February 10, 2016.

Richard G. Frank,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–03406 Filed 2–18–16; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment request National Institutes of Health (NIH) Loan Repayment Programs; Office of the Director (OD)

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 Division of Loan Repayment (DLR), 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 should 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: Written comments and/or suggestions from the public and affected agencies should 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Steve Boehlert, Director of Operations, Division of Loan Repayment, National Institutes of Health, 6011 Executive Blvd., Room 206 (MSC 7650), Bethesda, Maryland 20892–7650. Mr. Boehlert may be contacted via email at *BoehlerS@od.nih.gov* or by calling 301–451–4465. 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 within 60 days of the date of this publication.

Proposed Collection: National Institutes of Health (NIH) Loan Repayment Programs (LRP). *Type of Information Collection Request:* Extension of a currently approved collection (OMB No. 0925–0361, expiration date 06/30/17). Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The NIH makes available financial assistance, in the form of educational loan repayment, to M.D., Ph.D., Pharm.D., Psy.D., D.O., D.D.S., D.M.D., D.P.M., D.C., N.D., O.D., D.V.M, or equivalent doctoral degree holders who perform biomedical or behavioral research in NIH intramural laboratories or as extramural grantees or scientists funded by domestic non-profit organizations for a minimum of two years (three years for the General Research LRP) in research areas supporting the mission and priorities of the NIH.

The AIDS Research Loan Repayment Program (AIDS–LRP) is authorized by section 487A of the Public Health Service Act (42 U.S.C. 288–1); the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (CR–LRP) is authorized by section 487E (42 U.S.C. 288–5); the General Research Loan Repayment Program (GR–LRP) is authorized by section 487C of the Public Health Service Act (42 U.S.C. 288–3); the Clinical Research Loan Repayment Program (LRP–CR) is authorized by section 487F (42 U.S.C. 288–5a); the Pediatric Research Loan Repayment Program (PR–LRP) is authorized by section 487F (42 U.S.C. 288–6); the Extramural Clinical Research LRP for Individuals from Disadvantaged Backgrounds (ECR–LRP) is authorized by an amendment to section 487E (42 U.S.C. 288–5); the Contraception and Infertility Research LRP (CIR–LRP) is authorized by section 487B (42 U.S.C. 288–2); and the Health Disparities Research Loan Repayment Program (HD–LRP) is authorized by section 464z–5 (42 U.S.C. 285t–2). Form Numbers: NIH 2674–1, NIH 2674–2, NIH 2674–3, NIH 2674–4, NIH 2674–5, NIH 2674–6, NIH 2674–7, NIH 2674–8, NIH 2674–9, NIH 2674–10, NIH 2674–11, NIH 2674–12, NIH 2674–13, NIH 2674–14, NIH 2674–15, NIH 2674–16, NIH 2674–17, NIH 2674–18, NIH 2674–19, and NIH 2674–20.

The NIH Loan Repayment Programs can repay up to $35,000 per year toward a participant's extant eligible educational loans, directly to financial institutions. The information proposed for collection will be used by the Division of Loan Repayment to determine an applicant's eligibility for participation in the program. The total estimated annualized burden hours are 33,242.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Intramural LRPs:				
Initial Applicants	40	1	10	400
Advisors/Supervisors	40	1	1	40
Recommenders	120	1	30/60	60
Financial Institutions	8	1	15/60	2
Subtotal	210			502
Extramural LRPs:				
Initial Applicants	1650	1	11	18,150
Advisors/Supervisors	1480	1	1	1,480
Recommenders	4950	1	30/60	2,475
Financial Institutions	100	1	15/60	25
Subtotal	8,180			22,130
Intramural LRPs:				
Renewal Applicants	40	1	7	280
Advisors/Supervisors	40	1	2	80

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Subtotal	80			360
Extramural LRPS				
Renewal Applicants	1000	1	8	8,000
Advisors/Supervisors	750	1	1	750
Recommenders	3000	1	30/60	1,500
Subtotal	4750			10,250
Total	13,220			33,242

Dated: February 10, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–03508 Filed 2–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B.

Date: March 17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, Calvert I & II, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Dr., Rm 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov*.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—A.

Date: March 22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, Belgravia, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 11, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03414 Filed 2–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Center for Scientific Review Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Council.

Date: March 14, 2016.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: Provide advice to the Director, Center for Scientific Review (CSR), on matters related to planning, execution, conduct, support, review, evaluation, and receipt and referral of grant applications at CSR.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 3091, Bethesda, MD 20892.

Contact Person: Rene Etcheberrigaray, MD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3030, MSC 7776, Bethesda, MD 20892, (301) 435–1111, *etcheber@csr.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 into NIH buildings. 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://public.csr.nih.gov/aboutcsr/CSROrganization/Pages/CSRAC.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(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: February 12, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03417 Filed 2–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI Center Core Grants for Vision Research.
Date: March 14, 2016.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.
Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Mentored Training Grant Applications (K08).
Date: March 15–16, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, 5635 Fishers Lane, Rockville, MD (Virtual Meeting).
Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 12, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03415 Filed 2–18–16; 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: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences Member Conflict.
Date: March 8, 2016.
Time: 2:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery, and Nanotechnology.
Date: March 10, 2016.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–GM–16–003: Maximizing Investigators' Research Award for New and Early Stage Investigators (R35).
Date: March 14–15, 2016.
Time: 8:00 a.m. to 6:00 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: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–GM–16–003: Maximizing Investigators' Research Award for New and Early Stage Investigators (R35).
Date: March 14–15, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.
Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.
Date: March 14–15, 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: Yuan Luo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–915–6303, *luoy2@mail.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.
Date: March 14–15, 2016.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Pere Marquette, 817 Common Street, New Orleans, LA 70112.
Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics and Drug Discovery.
Date: March 14, 2016.
Time: 8:30 a.m. to 6:00 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: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–308: Innovative Basic Research on Adducts in Cancer Risk Identification and Prevention.
Date: March 14, 2016.
Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, *chatterm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urology.

Date: March 15–16, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 2188 MSC7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 15, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–435–0000, *bdey@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.

Date: March 15, 2016.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

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: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: March 15–16, 2016.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dermatology, Rheumatology and Inflammation.

Date: March 15, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@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: February 12, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–03416 Filed 2–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4254–DR; Docket ID FEMA–2016–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4254–DR), dated February 5, 2016, and related determinations.

DATES: *Effective Date:* February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 5, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of December 26, 2015 to January 22, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John Long, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Benton, Carroll, Crawford, Faulkner, Jackson, Jefferson, Lee, Little River, Perry, Sebastian, and Sevier Counties for Individual Assistance.

Benton, Boone, Bradley, Calhoun, Carroll, Clay, Crawford, Dallas, Drew, Franklin, Greene, Independence, Izard, Lawrence, Little River, Logan, Madison, Marion, Mississippi, Montgomery, Ouachita, Perry, Pike, Polk, Randolph, Scott, Searcy, Stone, Washington, White, Woodruff, and Yell Counties for Public Assistance.

All areas within the State of Arkansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03451 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4255–DR; Docket ID FEMA–2016–0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4255–DR), dated February 9, 2016, and related determinations.

DATES: *Effective Date:* February 9, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 9, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from severe winter storms, tornadoes, straight-line winds, and flooding during the period of December 26, 2015 to January 21, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Bailey, Castro, Childress, Cochran, Dallas, Deaf Smith, Dickens, Ellis, Hall, Hardeman, Harrison, Henderson, Hopkins, Kaufman, Kent, King, Lamb, Lubbock, Navarro, Parmer, Rains, Red River, Rockwall, Titus, and Van Zandt Counties for Public Assistance.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03452 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4248–DR; Docket ID FEMA–2016–0001]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4248–DR), dated January 4, 2016, and related determinations.

DATES: *Effective Date:* February 11, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 4, 2016.

Chickasaw County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03449 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3376–EM; Docket ID FEMA–2015–0002]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3376–EM), dated February 5, 2016, and related determinations.

DATES: *Effective Date:* February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 5, 2016, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana resulting from flooding during the period of December 28, 2015 to February 1, 2016, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

Concordia, Plaquemines, Pointe Coupee, St. Landry, St. Mary, Terrebonne, and West Feliciana Parishes for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03447 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4256–DR; Docket ID FEMA–2016–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4256–DR), dated February 10, 2016, and related determinations.

DATES: *Effective Date:* February 10, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 10, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe winter storms and flooding during the period December 26, 2015 to January 5, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Adair, Alfalfa, Beckham, Blaine, Caddo, Canadian, Cherokee, Coal, Comanche, Cotton, Craig, Custer, Delaware, Dewey, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Kay, Kingfisher, Kiowa, Latimer, Major, Mayes, McCurtain, McIntosh, Muskogee, Noble, Okfuskee, Okmulgee, Osage, Pittsburg, Pushmataha, Roger Mills, Sequoyah, Tillman, Washita, and Woods Counties for Public Assistance.

All areas within the State of Oklahoma are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03450 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2016–0005; OMB No. 1660–0082]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Community Disaster Loan Cancellation

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the application for loan cancellation under the Community Disaster Loan Program.

DATES: Comments must be submitted on or before April 19, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA- 2016–0005. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha Polanco, Assistant Program Manager, Federal Emergency Management Agency, Public Assistance Division, at 202–701–4023. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, 42 U.S.C. 5184, and implementing regulations at 44 CFR subpart K. The Assistant Administrator may make a CDL to any local government which has suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance in order to perform its governmental functions. FEMA shall cancel repayment of all or part of a CDL to the extent that the Assistant Administrator for the Disaster Assistance Directorate determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character.

Collection of Information

Title: Application for Community Disaster Loan Cancellation.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0082.

FEMA Form: FEMA Form 009–0–15, Application for Loan Cancellation.

Abstract: The loan cancellation form for the CDL Program provides local governments that have suffered substantial loss of tax or other revenues as a result of a major disaster or emergency and have not recovered financially during the third fiscal year post-disaster the opportunity to request cancellation of their loan. The loan cancellation must be justified on the basis of need and actual expenses.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 81.

Number of Responses: 81.

Estimated Total Annual Burden Hours: 81 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $3,947.13. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $12,355.11.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: February 12, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–03454 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4250–DR; Docket ID FEMA–2016–0001]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–4250–DR), dated January 21, 2016, and related determinations.

DATES: *Effective Date:* February 10, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 21, 2016.

Bollinger, Cedar, Dade, Dallas, Douglas, Dunklin, Howell, Iron, Ozark, Perry, Reynolds, St. Clair, Stoddard, Washington, and the Independent City of St. Louis for Public Assistance.

Barry, Camden, Cape Girardeau, Crawford, Franklin, Gasconade, Greene, Jasper, Jefferson, Lawrence, Lincoln, McDonald, Newton, Phelps, Pulaski, Scott, St. Charles, Ste. Genevieve, St. Louis, Stone, Taney, Texas, and Webster Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–03448 Filed 2–18–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, OECM MA–50, 4B122, 1000 Independence Ave SW., Washington, DC 20585 (202) 287–1503;

GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426; (These are not toll-free numbers).

Dated: February 11, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program—Federal Register Report for 02/19/2016

Suitable/Available Properties

Building

Minnesota

CFS Dwelling #5
Cutfoot Sioux Admin. Site
Itasca, MN
Landholding Agency: Agriculture
Property Number: 15201610016
Status: Unutilized
Comments: off-site removal only; 1,200 sq. ft.; no future agency need; removal difficult due to size/type; poor conditions; LBPs; contact Agriculture for more information.

CFS Dwelling #3
Cutfoot Sioux Admin. Site
Itasca, MN
Landholding Agency: Agriculture
Property Number: 15201610017
Status: Unutilized
Comments: off-site removal; 800 sq. ft.; no future agency need; residential; poor conditions; LBPs; contact Agriculture for more information.

Pennsylvania

Two Story Brick Residential
Home (AL6–12050)
1258 River Rd.
Freeport, PA 16229
Landholding Agency: COE
Property Number: 31201610006
Status: Underutilized
Comments: 1,768 sq. ft.; 12+ mons. vacant; very poor conditions; contact COE for more information.

Washington

Glacier WC Bunkhouse
(1052.004841) 07661 00
1094 Mt. Baker Hwy
Glacier, WA 98244
Landholding Agency: Agriculture
Property Number: 15201610010
Status: Unutilized
Comments: 1,660 sq. ft.; bunkhouse; very poor conditions; contact Agriculture for more information.

Darrington RS Evidence Locker
(14655010357)
07661 03; 1405 Emens Ave. N
Darrington, WA 98241
Landholding Agency: Agriculture
Property Number: 15201610011
Status: Unutilized
Comments: 256 sq. ft.; storage; poor conditions; contact Agriculture for more information.

Darrington Tree Cooler Bldg.
(10460.004841) 07661 02
1405 Emens Ave. N
Darrington, WA 98241
Landholding Agency: Agriculture
Property Number: 15201610012
Status: Excess
Comments: 1,600 sq. ft.; storage; contact Agriculture for more information.

Darrington RS Boneyard Log
Bldg. (1627.004841) 07661 03
1405 Emens Ave. N
Darrington, WA 98241
Landholding Agency: Agriculture
Property Number: 15201610013
Status: Unutilized
Comments: 2,160 sq. ft.; storage; poor conditions; contact Agriculture for more information.

Darrington RS Log Pole Storage
(1033.004841) 07661 03
1405 Emens Ave. N
Darrington, WA 98241
Landholding Agency: Agriculture
Property Number: 15201610014
Status: Unutilized
Comments: 1,750 sq. ft.; storage; poor conditions; contact Agriculture for more information.

Darrington RS Former Pump House (1628.004841) 07661 03
1405 Emens Ave. N
Darrington, WA 98241
Landholding Agency: Agriculture
Property Number: 15201610015
Status: Unutilized
Comments: 400 sq. ft.; storage; poor conditions; contact Agriculture for more information.

Land

Florida

Former Radio Communication Receiver Site
SW Kanner Hwy
Martin Co., FL 34956
Landholding Agency: GSA
Property Number: 54201610004
Status: Surplus
GSA Number: 4–U–FL–1321
Directions:
Landholding Agency: FAA; Disposal Agency: GSA
Comments: 1.06 acres; contact GSA for more information.

Oklahoma

Caney Creek
33.925152–96.690155
Unincorporated, OK 73152
Landholding Agency: GSA
Property Number: 54201610005
Status: Excess
GSA Number: 7–G–OK–0852–AA
Comments: 9.82 acres; endangered species in area not specifically on land; contact GSA for more information.

Unsuitable Properties

Building

Colorado

8 Buildings
Ptarmigan Guard Station
Granby, CO
Landholding Agency: Agriculture
Property Number: 15201610007
Status: Excess
Directions: 3841 (B2901.001481); 3842 (B2917.001481); 3843 (B2920.001481); 3844 (B2921.001481); 3845 (B2915.001481); 3846 (B2925.001481); 3847 (B2923.001481); 3848 (B2910.001481)
Reasons: Extensive deterioration
Comments: documented deficiencies: structure integrity unsound; clear threat to physical safety.

Arapaho Bay Dwelling #1
Arapaho Bay Campground
Granby, CO
Landholding Agency: Agriculture
Property Number: 15201610008
Status: Excess
Reasons: Extensive deterioration
Comments: documented deficiencies: structure integrity unsound; rodent infestation; clear threat to physical safety.

5 Buildings
Shadow Mountain Village
Granby, CO
Landholding Agency: Agriculture
Property Number: 15201610009
Status: Excess
Directions: 1203 (B1369.001481); 1220 (B1400.001481); 1221 (B1401.001481); 1218 (B1420.001481); 1225 (B1403.001481)
Reasons: Extensive deterioration
Comments: documented deficiencies: structure integrity unsound; clear threat to physical safety.

Georgia

Savannah Hilton Head International Airport, Fac. 1926 XDQU 1401 Robert B. Miller Jr. Dr. Garden City, GA 31408
Landholding Agency: Air Force
Property Number: 18201610002
Status: Unutilized
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

Illinois

Argonne National Lab
9700 South Cass Ave.
Argonne, IL
Landholding Agency: Energy
Property Number: 41201610003
Status: Excess
Directions: OSF 603; Bldg. 604
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

Maine

494
99 Glen Ave. Ste. 494
Bangor, ME 04401
Landholding Agency: Air Force
Property Number: 18201610003
Status: Excess
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

Bangor IAP (ANG) FKNN
109 Pesch Circle, Ste. 418

Bangor, ME 04401
Landholding Agency: Air Force
Property Number: 18201610004
Status: Underutilized
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

Michigan

Alpena Crtc.; Alpena Co.
Reg. Apt.—Installation TDVG
5884 A St.; Bldg. 315
Alpena, MI 49707
Landholding Agency: Air Force
Property Number: 18201610001
Status: Unutilized
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

North Carolina

Tower Support Facility
West of N.C. Hwy 17
Holly Ridge, NC 28445
Landholding Agency: Navy
Property Number: 77201610019
Status: Excess
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

200′ Communication Tower
West of N.C. Hwy 17
Holly Ridge, NC 28445
Landholding Agency: Navy
Property Number: 77201610020
Status: Excess
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

Pennsylvania

Wooden Garage
(AL6–12055)
1258 River Rd.
Freeport, PA 16229
Landholding Agency: COE
Property Number: 31201610007
Status: Underutilized
Reasons: Extensive deterioration
Comments: documented deficiencies: structurally unsound; clear threat to physical safety.

Land

Maryland

Building 1646
Naval Air Station
Patuxent River, MD 20670
Landholding Agency: Navy
Property Number: 77201610021
Status: Unutilized
Reasons: Secured Area
Comments: public access denied and no alternative method to gain access without compromising national security.

[FR Doc. 2016–03273 Filed 2–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N009; FXES11120800000–167–FF08EVEN00]

Receipt of Application for Renewal of Incidental Take Permit; Bonny Doon Quarries Settlement Ponds Low-Effect Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from CEMEX (applicant), for a renewal of incidental take permit TE844722–0 under the Endangered Species Act of 1973, as amended (Act). The applicant has requested a renewal that will extend permit expiration by 5 years from the date the permit is reissued. The applicant has agreed to follow all of the existing habitat conservation plan (HCP) conditions. If renewed, no additional take will be authorized. The permit would authorize take of the federally threatened California red-legged frog, incidental to otherwise lawful activities associated with the Bonny Doon Quarries Settlement Ponds HCP.

DATES: Written comments should be received on or before March 21, 2016.

ADDRESSES: You may obtain a copy of the permit renewal application and the HCP by writing to the Ventura Fish and Wildlife Ecological Services Office, Attn: Permit number TE844722–0, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. In addition, we will make the permit renewal application and HCP available for public inspection by appointment during normal business hours at the above address. Please address written comments to Stephen P. Henry, Field Supervisor, at the address above. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jacob Martin, Fish and Wildlife Biologist, at the above address or by calling (831) 768–6953.

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana draytonii*) was listed by the U.S. Fish and Wildlife Service as threatened on May 23, 1996. Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

CEMEX has applied for renewal of a permit for the incidental take of the threatened California red-legged frog. The potential taking would occur by activities associated with operations and maintenance of settlement ponds 1 through 7, habitat management and enhancement activities at the existing mitigation ponds, and possible reclamation activities of settlement ponds 2X and 5 at CEMEX's Bonny Doon Quarries. The Bonny Doon Quarries are located just north of the city of Davenport (Santa Cruz County), California. An incidental take permit was first issued for the project on August 5, 1999. Mining activities have ceased at the Bonny Doon Quarries; however, management and maintenance of settlement ponds continues. Conditions at the site remain unchanged from the time of original permit issuance.

Our Preliminary Determination

The Service has made a preliminary determination that renewal of the permit is not a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA), nor will it individually or cumulatively have more than a negligible effect on the species covered in the HCP. Therefore, the permit renewal qualifies for a categorical exclusion under NEPA as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 8.5).

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES.**

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: February 10, 2016.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2016–03303 Filed 2–18–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X; LLIDB00100. LF1000000. HT0000. LXSS024D0000. 241A00]

Notice of Public Meeting: Resource Advisory Council (RAC) to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held March 16, 2016, at the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 beginning at 9:00 a.m. and adjourning by 4:00 p.m. Members of the public are invited to attend. A public comment period will be held from 11:00 a.m. to 11:10 a.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, Idaho 83705, telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. During the March meeting the Boise District RAC will receive updates on the Bruneau Off-Range Corrals, the Soda fire emergency stabilization and rehabilitation actions and sage-grouse conservation implementation efforts. The RAC's subcommittee on the proposed Tri-State Fuels Breaks Project will provide a report about their first meeting. BLM staff will brief RAC members on the Gateway West Draft Supplemental Environmental Impact Statement. There will also be a discussion about the use of Prostrate kochia in fuel breaks. Agenda items and location may be modified due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. 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 Ms. Byrne. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Byrne. You will receive a reply during normal business hours.

Dated: February 11, 2016.

Lara Douglas,

District Manager.

[FR Doc. 2016–03463 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Eastern Gulf of Mexico Planning Area Outer Continental Shelf Oil and Gas Lease Sale 226

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 23, 2016, BOEM will open and publicly announce bids for blocks offered in Eastern Planning Area (EPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 226 (EPA Sale 226), in accordance with the provisions of the OCS Lands Act (OCSLA, 43 U.S.C. 1331–1356, as amended) and the implementing regulations issued pursuant thereto (30 CFR parts 550 and 556).

DATES: *Date And Time:* Public bid reading for EPA Sale 226 will begin at 9:00 a.m. on Wednesday, March 23, 2016. All times referred to in this document are Central Time, unless otherwise specified.

The EPA Sale 226 Final Notice of Sale (NOS) Package (Final NOS Package) contains information essential to potential bidders. Bidders are charged with knowing the contents of the documents contained in the Final NOS Package.

Bid Submission Deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days, or from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 22, 2016, the day before the lease sale. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: The Mercedes-Benz Superdome, 1500 Sugarbowl Drive, New Orleans, Louisiana, 70112. The lease sale will be held in the St. Charles Club Room on the second floor (Loge Level). Entry to the Superdome will be on the Poydras Street side of the building through Gate A on the Ground Level; parking will be available at Garage 6.

Interested parties, upon request, may obtain a compact disc (CD–ROM) containing the Final NOS Package by contacting the BOEM Gulf of Mexico (GOM) Region at: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF or by visiting the BOEM Web site at *http://www.boem.gov/Sale-226/.*

SUPPLEMENTARY INFORMATION:

Table of Contents

This Final NOS includes the following sections:

I. Lease Sale Area
II. Statutes and Regulations
III. Lease Terms and Financial Conditions
IV. Lease Stipulations
V. Information to Lessees
VI. Maps
VII. Bidding Instructions
VIII. Bidding Rules and Restrictions
IX. Forms
X. The Lease Sale
XI. Delay of Sale

I. Lease Sale Area

Blocks Offered for Leasing: BOEM is offering for lease all blocks and partial blocks listed in the document ''List of Blocks Available for Leasing'' included in this Final NOS Package. All of these blocks are shown on the following leasing maps and Official Protraction Diagrams (OPDs):

Outer Continental Shelf Official Protraction Diagrams

NG16–02 Lloyd Ridge (revised February 28, 2007)

NH16–11 De Soto Canyon (revised February 28, 2007)

Blocks Not Offered for Leasing: All whole or partial blocks in the EPA deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109–432.

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, and is subject to OCSLA, implementing regulations promulgated pursuant thereto, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease also is subject to amendments to statutes and regulations, including, but not limited to, OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Financial Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (October 2011) to convey leases resulting from this sale. This lease form may be viewed on the BOEM Web site at *http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.aspx.* The lease form will be amended to conform with the specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Initial Periods

Initial periods are summarized in the following table:

Water depth (meters)	Initial period
800 to <1,600	Standard initial period is 7 years; the lessee will earn an additional 3 years (*i.e.,* for a 10-year extended initial period) if a well is spudded during the first 7 years of the lease.
1,600+	10 years.

(1) The standard initial period for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale will be 7 years. The lessee will earn an additional 3 years, resulting in a 10-year extended initial period, if the lessee spuds a well within the first 7 years of the lease.

In order to earn the 10-year extended initial period, the lessee is required to submit to the appropriate Bureau of Safety and Environmental Enforcement (BSEE) District Manager, within 30 days after spudding a well, a letter providing the well number and spud date, and requesting concurrence that the lessee has earned the 10-year extended initial period. The BSEE District Manager will review the request and make a written determination within 30 days of receipt of the request. The BSEE District Manager must concur in writing that the conditions have been met by the lessee to earn the 10-year extended initial period.

(2) The standard initial period for a lease in water depths 1,600 meters or greater issued as a result of this sale will be 10 years.

Financial Conditions

Minimum Bonus Bid Amount

- $100.00 per acre or fraction thereof for all blocks

BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bid of $100.00 per acre or fraction thereof.

Rental Rate

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6+
800+	$11.00	$16.00

Royalty Rate

- 18.75 percent

Minimum Royalty Rate

- $11.00 per acre or fraction thereof per year

IV. Lease Stipulations

One or more of the following stipulations may be applied to leases issued as a result of this sale. The detailed text of these stipulations is contained in the ''Lease Stipulations'' section of the Final NOS Package.

(1) Military Areas

(2) Evacuation

(3) Coordination

(4) Protected Species

V. Information to Lessees

The Information to Lessees (ITL) clauses provide detailed information on certain issues pertaining to this oil and gas lease sale. The detailed text of these ITL clauses is contained in the ''Information to Lessees'' section of the Final NOS Package:

(1) Navigation Safety

(2) Ordnance Disposal Areas in the EPA

(3) Existing and Proposed Artificial Reefs/Rigs to Reefs

(4) Lightering Zones

(5) Military Areas in the EPA

(6) Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain Coast Guard Regulations

(7) Air Quality Permits

(8) Notice of Arrival on the Outer Continental Shelf

(9) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act

(10) Protected Species

VI. Maps

The maps pertaining to this sale may be found on the BOEM Web site at *http://www.boem.gov/Sale-226.* The following map also is included in the Final NOS Package:

Lease Terms, Financial Conditions, and Stipulations Map

The lease terms, financial conditions, stipulations, and the blocks to which these terms and conditions apply are shown on the map ''Final, Eastern Planning Area, Lease Sale 226, March 23, 2016, Lease Terms, Financial Conditions, and Stipulations'' included in the Final NOS Package.

VII. Bidding Instructions

Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and must include the following:

- Total amount of the bid in whole dollars only;
- sale number;
- sale date;
- each bidder's exact name;
- each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- typed name and title, and signature of each bidder's authorized officer;
- each bidder's qualification number;
- map name and number or Official Protraction Diagram (OPD) name and number;
- block number; and
- statement acknowledging that the bidder(s) understand that this bid legally binds the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid amount on all apparent high bids.

The information required on the bid(s) is specified in the document ''Bid Form'' in this Final NOS Package. A blank bid form will be provided therein for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for Oil and Gas Lease Sale 226, not to be opened until 9:00 a.m. Wednesday, March 23, 2016;''
- map name and number or OPD name and number;
- block number for block bid upon; and
- the exact name and qualification number of the submitting bidder only.

The Final NOS Package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Contains Sealed Bids for EPA Oil and Gas Lease Sale 226 Please Deliver to Ms. Cindy Thibodeaux or Mr. Carrol Williams, 2nd Floor, Immediately

Please Note: Bidders mailing bid(s) are advised to call Ms. Cindy Thibodeaux at (504) 736–2809, or Mr. Carrol Williams at (504) 736–2803, immediately after putting their bid(s) in the mail. If BOEM receives bids later than the Bid Submission Deadline, the BOEM Gulf of Mexico Regional Director (RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that ever have defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- amend an areawide development bond via bond rider;
- provide a letter of credit; or
- provide a lump sum payment in advance via EFT.

For more information on EFT procedures, see Section X of this document entitled, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011) with the BOEM Gulf of Mexico Region Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Region Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) The ''Statement'' page includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid on that did not use proprietary data;

(2) the ''Table'' listing the required data about each proprietary survey used (see below); and

(3) the ''Maps'' being the live trace maps for each survey that are identified in the GDIS statement and table.

Every bidder submitting a bid on a block in EPA Sale 226, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The GDIS must be submitted in a separate and sealed envelope, and identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO), Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* .pdf and ArcGIS shape file) for each *proprietary* survey that they identify in the GDIS illustrating the actual areal extent of the *proprietary* geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS Package for additional information). The shape file *must not* include cultural information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address of a contact person and an alternate who are both *knowledgeable about the information and data listed and who are available for 30 days after the sale date.* The GDIS statement also must include entries for all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. The GDIS statement must be submitted even if no proprietary geophysical data and information were used in bid preparation for the block.

The GDIS table should have columns that clearly state the sale number; the bidder company's name; the block area and block number bid on; the owner of the original data set (*i.e.,* who initially

acquired the data); the industry's original name of the survey (*e.g.,* E Octopus); the BOEM permit number for the survey; whether the data set is a fast track version; whether the data is speculative or proprietary; the data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; and time or depth); migration algorithm (*e.g.,* Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D). Provide the computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block in question. This will be used in estimating the reproduction costs for each data set, if applicable. The availability of reimbursement of production costs will be determined consistent with 30 CFR 551.13. The next column should state who reprocessed the data (*e.g.,* external company name or ''in-house'') and when the date of final reprocessing was completed (month and year). If the data was sent to BOEM for bidding in a previous lease sale, list the date the data was processed (month and year) and indicate if AVO data was used in the evaluation. BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. An example of the preferred format of the table may be found in the Final NOS Package, and a blank digital version of the preferred table may be accessed on the EPA Sale 226 sale Web page at *http://www.boem.gov/Sale-226.*

The GDIS maps are live trace maps (in .pdf and ArcGIS shape files) that should be submitted for each *proprietary* survey that is identified in the GDIS table. They should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS Package for additional information). As previously stated, the shape file *must not* include cultural information; only the live trace map of the survey itself. Pursuant to 30 CFR 551.12 and 30 CFR 556.32, as a condition of the sale, the BOEM Gulf of Mexico RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by a bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Pursuant to 30 CFR part 551 and as a condition of this sale, all bidders required to submit data must ensure that the data is received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: ''Proprietary Geophysical Data Submitted Pursuant to EPA 226 and used during <Bidder Name's> evaluation of Block <Block Number>.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Persons must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM User Account is needed to register or update an entity's records. The Web site for registering is *https://www.sam.gov.*

(2) Persons must be enrolled in the Department of Treasury's Internet Payment Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) Persons must have a current On-line Representations and Certifications Application at *https://www.sam.gov.*

Please Note: The GDIS Information Table *must be submitted digitally,* preferably as an Excel spreadsheet, on a CD or DVD along with the seismic data map(s). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Mr. John Johnson at (504) 736–2455. Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS Package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS Package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.46.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 2, 2015, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 80 FR 67416. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.41 for additional restrictions.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid on all high bids. A statement to this effect must be included on each bid form (see the document ''Bid Form'' to be contained in the Final NOS Package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed in conformance with the BOEM qualification records. Signatories must be authorized to bind their respective legal business entities (*e.g.,* a corporation, partnership, or LLC) and documentation must be on file with

BOEM setting forth this authority to act on the business entity's behalf for purposes of bidding and lease execution under OCSLA (*e.g.,* business charter or articles, incumbency certificate, or power of attorney). The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM Gulf of Mexico RD, or the RD's designee, will indicate their approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks will be shown in the document ''List of Blocks Available for Leasing,'' included in the Final NOS Package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM rounded up to the next whole acre. The appropriate minimum rate per acre was then be applied to the whole (rounded up) acreage. If this calculation resulted in a fractional dollar amount, the minimum bonus bid was rounded up to the next whole dollar amount. The bonus bid amount must be greater than or equal to the minimum bonus bid in whole dollars.

IX. Forms

The Final NOS Package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use these formats; should bidders use another format, they are responsible for including all the information specified for each item in the Final NOS Package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the ''DATE AND TIME'' and ''LOCATION'' sections of this document. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to the Office of Natural Resources Revenue (ONRR) equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid requirement deposit may be obtained at the EFT Area outside the Bid Reading Room on the day of the bid opening, or it may be obtained on the BOEM Web site at *http://www.boem.gov/Sale-226/* under the heading ''Notification of EFT 1/5 Bonus Liability.'' All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 11:00 a.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM Web site identified above.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for EPA Sale 226, following the detailed instructions contained on the ONRR Payment Information Web page at *http://www.onrr.gov/FM/PayInfo.htm.* Acceptance of a deposit does not constitute and will not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all requirements of the Final NOS, including those set forth in the documents contained in the Final NOS Package and applicable regulations;

(2) the bid is the highest valid bid; and

(3) the amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS Package, OCSLA, or other applicable statute or regulation may be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for EPA Sale 226

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, high bids will be evaluated in accordance with BOEM's bid adequacy procedures. A copy of updated Bid Adequacy Procedures, can be obtained from the BOEM Gulf of Mexico Region Public Information Office, or via the BOEM Gulf of Mexico Region Web site at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

BOEM published a notification in the **Federal Register**, 79 FR 62461–62463 (October 17, 2014), available at *http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24727.pdf,* proposing the elimination of one of its procedural guidelines for bid acceptance, (referred to as the Number of Bids Rule), from its bid adequacy procedures. BOEM carefully considered the comments submitted in response to the notice and met with industry representatives. BOEM believes that none of the submitted comments offered a compelling reason to keep the Number of Bids Rule, suggested a preferable alternative which BOEM had not considered, or indicated that our analysis or rationale was deficient. Therefore, BOEM removed the Number of Bids Rule from its bid adequacy procedures. This bid adequacy change is in effect and will apply to any bids received for the EPA Sale 226.

Lease Award

BOEM requires each bidder awarded a lease to: (1) Execute all copies of the lease (Form BOEM–2005 (October 2011), as amended); (2) pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.47(f); and (3) satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS Package in case of an event that the BOEM Gulf of Mexico RD deems may interfere with the carrying out of a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM Web site at *http://www.boem.gov,* for information

regarding any changes.

Dated: February 10, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–03279 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Central Gulf of Mexico Planning Area Outer Continental Shelf Oil and Gas Lease Sale 241

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 23, 2016, BOEM will open and publicly announce bids received for blocks offered in the Central Planning Area (CPA) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 241 (CPA Sale 241), in accordance with the provisions of the OCS Lands Act (OCSLA, 43 U.S.C. 1331–1356, as amended) and the implementing regulations issued pursuant thereto (30 CFR parts 550 and 556).

The CPA Sale 241 Final Notice of Sale (NOS) Package (Final NOS Package) contains information essential to potential bidders. Bidders are charged with knowing the contents of the documents contained in the Final NOS Package.

DATES:

Dates and Time: Public Bid reading for CPA 241 will begin at 9:00 a.m. on Wednesday, March 23, 2016. All times referred to in this document are Central Time, unless otherwise specified.

Bid Submission Deadline: BOEM must receive all sealed bids between 8:00 a.m. and 4:00 p.m. on normal working days, or from 8:00 a.m. to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 22, 2016, the day before the lease sale. For more information on bid submission, see Section VII, ''Bidding Instructions,'' of this document.

ADDRESSES: The Mercedes-Benz Superdome, 1500 Sugarbowl Drive, New Orleans, Louisiana 70112. The lease sale will be held in the St. Charles Club Room on the second floor (Loge Level). Entry to the Superdome will be on the Poydras Street side of the building through Gate A on the Ground Level; parking will be available at Garage 6.

Interested parties, upon request, may obtain a compact disc (CD–ROM) containing the Final NOS Package by contacting the BOEM Gulf of Mexico (GOM) Region at: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF. or by visiting the BOEM Web site at *http://www.boem.gov/Sale-241/.*

SUPPLEMENTARY INFORMATION:

Table of Contents

This Final NOS includes the following sections:

I. Lease Sale Area
II. Statutes and Regulations
III. Lease Terms and Financial Conditions
IV. Lease Stipulations
V. Information to Lessees
VI. Maps
VII. Bidding Instructions
VIII. Bidding Rules and Restrictions
IX. Forms
X. The Lease Sale
XI. Delay of Sale

I. Lease Sale Area

Blocks Offered for Leasing: BOEM proposes to offer for bid in this lease sale all of the available unleased acreage in the CPA, except those blocks listed in ''Blocks Not Offered for Leasing'' below.

Blocks Not Offered for Leasing: The following whole and partial blocks are not offered for lease in this sale:

Whole and partial blocks deferred by the Gulf of Mexico Energy Security Act of 2006, Public Law 109–432:

Pensacola (OPD NH 16–05)
Whole Blocks: 751 through 754, 793 through 798, 837 through 842, 881 through 886, 925 through 930, and 969 through 975

Destin Dome (OPD NH 16–08)
Whole Blocks: 1 through 7, 45 through 51, 89 through 96, 133 through 140, 177 through 184, 221 through 228, 265 through 273, 309 through 317, 353 through 361, 397 through 405, 441 through 450, 485 through 494, 529 through 538, 573 through 582, 617 through 627, 661 through 671, 705 through 715, 749 through 759, 793 through 804, 837 through 848, 881 through 892, 925 through 936, and 969 through 981

DeSoto Canyon (OPD NH 16–11)
Whole Blocks: 1 through 15, 45 through 59, and 92 through 102
Partial Blocks: 16, 60, 61, 89 through 91, 103 through 105, and 135 through 147

Henderson (OPD NG 16–05)
Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, and 423

Blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:

Lund South (OPD NG 16–07)
Whole Blocks: 128, 129, 169 through 173, 208 through 217, 248 through 261, 293 through 305, and 349

Henderson (OPD NG 16–05)
Whole Blocks: 466, 508 through 510, 551 through 554, 594 through 599, 637 through 643, 679 through 687, 722 through 731, 764 through 775, 807 through 819, 849 through 862, 891 through 905, 933 through 949, and 975 through 992
Partial Blocks: 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, and 994

Florida Plain (OPD NG 16–08)
Whole Blocks: 5 through 24, 46 through 67, 89 through 110, 133 through 154, 177 through 197, 221 through 240, 265 through 283, 309 through 327, and 363 through 370

The following blocks whose lease statuses are currently under appeal:

West Cameron (Leasing Map LA1) Block 171
East Cameron (Leasing Map LA2) Block 71 and Block 72

II. Statutes and Regulations

Each lease is issued pursuant to OCSLA, and is subject to OCSLA, implementing regulations promulgated pursuant thereto, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is also subject to amendments to statutes and regulations, including, but not limited to, OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease.

III. Lease Terms and Financial Conditions

Lease Terms

OCS Lease Form

BOEM will use Form BOEM–2005 (October 2011) to convey leases resulting from this sale. This lease form may be viewed on the BOEM Web site at *http://www.boem.gov/About-BOEM/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.aspx.* The lease form will be amended to conform with the specific terms, conditions, and stipulations applicable to the individual lease. The terms, conditions, and stipulations applicable to this sale are set forth below.

Initial Periods

Initial periods are summarized in the following table:

Water depth (meters)	Initial period
0 to <400	Standard initial period is 5 years; the lessee may earn an additional 3 years (*i.e.,* for an 8-year extended initial period) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVD SS) during the first 5 years of the lease.
400 to <800	Standard initial period is 5 years; the lessee will earn an additional 3 years (*i.e.,* for an 8-year extended initial period) if a well is spudded during the first 5 years of the lease.
800 to <1,600	Standard initial period is 7 years; the lessee will earn an additional 3 years (*i.e.,* for a 10-year extended initial period) if a well is spudded during the first 7 years of the lease.
1,600+	10 years.

(1) The standard initial period for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVD SS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8-year extended initial period. The lessee will earn the 8-year extended initial period when the well is drilled to a target below 25,000 feet TVD SS, or the lessee may earn the 8-year extended initial period in cases where the well targets, but does not reach, a depth below 25,000 feet TVD SS due to mechanical or safety reasons, where sufficient evidence is provided.

In order to earn the 8-year extended initial period, the lessee is required to submit to the Bureau of Safety and Environmental Enforcement (BSEE) Gulf of Mexico Regional Supervisor for Production and Development, within 30 days after completion of the drilling operation, a letter providing the well number, spud date, information demonstrating a target below 25,000 feet TVD SS and whether that target was reached, and if applicable, any safety, mechanical, or other problems encountered that prevented the well from reaching a depth below 25,000 feet TVD SS. The BSEE Gulf of Mexico Regional Supervisor for Production and Development must concur in writing that the conditions have been met for the lessee to earn the 8-year extended initial period. The BSEE Gulf of Mexico Regional Supervisor for Production and Development will provide a written response within 30 days of receipt of the lessee's letter.

A lessee that has earned the 8-year extended initial period by spudding a well with a hydrocarbon target below 25,000 feet TVD SS during the first 5 years of the lease, confirmed by BSEE, will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The standard initial period for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is 5 years. The lessee will earn an additional 3 years, resulting in an 8-year extended initial period, if the lessee spuds a well within the first 5 years of the lease.

In order to earn the 8-year extended initial period, the lessee is required to submit to the appropriate BSEE District Manager, within 30 days after spudding a well, a letter providing the well number and spud date, and requesting concurrence that the lessee has earned the 8-year extended initial period. The BSEE District Manager will review the request and make a written determination within 30 days of receipt of the request. The BSEE District Manager must concur in writing that the conditions have been met by the lessee to earn the 8-year extended initial period.

(3) The standard initial period for a lease in water depths ranging from 800 to less than 1,600 meters issued as a result of this sale will be 7 years. The lessee will earn an additional 3 years, resulting in a 10-year extended initial period, if the lessee spuds a well within the first 7 years of the lease.

In order to earn the 10-year extended initial period, the lessee is required to submit to the appropriate BSEE District Manager, within 30 days after spudding a well, a letter providing the well number and spud date, and requesting concurrence that the lessee has earned the 10-year extended initial period. The BSEE District Manager will review the request and make a written determination within 30 days of receipt of the request. The BSEE District Manager must concur in writing that the conditions have been met by the lessee to earn the 10-year extended initial period.

(4) The standard initial period for a lease in water depths 1,600 meters or greater issued as a result of this sale will be 10 years.

Financial Conditions

Minimum Bonus Bid Amounts

- $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters
- $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper

BOEM will not accept a bonus bid unless it provides for a cash bonus in the amount equal to, or exceeding, the specified minimum bid of $25.00 per acre or fraction thereof for blocks in water depths less than 400 meters, and $100.00 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates are summarized in the following table:

RENTAL RATES PER ACRE OR FRACTION THEREOF

Water depth (meters)	Years 1–5	Years 6, 7, & 8+
0 to <200	$7.00	$14.00, $21.00, & $28.00.
200 to <400	11.00	$22.00, $33.00, & $44.00.
400+	11.00	$16.00.

Escalating Rental Rates for Leases With an 8-Year Extended Initial Period in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year extended initial period will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate, if another well is spudded targeting hydrocarbons below 25,000 feet TVD SS after the fifth year of the lease, and BSEE concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18.75 percent

Minimum Royalty Rate

- $7.00 per acre or fraction thereof per year for blocks in water depths less than 200 meters
- $11.00 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper

Royalty Suspension Provisions

The issuance of leases with royalty suspension volumes (RSVs) or other

forms of royalty relief is authorized under existing BOEM regulations at 30 CFR part 560. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are codified in BSEE regulations at 30 CFR part 203. In CPA Sale 241, the only royalty relief program being offered, which involves the provision of RSVs, relates to the drilling of ultra-deep wells in water depths of less than 400 meters, as described below.

Leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells pursuant to 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005. Under this program, certain wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVD SS or deeper may receive an RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203.

IV. Lease Stipulations

One or more of the following stipulations may be applied to leases issued as a result of this sale. The detailed text of these stipulations is contained in the ''Lease Stipulations'' section of the Final NOS Package.

(1) Topographic Features
(2) Live Bottom
(3) Military Areas
(4) Evacuation
(5) Coordination
(6) Blocks South of Baldwin County, Alabama
(7) Law of the Sea Convention Royalty Payment
(8) Protected Species
(9) Below Seabed Operations
(10) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico

V. Information to Lessees

The Information to Lessees (ITL) clauses provide detailed information on certain issues pertaining to this oil and gas lease sale. The detailed text of these ITL clauses is contained in the ''Information to Lessees'' section of the Final NOS Package:

(1) Navigation Safety
(2) Ordnance Disposal Areas in the CPA
(3) Communications Towers
(4) Existing and Proposed Artificial Reefs/Rigs to Reefs
(5) Lightering Zones
(6) Indicated Hydrocarbons List
(7) Military Areas in the CPA
(8) Bureau of Safety and Environmental Enforcement (BSEE) Inspection and Enforcement of Certain Coast Guard Regulations
(9) Deepwater Port Applications for Offshore Liquefied Natural Gas Facilities
(10) Ocean Dredged Material Disposal Sites
(11) Potential Sand Dredging Activities in the CPA
(12) Below Seabed Operations
(13) Industrial Waste Disposal Areas
(14) Air Quality Permits
(15) Notice of Arrival on the Outer Continental Shelf
(16) Gulf Islands National Seashore
(17) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(18) Protected Species
(19) Flower Garden Banks Expansion

VI. Maps

The maps pertaining to this lease sale may be found on the BOEM Web site at *http://www.boem.gov/Sale-241/.* The following maps also are included in the Final NOS Package:

Lease Terms and Financial Conditions Map

The lease terms and financial conditions and the blocks to which these terms and conditions apply are shown on the map entitled, ''Final, Central Planning Area, Lease Sale 241, March 23, 2016, Lease Terms and Financial Conditions,'' which is included in the Final NOS Package.

Stipulations and Deferred Blocks Map

The blocks to which one or more lease stipulations may apply are shown on the map entitled, ''Final, Central Planning Area, Lease Sale 241, March 23, 2016, Stipulations and Deferred Blocks Map,'' which is included in the Final NOS Package.

VII. Bidding Instructions

Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and what information must be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and must include the following:

- Total amount of the bid in whole dollars only;
- sale number;
- sale date;
- each bidder's exact name;
- each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- typed name and title, and signature of each bidder's authorized officer;
- each bidder's qualification number;
- map name and number or Official Protraction Diagram (OPD) name and number;
- block number; and
- statement acknowledging that the bidder(s) understand that this bid legally binds the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid amount on all apparent high bids.

The information required on the bid(s) is specified in the document ''Bid Form'' in this Final NOS Package. A blank bid form is provided herein for convenience and may be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for Oil and Gas Lease Sale 241, not to be opened until 9 a.m. Wednesday, March 23, 2016;''
- map name and number or OPD name and number;
- block number for block bid upon; and
- the exact name and qualification number of the submitting bidder only.

The Final NOS Package includes a sample bid envelope for reference.

Mailed Bids

If bids are mailed, please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Contains Sealed Bids for CPA Oil and Gas Lease Sale 241, Please Deliver to Ms. Cindy Thibodeaux or Mr. Carrol Williams, 2nd Floor, Immediately.

Please Note

Bidders mailing bid(s) are advised to call Ms. Cindy Thibodeaux at (504) 736–2809, or Mr. Carrol Williams at (504) 736–2803, immediately after putting their bid(s) in the mail. If BOEM receives bids later than the Bid Submission Deadline, the BOEM Gulf of Mexico Regional Director (RD) will return those bids unopened to bidders. Please see ''Section XI. Delay of Sale''

regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding or travel restrictions) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that have ever defaulted on a one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, must guarantee (secure) the payment of the one-fifth bonus bid deposit prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- amend an areawide development bond via bond rider;
- provide a letter of credit; or
- provide a lump sum payment in advance via EFT.

For more information on EFT procedures, see Section X of this document entitled, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file Equal Opportunity Affirmative Action Representation Form BOEM–2032 (October 2011) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (October 2011) with the BOEM Gulf of Mexico Region Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order No. 11246, issued September 24, 1965, as amended by Executive Order No. 11375, issued October 13, 1967, and by Executive Order 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Region Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) The ''Statement'' page includes the company representatives' information and lists of blocks bid on that used proprietary data and those blocks bid on that did not use proprietary data;

(2) the ''Table'' listing the required data about each proprietary survey used (see below); and

(3) the ''Maps'' being the live trace maps for each survey that are identified in the GDIS statement and table.

Every bidder submitting a bid on a block in CPA Sale 241, or participating as a joint bidder in such a bid, must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The GDIS must be submitted in a separate and sealed envelope, and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO), Gravity, or Magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* .pdf and ArcGIS shape file) for each *proprietary* survey that they identify in the GDIS illustrating the actual areal extent of the *proprietary* geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS Package for additional information). The shape file *must not* include cultural information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address of a contact person and an alternate who are both *knowledgeable about the information and data listed and who are available for 30 days after the sale date.* The GDIS statement also must include entries for all blocks bid upon that did not use proprietary or reprocessed pre- or post-stack geophysical data and information as part of the decision to bid or to participate as a joint bidder in the bid. The GDIS statement must be submitted even if no proprietary geophysical data and information were used in bid preparation for the block.

The GDIS table should have columns that clearly state the sale number; the bidder company's name; the block area and block number bid on; the owner of the original data set (*i.e.,* who initially acquired the data); the industry's original name of the survey (*e.g.,* E Octopus); the BOEM permit number for the survey; whether the data set is a fast track version; whether the data is speculative or proprietary; the data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; and time or depth); migration algorithm (*e.g.,* Kirchhoff Migration, Wave Equation Migration, Reverse Migration, Reverse Time Migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D). Provide the computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block in question. This will be used in estimating the reproduction costs for each data set, if applicable. The availability of reimbursement of production costs will be determined consistent with 30 CFR 551.13. The next column should state who reprocessed the data (*e.g.,* external company name or ''in-house'') and when the date of final reprocessing was completed (month and year). If the data was sent to BOEM for bidding in a previous lease sale, list the date the data was processed (month and year) and indicate if AVO data was used in the evaluation. BOEM reserves the right to query about alternate data sets, to quality check, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. An example of the preferred format of the table may be found in the Final NOS Package, and a blank digital version of the preferred table may be accessed on the CPA Sale 241 sale page at *http://www.boem.gov/Sale-241/.*

The GDIS maps are live trace maps (in .pdf and ArcGIS shape files) that should be submitted for each *proprietary* survey that is identified in the GDIS table. They should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' in the Final NOS Package for additional information). As previously stated, the shape file *must not* include cultural information; only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 30 CFR 556.32, as a condition of the sale, the BOEM Gulf of Mexico RD requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless they are notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data is not required to be submitted to BOEM, and reimbursement will not be provided if such data is submitted by a bidder. The BOEM Gulf of Mexico RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 days of the lease sale. Pursuant to 30 CFR part 551 and as a condition of this sale, all bidders required to submit data must ensure that the data is received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday. The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that the data be submitted in an internal envelope, or otherwise marked, with the following designation: ''Proprietary Geophysical Data Submitted Pursuant to CPA 241 and used during <Bidder Name's> evaluation of Block <Block Number>.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Persons must be registered with the System for Award Management (SAM), formerly known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM User Account is needed to register or update an entity's records. The Web site for registering is *https://www.sam.gov.*

(2) Persons must be enrolled in the Department of Treasury's Internet Payment Platform (IPP) for electronic invoicing. The person must enroll in the IPP at *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When a request for payment is submitted, it must include the assigned Purchase Order Number on the request.

(3) Persons must have a current On-line Representations and Certifications Application at *https://www.sam.gov.*

Please Note

The GDIS Information Table *must be submitted digitally,* preferably as an Excel spreadsheet, on a CD or DVD along with the seismic data map(s). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Mr. John Johnson at (504) 736–2455. Bidders should refer to Section X of this document, ''The Lease Sale: Acceptance, Rejection, or Return of Bids,'' regarding a bidder's failure to comply with the requirements of the Final NOS, including any failure to submit information as required in the Final NOS or Final NOS Package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS Package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.46.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On November 2, 2015, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 80 FR 67416. Potential bidders are advised to refer to the **Federal Register**, prior to bidding, for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.41 for additional restrictions.

Authorized Signatures

All signatories executing documents on behalf of bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including payment of one-fifth of the bonus bid on all high bids. A statement to this effect must be included on each bid form (see the document ''Bid Form'' contained in the Final NOS Package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the Bid Submission Deadline. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed in conformance with the BOEM qualification records. Signatories must be authorized to bind their respective legal business entities (*e.g.,* a corporation, partnership, or LLC) and documentation must be on file with BOEM setting forth this authority to act on the business entity's behalf for purposes of bidding and lease execution under OCSLA (*e.g.,* business charter or articles, incumbency certificate, or power of attorney). The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM Gulf of Mexico RD, or the RD's designee, will indicate their approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks will be shown in the document ''List of Blocks Available for Leasing'' included in the Final NOS Package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM rounded up to the next whole acre. The appropriate minimum rate per acre was then be applied to the whole (rounded up) acreage. If this calculation resulted in a fractional dollar amount, the minimum bonus bid was rounded up to the next whole dollar amount. The bonus bid amount must be greater than or equal to the minimum bonus bid in whole dollars.

IX. Forms

The Final NOS Package includes instructions, samples, and/or the preferred format for the following items. BOEM strongly encourages bidders to use these formats; should bidders use another format, they are responsible for including all the information specified for each item in the Final NOS Package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified in the ''DATE AND TIME'' and ''LOCATION'' sections of this document. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to the Office of Natural Resources Revenue (ONRR) equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid requirement deposit may be obtained at the EFT Area outside the Bid Reading Room on the day of the bid opening, or it may be obtained on the BOEM Web site at *http://www.boem.gov/Sale-241/* under the heading ''Notification of EFT 1/5 Bonus Liability.'' All payments must be deposited electronically into an interest-bearing account in the U.S. Treasury by 11:00 a.m. Eastern Time the day following the bid reading (no exceptions). Account information is

provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM Web site identified above.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for CPA Sale 241, following the detailed instructions contained on the ONRR Payment Information Web page at *http://www.onrr.gov/FM/PayInfo.htm.* Acceptance of a deposit does not constitute and will not be construed as acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. No bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all requirements of the Final NOS and applicable regulations;

(2) the bid submitted is the highest valid bid; and

(3) the amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS Package, OCSLA, or other applicable statute or regulation may be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for CPA Sale 241

To ensure that the U.S. Government receives a fair return for the conveyance of leases from this sale, high bids will be evaluated in accordance with BOEM's bid adequacy procedures. A copy of the updated Bid Adequacy Procedures can be obtained from the BOEM Gulf of Mexico Region Public Information Office, or via the BOEM Gulf of Mexico Region Web site at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

BOEM published a notification in the **Federal Register**, 79 FR 62461–62463 (October 17, 2014), available at *http://www.gpo.gov/fdsys/pkg/FR-2014-10-17/pdf/2014-24727.pdf,* proposing the elimination of one of its acceptance rules, the Number of Bids Rule, from its bid adequacy procedures. BOEM carefully considered the comments submitted in response to the notice and met with industry representatives. BOEM believes that none of the submitted comments offered a compelling reason to retain the Number of Bids Rule, suggested a preferable alternative which BOEM had not considered, or indicated that our analysis or rationale was deficient. Therefore, BOEM removed the Number of Bids rule from its procedures. This bid adequacy change is in effect and will be applied to any bids received for the CPA Sale 241.

Lease Award

BOEM requires each bidder awarded a lease to: (1) Execute all copies of the lease (Form BOEM–2005 (October 2011), as amended); (2) pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155 and 556.47(f); and (3) satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

XI. Delay of Sale

The BOEM Gulf of Mexico RD has the discretion to change any date, time, and/or location specified in the Final NOS Package in case of an event that the BOEM Gulf of Mexico RD deems may interfere with the carrying out of a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, and floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM Web site at *http://www.boem.gov,* for information regarding any changes.

Dated: February 10, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–03278 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0118; MMAA104000]

Gulf of Mexico, Outer Continental Shelf (OCS), Eastern Planning Area (EPA) Oil and Gas Lease Sale 226

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: BOEM is announcing the availability of a Record of Decision for proposed oil and gas EPA Lease Sale 226. This Record of Decision identifies the Bureau's selected alternative for proposed EPA Lease Sale 226, which is analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2016 and 2017; Central Planning Area Lease Sales 241 and 247; Eastern Planning Area Lease Sale 226; Final Supplemental Environmental Impact Statement* (CPA 241/EPA 226 Supplemental EIS). The Record of Decision and associated information are available on the agency Web site at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (GM 623E), New Orleans, Louisiana 70123–2394. You may also contact Mr. Goeke by telephone at 504–736–3233.

SUPPLEMENTARY INFORMATION: In the CPA 241/EPA 226 Supplemental EIS, BOEM evaluated the two alternatives that are summarized below with regard to proposed EPA Lease Sale 226:

Alternative A—The Proposed Action: This is BOEM's preferred alternative. This alternative would offer for lease all unleased blocks within the proposed EPA lease sale area for oil and gas operations.

All unleased blocks in the EPA that BOEM will offer for leasing in proposed EPA Lease Sale 226 are listed in the document ''List of Blocks Available for Leasing,'' which is included in the Final Notice of Sale for EPA Lease Sale 226. The proposed EPA lease sale area covers approximately 657,905 acres (ac) and includes those blocks previously included in EPA Lease Sale 225. The area is south of eastern Alabama and western Florida; the nearest point of land is 125 miles (201 kilometers) northwest in Louisiana. As of October 2015, approximately 595,475 ac of the proposed EPA lease sale area are available for lease. The estimated

amount of natural resources projected to be developed as a result of proposed EPA Lease Sale 226 is 0–0.071 billion barrels of oil and 0–0.162 trillion cubic feet of gas.

Alternative B—No Action: This alternative is the cancellation of proposed EPA Lease Sale 226 and is identified as the environmentally preferred alternative.

Lease Stipulations—The CPA 241/EPA 226 Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. The four lease stipulations for proposed EPA Lease Sale 226 are the Protected Species Stipulation, the Military Areas Stipulation, the Evacuation Stipulation, and the Coordination Stipulation. The stipulations will be added as lease terms where applicable and will therefore be enforceable as part of the lease. Appendix A of the CPA 241/EPA 226 Supplemental EIS provides a list and description of standard postlease mitigating measures that may be required by BOEM or the Bureau of Safety and Environmental Enforcement as a result of plan and permit review processes for the Gulf of Mexico OCS Region.

After careful consideration, BOEM has selected the proposed action, which is identified as BOEM's preferred alternative (Alternative A) in the CPA 241/EPA 226 Supplemental EIS. BOEM's selection of the preferred alternative reflects an orderly resource development with protection of the human, marine, and coastal environments, while also ensuring that the public receives an equitable return for these resources and that free-market competition is maintained.

Authority: This NOA of a Record of Decision is published pursuant to regulations (40 CFR part 1503) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 10, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–03277 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0119]

Outer Continental Shelf (OCS), Gulf of Mexico (GOM), Oil and Gas Western Planning Area (WPA) Lease Sale 248, MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a Final Supplemental Environmental Impact Statement.

SUMMARY: BOEM is announcing the availability of a Final Supplemental Environmental Impact Statement (SEIS) for proposed GOM OCS Oil and Gas WPA Lease Sale 248. The Final SEIS provides a discussion of the potential significant impacts of the proposed action, provides an analysis of reasonable alternatives to the proposed action, and identifies the Bureau's preferred alternative.

The Final SEIS is available on BOEM's Web site at *http://www.boem.gov/nepaprocess/.* BOEM will primarily distribute digital copies of the Final SEIS on compact discs. You may request a paper copy or the location of a library with a digital copy of the Final SEIS from the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (GM 250C), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF).

FOR FURTHER INFORMATION CONTACT: For more information on the WPA 248 Final Supplemental Environmental Impact Statement, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Office of Environment (GM 623E), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by email at *wpa248@boem.gov.* You may also contact Mr. Goeke by telephone at 504–736–3233.

Authority: This Notice of Availability of a Final Supplemental Environmental Impact Statement is in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and is published pursuant to 43 CFR 46.415.

Dated: January 4, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–02653 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–MR—P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0117]

Gulf of Mexico, Outer Continental Shelf (OCS), Central Planning Area (CPA) Oil and Gas Lease Sale 241; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: BOEM is announcing the availability of a Record of Decision for proposed oil and gas CPA Lease Sale 241. This Record of Decision identifies the Bureau's selected alternative for proposed CPA Lease Sale 241, which is analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2016 and 2017; Central Planning Area Lease Sales 241 and 247; Eastern Planning Area Lease Sale 226; Final Supplemental Environmental Impact Statement* (CPA 241/EPA 226 Supplemental EIS). The Record of Decision and associated information are available on the agency Web site at *http://www.boem.gov/nepaprocess/.*

FOR FURTHER INFORMATION CONTACT: For more information on the Record of Decision, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (GM 623E), New Orleans, Louisiana 70123–2394. You may also contact Mr. Goeke by telephone at 504–736–3233.

SUPPLEMENTARY INFORMATION: In the CPA 241/EPA 226 Supplemental EIS, BOEM evaluated the three alternatives that are summarized below with regard to proposed CPA Lease Sale 241:

Alternative A—The Proposed Action: This is BOEM's preferred alternative. This alternative would offer for lease for oil and gas operations all unleased blocks within the proposed CPA lease sale area with the following exceptions: whole and partial blocks deferred by the Gulf of Mexico Energy Security Act of 2006; and blocks that are adjacent to or beyond the United States' Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap.

All unleased whole and partial blocks in the CPA that BOEM will offer for leasing in proposed CPA Lease Sale 241 are listed in the document ''List of Blocks Available for Leasing,'' which is included in the Final Notice of Sale for CPA Lease Sale 241. The proposed CPA lease sale area encompasses about 63 million acres (ac) of the total CPA area of 66.45 million acres. As of October 2015, approximately 46.9 million ac of

the proposed CPA lease sale area are currently unleased. The estimated amount of resources projected to be developed as a result of the proposed CPA lease sale is 0.460–0.894 billion barrels of oil (BBO) and 1.939–3.903 trillion cubic feet (Tcf) of gas.

Alternative B—*Exclude the Unleased Blocks Near Biologically Sensitive Topographic Features:* This alternative would offer for lease all unleased blocks within the proposed CPA lease sale area, as described for the proposed action (Alternative A), but it would exclude from leasing any unleased blocks subject to the Topographic Features Stipulation, described below. The number of blocks that would not be offered under Alternative B represents only a small percentage of the total number of blocks to be offered under Alternative A; therefore, it is assumed that the levels of activity for Alternative B would be essentially the same as those projected for the CPA proposed action. The estimated amount of resources projected to be developed under this alternative is 0.460–0.894 BBO and 1.939–3.903 Tcf of gas.

Alternative C—No Action: This alternative is the cancellation of proposed CPA Lease Sale 241 and is identified as the environmentally preferred alternative.

Lease Stipulations—The CPA 241/EPA 226 Supplemental EIS describes all lease stipulations, which are included in the Final Notice of Sale Package. The 10 lease stipulations for proposed CPA Lease Sale 241 are the Topographic Features Stipulation; the Live Bottom (Pinnacle Trend) Stipulation; the Military Areas Stipulation; the Evacuation Stipulation; the Coordination Stipulation; the Blocks South of Baldwin County, Alabama, Stipulation; the Protected Species Stipulation; the United Nations Convention on the Law of the Sea Royalty Payment Stipulation; the Below Seabed Operations Stipulation; and the Stipulation on the Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico. The stipulations will be added as lease terms where applicable and will therefore be enforceable as part of the lease. Appendix A of the CPA 241/EPA 226 Supplemental EIS provides a list and description of standard post-lease mitigating measures that may be required by BOEM or BSEE as a result of plan and permit review processes for the Gulf of Mexico OCS Region.

After careful consideration, BOEM has selected the proposed action, which is identified as BOEM's preferred alternative (Alternative A) in the CPA 241/EPA 226 Supplemental EIS. BOEM's selection of the preferred alternative meets the purpose and need for the proposed action, as identified in the CPA 241/EPA 226 Supplemental EIS, and reflects orderly resource development, with protection of the human, marine, and coastal environments, while also ensuring that the public receives an equitable return for these resources and that free-market competition is maintained.

Authority: This NOA of a Record of Decision is published pursuant to the regulations (40 CFR part 1503) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 10, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–03280 Filed 2–18–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 167R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of *1939,* and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the

Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

PACIFIC NORTHWEST REGION: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Nine water user entities of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

6. Three irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with three entities for the provision of up to 292 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

7. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

8. Benton ID, Yakima Project, Washington: Replacement contract to, among other things, withdraw the District from the Sunnyside Division Board of Control; provide for direct payment of the District's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish District responsibility for operation, maintenance, repair, and replacement for irrigation distribution system.

9. City of Prineville and Ochoco ID, Crooked River Project, Oregon: Long-term contract to provide the city of Prineville with a mitigation water supply from Prineville Reservoir; with Ochoco ID anticipated to be a party to the contract, as they are responsible for O&M of the dam and reservoir.

10. Burley and Minidoka IDs, Minidoka Project, Idaho: Supplemental and amendatory contracts to transfer the O&M of the Main South Side Canal Headworks to Burley ID and transfer the O&M of the Main North Side Canal Headworks to the Minidoka ID.

Completed contract actions:

1. (9) Stanfield and Westland IDs and 67 individual contractors, Umatilla Project, Oregon: Amendatory repayment contracts and repayment agreements for reimbursable cost of SOD repairs to McKay Dam. Contracts executed September 17, 2015, and October 8, 2015.

2. (10) East Columbia Basin ID, Columbia Basin Project, Washington: Long-term contract to renew master water service contract No. 14–06–100–9165, as supplemented, to authorize the District to deliver a base quantity of up to 90,000 acre-feet of Columbia Basin Project water annually to up to 30,000 First Phase Continuation Acres located within the District, and continue delivery of additional water to land irrigated under the District's repayment contract during the peak period of irrigation water use annually. Contract executed September 22, 2015.

MID-PACIFIC REGION: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of excess capacity in project facilities for terms up to 5 years; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. Contractors from the American River Division, Delta Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, San Luis Unit, and Elk Creek Community Services District; CVP; California: Renewal of 30 interim and long-term water service contracts; water quantities for these

contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Public Law 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101–514 (Section 206) for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife; CVP; California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for CVPIA refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

6. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 5 years.

7. El Dorado ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the amount of up to 17,000 acre-feet annually. The contract will allow CVP facilities to be used to deliver nonproject water to the District for M&I use within its service area.

8. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

9. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

10. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 40 years) with various entities for conveyance of nonproject water in the CVP.

11. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of nonproject water in New Melones Reservoir.

12. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the OM&R and certain financial and administrative activities related to the Madera Canal and associated works.

13. Sacramento Suburban WD, CVP, California: Execution of a long-term Warren Act contract for conveyance of 29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to the District for use within its service area.

14. Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement.

15. Delta Lands Reclamation District No. 770, CVP, California: Long-term Warren Act contract for conveyance of up to 300,000 acre-feet of nonproject flood flows via the Friant-Kern Canal for flood control purposes.

16. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

17. Mendota Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

18. San Luis WD, CVP, California: Proposed partial assignment of 2,400 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

19. Placer County Water Agency, CVP, California: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

20. Irrigation Contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

21. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

22. Goleta WD, Cachuma Project, California: An agreement to transfer title of the federally owned distribution system to the District subject to approved legislation.

23. City of Santa Barbara, Cachuma Project, California: Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of nonproject water in Cachuma Project facilities.

24. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA. Added costs to rates to be collected under irrigation and interim M&I ratesetting policies.

25. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

26. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD Contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

27. Reclamation will become signatory to a three-party conveyance agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors' CVP water supplies that are made available pursuant to long-term water service contracts.

28. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to Westlands

located within the San Luis Unit of the CVP.

29. San Luis WD, Meyers Farms Family Trust, and Reclamation; CVP; California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

30. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs; Delta Division, CVP; California: Negotiation of a multi-year wheeling agreement with a retroactive effective date of 2011 is pending. A wheeling agreement with the State of California Department of Water Resources provides for the conveyance and delivery of CVP water through the State of California's water project facilities to the San Joaquin Valley National Cemetery.

31. Byron-Bethany ID, CVP, California: Negotiation of a multi-year wheeling agreement with a retroactive effective date is pending. A wheeling agreement with the State of California Department of Water Resources provides for the conveyance and delivery of CVP water through the State of California's water project facilities, to the Musco Family Olive Company, a customer of Byron-Bethany ID.

32. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the District. Initial construction funding provided through ARRA.

33. Irrigation water districts, individual irrigators and M&I water users, CVP, California: Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

34. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, CVP, California: Temporary Warren Act contracts for terms up to 5 years providing for use of excess capacity in CVP facilities for annual quantities exceeding 10,000 acre-feet.

35. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

36. Langell Valley ID, Klamath Project; Oregon: Title transfer of lands and facilities of the Klamath Project.

37. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

38. California Department of Fish and Game, CVP, California: To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

39. Orland Unit Water User's Association, Orland Project, California: Title transfer of lands and features of the Orland Project.

40. Santa Clara Valley WD, CVP, California: Second amendment to Santa Clara Valley WD's water service contract to add the State of California Department of Water Resources, State of California's water project facilities on the South Bay Aqueduct as an additional point of delivery, and to add CVP-wide form of contract language providing for mutually agreed upon point or points of delivery.

41. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

42. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain #1, Lost River Diversion Channel.

43. Fresno County Waterworks No. 18; Friant Division, CVP; California: Execution of an agreement to provide for the O&M of select Federal facilities by Fresno County Waterworks No. 18.

44. U.S. Fish and Wildlife Service, Tulelake ID; Klamath Project; Oregon and California: Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

45. Tulelake ID, Klamath Project, Oregon and California: Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

46. East Bay Municipal Utility District, CVP, California: Long-term Warren Act contract for storage and conveyance of up to 47,000 acre-feet annually.

47. Sacramento County Water Agency, CVP, California: Assignment of 7,000 acre-feet of CVP water to the City of Folsom.

48. Del Puerto WD, CVP, California: Long-term Warren Act contract, not to exceed 40 years, for annual storage and conveyance of up to 60,000 acre-feet of recycled water from the cities of Turlock and Modesto. This nonproject water will be stored in the San Luis Reservoir and conveyed through the Delta-Mendota Canal to agricultural lands and wildlife refuges.

49. Gray Lodge Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for groundwater pumping costs. Groundwater will provide a portion of Gray Lodge Wildlife Area's CVPIA Level 4 water supplies. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1, 2 and 5), to meet full Level 4 water needs of the Gray Lodge Wildlife Area.

LOWER COLORADO REGION: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. Gila Project Works, Gila Project, Arizona: Perform title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

3. Sherrill Ventures, LLLP and Green Acres Mohave, LLC; BCP; Arizona: Draft contracts for PPR No. 14 for 1,080 acre-feet of water per year as follows: Sherrill Ventures, LLLP, a draft contract for 954.3 acre-feet per year and Green Acres Mohave, LLC, a draft contract for 125.7 acre-feet per year.

4. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

5. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

6. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Proposed 100-year lease not to exceed 5,925 acre-feet per year of CAP water from the Tribe to Gilbert.

7. City of Yuma, BCP, Arizona: Amend the City's contract to extend the term (which expired October 2012) for 5 years during which time a consolidated contract will be developed.

8. Bard WD, Yuma Project, California: Supersede and replace the District's O&M contract for the Yuma Project, California, Reservation Division, Indian Unit, to reflect that appropriated funds are no longer available, and to specify

an alternate process for transfer of funds. In addition, other miscellaneous processes required for Reclamation's contractual administration and oversight will be updated to ensure the Federal Indian Trust obligation for reservation water and land are met.

9. Metropolitan Water District of Southern California, the San Diego County Water Authority, and the Otay WD; BCP; California: Execute a proposed Amendment No. 2 to extend the ''Agreement for Temporary Emergency Delivery of a Portion of the Mexican Treaty Waters of the Colorado River to the International Boundary in the Vicinity of Tijuana, Baja California, Mexico, and the Operation of Facilities in the United States'' until November 9, 2019.

10. Central Arizona Water Conservation District, CAP, Arizona: Negotiate a standard form of wheeling agreement for the wheeling of nonproject water, in accordance with the District's existing contract.

11. Ogram Farms, BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

12. Ogram Boys Enterprises, Inc., BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

13. Reclamation, Davis Dam (Davis Dam) and Big Bend WD, BCP, Arizona and Nevada: Enter into proposed ''Agreement for the Diversion, Treatment, and Delivery of Colorado River Water'' in order for district to divert, treat, and deliver to Davis Dam the Davis Dam Secretarial Reservation amount of up to 100 acre-feet per year of Colorado River water.

14. Reclamation, Arizona Department of Water Resources, Arizona Water Banking Authority, Central Arizona Water Conservation District, Southern Nevada Water Authority, and The Metropolitan Water District of Southern California; BCP; Arizona, California and Nevada: Begin negotiations to enter into proposed ''Storage and Interstate Release Agreement(s)'' for creation, offstream storage, and release of unused basic or surplus Colorado River apportionment within the lower division states pursuant to 43 CFR part 414.

15. La Paz County and Ehrenberg Improvement Association, BCP, Arizona: Review and approve a proposed partial assignment to the Association of 150 acre-feet per year of La Paz County's Arizona fourth priority water entitlement amount of 500 acre-feet per year and execute the associated amendments to La Paz County's and the Association's contracts.

16. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute Amendment No. 5 to a CAP water lease to extend the term of the lease in order for the San Carlos Apache Tribe to lease 20,000 acre-feet of its CAP water to the Town of Gilbert during calendar year 2016.

17. San Carlos Apache Tribe and the Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease in order for the San Carlos Apache Tribe to lease 790 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2016.

18. Chandler Heights Citrus ID and Central Arizona Water Conservation District, CAP, Arizona: Execute a proposed assignment to Central Arizona Water Conservation District of Chandler Heights Citrus ID's 315 acre-foot annual CAP water entitlement.

19. Ak-Chin Indian Community and Del Webb Corporation, CAP, Arizona: Execute a CAP water lease in order for Ak-Chin Indian Community to lease 2,800 acre-feet of its CAP water to the Del Webb Corporation during calendar year 2016.

20. Mohave County Water Authority, BCP, Arizona: Amend Exhibit D to the Authority's Colorado River water delivery contract to update the list of subcontractors with the Authority.

Completed contract actions:

1. (15) H2O Water Company, Inc. and the Town of Queen Creek, CAP, Arizona: Execute a proposed assignment to the Town of Queen Creek of the H2O Water Company's 147 acre-foot annual CAP water entitlement. Contract executed on September 29, 2015.

2. (19) Town of Quartzsite, BCP, Arizona: Amend the contract with the Town of Quartzsite to extend the term for another 15 years ending on January 28, 2029. Contract Executed on October 20, 2015.

3. (23) Yuma County Water Users' Association, Yuma Project, Arizona: Execute a funding agreement for California Check and Wasteway infrastructure improvements to improve operational control and reduce water spills as part of the Western Drought Response activities in Arizona, California, Nevada, and Mexico. Contract executed on September 15, 2015.

UPPER COLORADO REGION: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of 111–11 to be executed as project progresses.

3. Middle Rio Grande Project, New Mexico: Reclamation continues annual leasing of water from various San Juan-Chama Project contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 14,423 acre-feet of water from San Juan-Chama Project contractors in 2015.

4. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: The District has requested that its Meeks Cabin repayment contract be amended from two 25-year contacts to one 40-year contract.

5. Uintah Water Conservancy District; Vernal Unit, CUP; Utah: Proposed carriage contract to both store up to 35,000 acre-feet of nonproject water in Steinaker Reservoir and carry nonproject water in the Steinaker Service and Feeder Canals.

6. Weber Basin Water Conservancy District, Weber Basin Project, Utah: The District has requested a contract to allow the storage of Weber Basin Project water in Smith Morehouse Reservoir under the authority of Section 14 of the Reclamation Projects Act of 1939.

7. Carbon Water Conservancy District, Scofield Project, Utah: The District has requested Reclamation's assistance with O&M activities to rehabilitate certain portions of the Scofield Dam outlet works and surrounding area.

8. Provo Reservoir Water Users Company, Provo River Project, Utah: The Company has requested a contract to store up to 5,000 acre-feet on its nonproject water in Deer Creek Reservoir on a space-available basis under the authority of the Warren Act of 1911.

9. Uintah Water Conservancy District; Vernal Unit, CUP; Utah: The District desires to pipe the Steinaker Service Canal to improve public safety, decrease O&M costs, and increase water efficiency. This action will require a supplementary O&M contract to modify Federal Reclamation facilities, as well as an agreement written under the authority of the Civil Sundry Appropriations Act of 1921 for

Reclamation to accept funds to review designs, inspect project construction, and any other activities requiring Reclamation's participation.

10. Newton Water Users Association, Newton Project; Utah: The Association desires to abandon the Federal canals distributing water from Newton Reservoir, and replace them with a private pipeline. This requires a supplementary O&M agreement to approve modification to Federal Reclamation facilities and outline the O&M responsibilities during and after construction.

11. Salem Canal and Irrigation Company, Strawberry Valley Project, Utah: The United States intends to enter into an amendatory contract regarding possible lost generation of power revenues generated at the Spanish Fork Power Plant on the Strawberry Valley Project.

12. Weber Basin Water Conservancy District, A.V. Watkins Dam, Utah: The United States intends to enter into an implementation agreement with the District giving the District the authority to modify Federal facilities to raise the crest of AV Watkins Dam.

13. Uintah Water Conservancy District; Flaming Gorge Unit, CRSP; Utah: The District has requested a long-term water service contract to remove up to 5,500 acre-feet of water annually from the Green River for irrigation purposes under the authority of Section 9(e) of the Reclamation Project Act of 1939. A short-term contract may be executed until a long-term contract can be completed.

14. South Cache Water Users Association, Hyrum Project, Utah: The Association has requested a loan under Public Law 111–11 to pipe approximately 2,100 linear-feet of the Hyrum Mendon Canal.

15. Emery County Water Conservancy District, Emery County Project, Utah: The District has requested to convert 79 acre-feet of Cottonwood Creek Consolidated Irrigation Company water from irrigation to M&I uses.

16. Aamodt Litigation Settlement, San Juan-Chama Project, New Mexico: Contract for 1,079 acre-feet of San Juan-Chama Project water for M&I use with the four Pueblos included in the Aamodt Litigation Settlement Act, Title VI of Public Law 111–291. The four Pueblos are the Nambe, Pojoaque, San Ildefonso, and Tesuque.

17. Salt River Project Agricultural Improvement and Power District, Salt River Project; Glen Canyon Unit, CRSP; Arizona: The District has requested a renewal of its existing contract from 2034 through 2044.

18. Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

19. City of Page, Arizona; Glen Canyon Unit, CRSP; Arizona: Long-term contract for 975 acre-feet of water for municipal purposes.

20. Florida Water Conservancy District, Florida Project, Colorado: The District and the United States, pursuant to Section 4 of the CRSP, and subsection 9(c)(2) of the Reclamation Projects Act of 1939, propose to negotiate and execute a water service contract for 2,500 acre-feet of Florida Project water for M&I and other miscellaneous beneficial uses, other than commercial agricultural irrigation, within the District boundaries in La Plata County, Colorado.

21. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Requested a water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Public Law 106–554).

22. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Requested a water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Public Law 106–554).

23. Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations on an OM&R transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, Section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project, distribution of water, and sets forth the allocation and payment of annual OM&R costs of the Project.

24. Animas-La Plata Project, Colorado-New Mexico: (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Public Law 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Public Law 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington; New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Public Law 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Public Law 111–11); and (c) Operations agreement among the United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Public Law 111–11, Section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

25. Aamodt Settlement, Pojoaque Basin Region Water System: Contributed Funding Agreements with the County of Santa Fe for associated construction costs will be executed in 2016.

Completed contract actions:

1. (4) Various Entities, Carlsbad Project, New Mexico: Reclamation leases water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos Bluntnose Shiner. Individual irrigators enter into forbearance contracts and lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. Reclamation contracted with Fort Sumner ID for partial- and full-season fallowing in 2014, and with the NMISC to lease privately held water for delivery to the Pecos River via the NMISC's Vaughn Pipeline. Contract executed December 4, 2015.

2. (12) Weber River Water Users Association, Weber River Project, Utah: The Association has requested Reclamation augment a to-be-built O&M building near Echo Dam and is willing to pay the difference in costs for the larger building. The United States would accept the money under the Civil Sundry Appropriations Act of 1921. Contract executed August 19, 2015.

3. (13) North Summit Pressurized Irrigation Company, Weber Basin Project, Utah: The Company has requested a contract to convey and store its privately held water on a space-available basis in Rockport Reservoir and the use of Wanship Dam to pressurize its piped irrigation system under the authority of the Warren Act of 1911. Contract executed October 13, 2015.

4. (14) Metropolitan Water District of Salt Lake and Sandy, Provo River Project, Utah: The District has requested a contract to store its Ontario Drain Tunnel water in Deer Creek Reservoir

on a space-available basis under the authority of the Warren Act of 1911. Contract executed May 6, 2015.

GREAT PLAINS REGION: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to modify long-term water service contract to add additional irrigated acres.

5. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

6. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

7. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 15 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

8. Roger W. Evans (Individual); Boysen Unit, P–SMBP; Wyoming: Renewal of long-term water service contract.

9. Busk-Ivanhoe, Inc., Fryingpan-Arkansas Project, Colorado: Contract for long-term carriage and storage, and/or a new contract for an additional use of water.

10. Southeastern Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of an excess capacity master storage contract.

11. State of Kansas Department of Wildlife and Parks; Glen Elder Unit, P–SMBP; Kansas: Intent to enter into a contract for the remaining conservation storage in Waconda Lake for recreation and fish and wildlife purposes.

12. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit.

13. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Amend or supplement the 1938 repayment contract to include the transfer of OM&R for Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

14. Van Amundson; Jamestown Reservoir, Garrison Diversion Unit, P–SMBP; North Dakota: Intent to enter into an individual long-term irrigation water service contract to provide up to 285 acre-feet of water annually for a term of up to 40 years from Jamestown Reservoir, North Dakota.

15. Donala Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a long-term excess capacity contract.

16. Purgatoire Water Conservancy District, Trinidad Project, Colorado: Consideration of a request to amend the contract.

17. State of Colorado; Armel Unit, P–SMBP; Colorado: Consideration of a contract action to address future OM&R costs.

18. Central Oklahoma Master Conservancy District, Norman Project, Oklahoma: Amend existing contract No. 14–06–500–590 to execute a separate contract(s) to allow for importation and storage of nonproject water in accordance with the Lake Thunderbird Efficient Use Act of 2012.

19. Harlan County Dam and Reservoir; Bostwick Division, P–SMBP; Nebraska and Kansas: Consideration of a contract with Bostwick ID in Nebraska and Kansas-Bostwick ID No. 2 for repayment of extraordinary O&M at Harlan County Dam and Reservoir.

20. Altus Dam, W.C. Austin Project, Oklahoma: Consideration of a contract(s) for repayment of SOD costs.

21. Bull Lake Dam; Riverton Unit, P–SMBP; Wyoming: Consideration of a contract with Midvale ID for repayment of SOD costs.

22. Helena Valley ID; Helena Valley Unit, P–SMBP; Montana: Consideration of a contract to allow for delivery of up to 500 acre-feet of water for M&I purposes within the District boundaries.

23. Savage ID; Savage Unit, P–SMBP; Montana: Intent to renew the repayment contract to provide for a long-term-water supply to the District.

24. Mirage Flats ID, Mirage Flats Project, Nebraska: Consideration of a contract action for repayment of SOD costs.

25. Guernsey Dam, North Platte Project, Nebraska and Wyoming: O&M repayment contracts with North Platte Project contractors for the repayment of extraordinary maintenance associated with Guernsey Dam.

26. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Consideration of a potential contract(s) for use of excess capacity by individual landowner(s) for irrigation purposes.

27. East Larimer County Water District, Fort Collins-Loveland Water District, North Weld County Water District, and Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of long-term excess capacity contracts.

28. Western Heart River ID; Heart Butte Unit, P–SMBP; North Dakota: Consideration of amending the long-term irrigation repayment contract and project-use power contract to include additional acres.

29. Larry TenBensel; Frenchman Cambridge, P–SMBP; Nebraska: Consideration of a long-term Warren Act contract.

30. Dickinson-Heart River Mutual Aid Corporation; Dickinson Unit, Heart Division; P–SMBP; North Dakota: Consideration of amending the long-term irrigation water service contract to modify the acres irrigated.

31. Buford-Trenton ID, Buford-Trenton Project, P–SMBP; North Dakota: Consideration of amending the long-term irrigation power repayment contract and project-use power contract to include additional acres.

32. Bostwick Division, P–SMBP: Excess capacity contract with the State of Nebraska and/or State of Kansas entities and/or irrigation districts.

33. Milk River Project, Montana: Proposed amendment to contracts to reflect current landownership.

34. Power—Teton County Water and Sewer District; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a long-term contract for up to 40 acre-feet of M&I water from Canyon Ferry Reservoir.

35. Bryan Hauxwell, Frenchman Cambridge Project, Nebraska: Consideration of a long-term Warren Act contract.

36. Glen Elder ID No. 8; Glen Elder Unit, P–SMBP; Kansas: Consideration to renew long-term water service contract No. 2–07–60–W0855.

37. Mitchell County Rural Water District No. 2; Glen Elder Unit, P–

SMBP; Kansas: Consideration to renew long-term water delivery contract No. 7–07–70–W0108.

38. City of Chinook, Milk River Project, Montana: Consideration to renew long-term M&I water service Contract No. 14–06–600–2034A.

Discontinued contract actions:

1. (24) Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Renegotiation of the master repayment contract to conform to the Dakota Water Resources Act of 2000; negotiation of water service or repayment contracts with irrigators and M&I users.

2. (62) Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Consideration to enter into long-term water service contract for M&I use out of McClusky Canal.

Dated: January 6, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–03464 Filed 2–18–16; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–557 and 731–TA–1312 (Preliminary)]

Stainless Steel Sheet and Strip From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–557 and 731–TA–1312 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of stainless steel sheet and strip from China, provided for in subheading 7219.13.00, 7219.14.00, 7219.23.00, 7219.24.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 28, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 4, 2016.

DATES: *Effective date:* February 12, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*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.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)), in response to a petition filed on February 12, 2016, by AK Steel Corp., West Chester, Ohio; Allegheny Ludlum, LLC, Pittsburgh, Pennsylvania; North American Stainless, Inc., Ghent, Kentucky; and Outokumpu Stainless USA, LLC, Bannockburn, Illinois.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Friday, March 4, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before March 2, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 9, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 12, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–03434 Filed 2–18–16; 8:45 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2015–8]

Section 1201 Study: Extension of Comment Period

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadlines for the submission of written comments in response to its December 29, 2015 Notice of Inquiry regarding the operation of section 1201 of Title 17.

DATES: Initial written comments are now due no later than 11:59 p.m. Eastern Time on March 3, 2016. Written reply comments are due no later than 11:59 p.m. Eastern Time on April 1, 2016.

ADDRESSES: The Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/policy/1201/comment-submission/*. If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, Associate General Counsel, *resm@loc.gov;* or Kevin R. Amer, Senior Counsel for Policy and International Affairs, *kamer@loc.gov.* Each can be reached by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is undertaking a public study to assess the operation of section 1201 of Title 17. On December 29, 2015, the Office issued a Notice of Inquiry seeking public input on several questions relating to that topic. *See* 80 FR 81369 (Dec. 29, 2015). To ensure that commenters have sufficient time to respond, the Office is extending the deadline for the submission of initial comments in response to the Notice to March 3, 2016, at 11:59 p.m. Eastern Time, and the deadline for the submission of reply comments to April 1, 2016, at 11:59 p.m. Eastern Time. Please note that in light of the expected time frame for this study, the Office is unlikely to grant further extensions for these comments.

Dated: February 16, 2016.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–03515 Filed 2–18–16; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–012)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, Mail Code JF000, 300 E Streets SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–2225.

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA hosts/sponsors numerous events on federally owned/leased property which are open to NASA affiliates and members of the public. The events include but are not limited to meetings, conferences, briefings, public outreach activities, tours, focus groups, etc. Visitor access is substantiated by a credentialed NASA sponsor who validates the visitor's need to access a building/area, guest networking services, etc. for a specific event/purpose. Information is collected to validate identity and enable intermittent access to activities.

Currently, visitor registration is accomplished via several electronic and paper processes. The NASA Office of Protective Services is transitioning to a one-NASA process to manage access for visitors with an affiliation less than 30-days.

NASA may collect event registration information to include but not limited to a visitor's name, address, citizenship, biometric data, purpose of visit, the location to be visited, escort/sponsor name with contact data, and preferred meeting/event sessions when options are available. When parking is provided on federal owned/leased space, driver's license information as well as vehicle make/model/tag information will be collected.

When visitors/vendors are permitted to bring equipment and/or event set-up materials such as booths and displays, information will be collected to issue property passes and coordinate equipment/property delivery. Information will also be collected, when applicable, to include other associated requirements such as electrical power needs, internet access, etc.

NASA collects, stores, and secures information from individuals requiring routine and intermittent access in a manner consistent with the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a) and the Paperwork Reduction Act.

II. Method of Collection

Electronic.

III. Data

Title: The NASA Visitor Management System for Intermittent Access to NASA Hosted/Sponsored Events and Activities.

OMB Number: 2700–XXXX.

Type of review: Active Information Collection In Use Without OMB Approval.

Affected Public: Individuals.

Estimated Number of Respondents: 400,000.

Estimated Time Per Response: 8 minutes.

Estimated Total Annual Public Burden Hours: 53,333.

Estimated Total Annual Public Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2016–03483 Filed 2–18–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 2, 2016, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 2, 2016—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: February 11, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–03487 Filed 2–18–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Future Plant Designs

The ACRS Subcommittee on Future Plant Designs will hold a meeting on March 1, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, March 1, 2016—2:00 p.m. Until 5:00 p.m.

The Subcommittee will discuss NuScale Topical Report TR–0515–13952, ''Risk Significance Determination.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North

building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: February 11, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–03485 Filed 2–18–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–86; Order No. 3075]

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 Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 22, 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 February 11, 2016, the Postal Service filed notice that it has agreed to a modification to the existing Global Expedited Package Services 3 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the modification and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted modification and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1–2.

The modification revises various articles so that the agreement applies to qualifying Priority Mail Express International (PMEI) and Priority Mail International (PMI) mailpieces. *Id.* Attachment 1 at 1–2. The modification also replaces Annex 1 with new price tables for PMEI and PMI mailpieces. *Id.* at 5–7.

The Postal Service intends for the modification to become effective March 1, 2016. Notice at 1. The Postal Service asserts that the modification will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.* Attachment 2.

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 February 22, 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. CP2015–86 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 February 22, 2016.

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

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–03383 Filed 2–18–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing Modification to Global Expedited Package Services 3 Negotiated Service Agreement, February 11, 2016 (Notice).

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–100; Order No. 3077]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 22, 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:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On February 11, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–100 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than February 22, 2016. The public portions of the filing can be

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, February 11, 2016 (Notice).

accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–100 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than February 22, 2016.

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

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–03431 Filed 2–18–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77124; File No. SR–NYSEArca–2016–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

February 12, 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 February 1, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule''). The Exchange proposes to implement the fee changes effective February 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 1, 2016,[4] the Exchange is scheduled to commence the implementation of Pillar, the Exchange's proposed new technology trading platform.[5] Pillar is the integrated trading technology platform designed to use a single specification for connection to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC. NYSE Arca Equities will be the first trading system to migrate to Pillar. Securities traded on the Exchange will be migrated from the current trading platform to Pillar in phases. The Exchange is proposing that the current Fee Schedule, which applies to all securities traded on the Exchange, will also apply to securities that migrate to Pillar. To that end, the Exchange proposes to explicitly state in the current Fee Schedule that it will also apply to securities traded on Pillar.

Mid-Point Passive Liquidity Order—Securities $1.00 and Greater

The Exchange currently provides per share credits under Tier 1, Tier 2 and Basic Rates [6] for Mid-Point Passive Liquidity (''MPL'') Orders that provide liquidity based on the Average Daily Volume (''ADV'') of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined (''MPL Adding ADV''). Specifically, for ETP Holders and Market Makers that have MPL Adding ADV during a billing month of at least 3 million shares, the Exchange provides a credit of $0.0015 for Tape A Securities, $0.0020 for Tape B Securities and $0.0025 per share for Tape C Securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of at least 1.5 million shares but less than 3 million shares, the Exchange provides a credit of $0.0015 for Tape A, Tape B and Tape C Securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of less than 1.5 million shares, the Exchange provides a credit of $0.0010 for Tape A, Tape B and Tape C Securities. The Exchange also currently charges a fee of $0.0030 per share for MPL Orders in Tape A, Tape B and Tape C Securities that remove liquidity from the Exchange that are not designated as ''Retail Orders.'' [7] In addition, MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are not currently subject to a fee. On Pillar,

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission notes that, according to the Exchange, the implementation of Pillar is now scheduled to begin on February 22, 2016. *See* NYSE Arca Trader Update, NYSE Pillar: Phase I Test and Launch Date (January 27, 2016), *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/Pillar_Phase_I_Launch_Date_Move.pdf.*

[5] *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR–NYSEArca–2015–38) (''Pillar I Filing''); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR–NYSEArca–2015–56)(''Pillar II Filing''); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR–NYSEArca–2015–58) (''Pillar III Filing''); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR–NYSEArca–2015–86) (''Pillar Auction Filing'').

[6] Tier 1 applies to ETP Holders and Market Makers (1) that provide liquidity an average daily share volume per month of 0.70% or more of the US CADV. Tier 2 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV. Basic Rates apply when tier rates do not apply. US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

[7] Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. *See* Rule 7.44. *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

Mid-Point Passive Liquidity Order is named Mid-Point Liquidity Order and the Exchange proposes to note this name change in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees and credits for Mid-Point Passive Liquidity Orders are described. The Exchange is not proposing any change to the fees charged or credits provides [sic] for Mid-Point Passive Liquidity Orders (and for Mid-Point Liquidity Orders on Pillar) in securities priced $1.00 and greater.

Orders designated as retail orders for securities traded on Pillar would need to meet the requirements of Rule 7.44P(a)(3) and the Exchange proposes to amend the Fee Schedule to note the application of Rule 7.44P to such securities.

Opening Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0015 per share is charged for certain orders executed in the Opening Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders.[8] This fee is capped at $20,000 per month per Equity Trading Permit ID. On Pillar, the Opening Auction is named the Early Open Auction and the Exchange proposes to note this name change in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Early Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Opening Auction (and in the Early Open Auction on Pillar) in securities priced $1.00 and greater.

Market Order Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0015 per share is charged for certain orders executed in the Market Order Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders. This fee is capped at $20,000 per month per Equity Trading Permit ID. On Pillar, the Market Order Auction is named the Core Open Auction and the Exchange proposes to note this name change in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Core Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Market Order Auction (and in the Core Open Auction on Pillar) in securities priced $1.00 and greater.

Market Order Auction—Securities Less Than $1.00

The Fee Schedule currently provides that a fee of 0.1% of the total dollar value will be charged for round lot and odd lot executions of securities priced below $1.00 that take place during a Market Order Auction. On Pillar, the Market Order Auction is named the Core Open Auction and the Exchange proposes to note this name change. The Exchange is not proposing any change to the fee charged for orders executed in the Market Order Auction (and in the Core Open Auction on Pillar) in securities priced below $1.00.

Passive Liquidity Order—Securities $1.00 and Greater

The Fee Schedule currently provides that no fee or credit is charged for Passive Liquidity Orders that provide liquidity to the order book in Tape A, Tape B or Tape C securities. The Fee Schedule further provides that a fee of $0.0030 per share is charged for Passive Liquidity Orders that take liquidity from the order book in Tape A [sic] securities, and a fee of $0.0028 per share is charged for such orders that take liquidity from the order book in Tape B and Tape C [sic] securities. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and the Exchange proposes to note this name change in each of the Tier 1, Tier 2, Tier 3 and Basic Rates sections of the Fee Schedule in which fees for Passive Liquidity Orders are described. The Exchange is not proposing any change to the fee charged or rebate provided for Passive Liquidity Orders (and for Limit Non-Displayed Orders on Pillar) in securities priced $1.00 and greater.

Passive Liquidity Order—Lead Market Makers

For Lead Market Makers (''LMMs''),[9] the Exchange currently provides a $0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM. On Pillar, Passive Liquidity Order is named Non-Displayed Limit Order and the Exchange proposes to note this name change in the section of the Fee Schedule related to Market Maker Fees and Credits. The Exchange is not proposing any change to the credit provided to LMMs for Passive Liquidity Orders (and for Non-Displayed Limit Orders on Pillar).

Post No Preference Blind Order—Lead Market Makers

For LMMs, the Exchange currently provides a $0.0030 per share credit for orders that provide undisplayed liquidity in Post No Preference Blind (PNP B) Orders to the order book in securities for which they are registered as LMMs. On Pillar, PNP B Order is named Arca Only Order and the Exchange proposes to note the name change with an amendment to the Fee Schedule that notes this name change. The Exchange is not proposing any change to the credit provided to LMMs that provide undisplayed liquidity in securities in which they are registered as LMMs using PNP B Orders (and for Arca Only Orders on Pillar).

Non-Substantive Change to the Fee Schedule

The Fee Schedule currently provides that a fee of $0.0025 per share is charged for Primary Sweep Orders in Tape A securities routed outside the book to the NYSE that remove liquidity from the NYSE and that Primary Sweep Orders in Tape A securities routed outside the book to the NYSE that provide liquidity to the NYSE are not charged a fee or given a credit. This fee appears in each of Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule. The Exchange has eliminated the Primary Sweep Order type and therefore, proposes to remove this fee from the Fee Schedule as it is no longer applicable.[10]

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

[8] *See* NYSE Arca Equities Rule 7.31(c). An Auction-Only order is executable during the next auction following entry of the order. If the Auction-Only Order is not executed in the auction, the balance is cancelled. Auction-Only orders are only available for auctions that take place on the Exchange and are not routed to other exchanges.

[9] The term ''Lead Market Maker'' means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. *See* NYSE Arca Equities Rule 1.1(ccc).

[10] *See* Securities Exchange Act Release No. 74415 (March 3, 2015), 80 FR 12537 (March 9, 2015) (SR–NYSEArca–2015–08).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the Fee Schedule, which include the addition of rule text to note that the Fee Schedule would be applicable to securities traded on Pillar and the addition of rule text to [sic] regarding order types that would be renamed on Pillar, is reasonable, equitable and not unfairly discriminatory because the changes are designed to make the Fee Schedule more logical and comprehensive therefore, easier for market participants to navigate and digest, which is in the public interest. The Exchange further believes that the proposed changes are designed to enable market participants to better understand how Exchange fees would be applicable to market participants, which should make the overall Fee Schedule more transparent and comprehensive to the benefit of the investing public.

The Exchange believes removing references to Primary Sweep Orders from the Fee Schedule will remove investor confusion as this order type no longer exists in the Exchange's rules. The Exchange strives for clarity in its rules and Fee Schedule so that market participants may best understand how rules and fees apply. The Exchange believes that the proposed removal of outdated language and fees from the Fee Schedule will add clarity to the Fee Schedule and alleviate potential confusion which will remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will any [sic] burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather provide the public and investors with a Fee Schedule that is transparent once securities traded on the Exchange begin to migrate to Pillar.

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) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] 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) [15] 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–2016–18 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–2016–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–18, and should be submitted on or before March 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03387 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–02736.

Extension:

Form 18–K, SEC File No. 270–108, OMB Control No. 3235–0120.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments or political subdivisions of foreign governments that have securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy and public availability of information available to investors. We estimate that Form 18–K takes approximately 8 hours to prepare and is filed by approximately 35

respondents for a total annual reporting burden of 280 hours (8 hours per response × 35 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03518 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77126; SR–NYSEArca–2015–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Implementation of a Fee on Securities Lending and Repurchase Transactions With Respect to Shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust

February 12, 2016.

On July 30, 2015, NYSE Arca, Inc. (''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 relating to implementation of a fee on securities lending and repurchase transactions with respect to shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust, which are currently listed and trading on the Exchange under NYSE Arca Equities Rule 8.202. The proposed rule change was published for comment in the **Federal Register** on August 20, 2015.[3]

On September 18, 2015, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 18, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] In the Order Instituting Proceedings, the Commission solicited responses to specified matters related to the proposal.[8] The Commission has not received any comments on the proposal.[9]

Section 19(b)(2) of the Act [10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for that determination. The proposed rule change was published for notice and comment in the **Federal Register** on August 20, 2015.[11] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is February 16, 2016.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates April 15, 2016 as the date by which the Commission should either approve or disapprove the proposed rule change (SR–NYSEArca–2015–68).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03389 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75698 (Aug. 14, 2015), 80 FR 50701 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 75945, 80 FR 57645 (Sept. 24, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated November 18, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 76472, 80 FR 73258 (Nov. 24, 2015) (''Order Instituting Proceedings'').

[8] *See id.,* 80 FR at 73261–73262.

[9] Although the Commission has not received comments on the proposal, the Exchange represents that it issued a Regulatory Bulletin on this proposal on August 21, 2013 (regulatory bulletin available at *http://www.sec.gov/rules/sro/nysearca/2015/34-75698-ex2a.pdf*) and received two comment letters in response. *See* Notice, *supra* note 3, 80 FR at 50705 n.22. *See also* Letter from Daniel J. McCabe, President, Precidian Investments, to John Carey, Vice President—Legal, NYSE (Sept. 20, 2013) (supporting the proposed rule change); and Letter from Theodore R. Lazo, Associate General Counsel, and Kyle Brandon, Managing Director, SIFMA, to John Carey, Vice President—Legal (Sept. 23, 2013) (opposing the proposal) (available at *http://www.sec.gov/rules/sro/nysearca/2015/34-75698-ex2b.pdf*).

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* note 3 and accompanying text.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77127; File No. SR–NASDAQ–2016–015]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Options Pricing at Chapter XV, Section 2

February 12, 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 February 1, 2016, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (''NOM''), the Exchange's facility for executing and routing standardized equity and index options. The Exchange proposes to amend certain Penny Pilot and Non-Penny Pilot Options pricing as well as the Market Access and Routing Subsidy or ''MARS.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 proposes certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny and Non-Penny Pilot Options program as well as amendments to MARS. Each change will be described below.

Penny Pilot Options

The Exchange proposes to amend the Penny Pilot Options Customer [3] Rebate to Add Liquidity by offering an incentive to NOM Participants to add an even greater amount of liquidity to NOM. Specifically, the Exchange proposes to incentivize NOM Participants by offering the opportunity to earn an additional $0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to qualifying Penny Pilot Options Customer Rebate to Add Liquidity Tiers 1–8,[4] provided the NOM Participant qualifies for MARS Payment Tiers 1, 2 or 3, which are proposed below.[5] The Exchange proposes to add this incentive into new note ''d.'' NOM Participants that qualify for the current note ''c'' [6] incentive will receive the greater of the note ''c'' [7] or the note ''d'' incentive.

Non-Penny Pilot Options

The Exchange proposes to delete an offer to reduce a fee offered to Non-Customer Participants (Professional,[8] Firm,[9] Non-NOM Market Maker,[10] NOM Market Maker [11] and Broker-Dealer [12]) when they remove liquidity. Today, these Non-Customer Participants pay a Non-Penny Pilot Options Fee for Removing Liquidity of $1.10 per contract. Note ''3'' offers Non-Customer Participants an opportunity to reduce the Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.03 per contract, provided the Participant qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month. The Exchange proposes to delete note ''3'' and no longer offer this fee reduction. The Exchange proposes to reserve note ''3.'' Today, Customers are assessed a lower Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract. Customers are not currently offered the fee reduction because they are assessed a lower fee ($0.85 per contract as compared to $1.03 per contract). Despite the removal of the fee reduction, the Exchange believes that these fees will continue to attract market participants to NOM.

The Exchange currently assesses a NOM Market Maker Non-Penny Pilot Options Fee for Removing Liquidity of $1.10 per contract and offers Participants that qualify for Customer or

[3] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)).

[4] Today, the Exchange offers 8 tiered Penny Pilot Options Rebates to Add Liquidity to Customers based on various criteria with rebates ranging from $0.20 to $0.48 per contract. Participants may qualify for Customer and Professional Penny Pilot Options Rebates to Add Liquidity by adding a certain amount of liquidity as specified by each tier. Tiers 6 and 7 are calculated based on Total Volume. Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM. *See* note ''b'' in Section 2(1) of Chapter XV. The Exchange utilizes data from The Options Clearing Corporation (''OCC'') to determine the total industry customer equity and ETF options ADV figure. OCC classifies equity and ETF options volume under the equity options category. Also, both customer and professional orders that are transacted on options exchanges clear in the customer range at OCC and therefore both customer and professional volume would be included in the total industry figure to calculate rebate tiers.

[5] The MARS Payment Tiers are proposed herein and described in more detail below.

[6] Note ''c'' at Chapter XV, Section 2(1) provides that Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month. Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month. Finally, Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% of total industry customer equity and ETF option ADV contracts per day in a month and (b) have added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.10% or more of Consolidated Volume in a month will receive an additional $0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated volume and the member's trading activity.

[7] Note ''c'' offers Participants the ability to earn a $0.02, $0.03 or $0.05 per contract rebate.

[8] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[9] The term ''Firm'' applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

[10] The term ''Non-NOM Market Maker'' is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[11] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[12] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month, the opportunity to lower the NOM Market Maker Non-Penny Pilot Options Fee for Removing Liquidity to $1.08 per contract in that month. The Exchange proposes to continue to offer this incentive and expand the qualification for this incentive, described in note ''4,'' to permit Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers [13] 2, 3, 4, 5, 6, *7* or *8* in a month to receive the lower Non-Penny Pilot Options Fee for Removing Liquidity rate of $1.08 per contract in that month. Tiers 7 and 8 are being added as qualifying tiers for this note ''4'' incentive. The Exchange believes that this incentive will encourage Participants to add liquidity to NOM.

MARS

NOM offers a subsidy to NOM Participants that provide certain order routing functionalities to other NOM Participants and/or use such functionalities themselves. NOM Participants are subsidized for the costs they incur when providing routing services to route orders to NOM. Today, in order to qualify for MARS, a NOM Participant's routing system (hereinafter ''System'') would be required to meet certain criteria.[14] Today, NOM pays NOM Participants that have System Eligibility and have routed at least 5,000 Eligible Contracts daily in a month, which were executed on NOM, a MARS Payment. Today, to qualify for a MARS Payment, eligible contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, Joint Back Office or ''JBO'' [15] or Professional equity option orders that add liquidity and are electronically delivered and executed (''Eligible Contracts''). Eligible Contracts do not include Mini-Options.[16] Today, NOM Participants that have System Eligibility and have executed the requisite Eligible Contracts, in a month, will receive a MARS Payment of $0.10 per contract. Today, the MARS Payment will be paid only on executed Firm orders that add liquidity and which are routed to NOM through a participating NOM Participant's System. No payments are made with respect to orders that are routed to NOM, but not executed.[17]

The Exchange proposes to amend the MARS Payment to replace the $0.10 per contract payment and the 5,000 requisite Eligible Contracts minimum with the following 3 tiered MARS Payment and Average Daily Volume requisites:

Tiers	Average daily volume (''ADV'')	MARS Payment
1	2,500	$0.07
2	5,000	$0.09
3	10,000	$0.11

Provided the NOM Participant executed the requisite number of Eligible Contracts ADV, the Exchange proposes to pay the applicable MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System. Today, the Exchange pays the MARS Payment only on executed Firm orders that add liquidity, which are routed to NOM through a participating NOM Participant's System. The Exchange believes that expanding the scope of orders eligible for a MARS Payment will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants with the proposed changes. The Exchange is not amending the other aspects of MARS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[18] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

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. 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'. . . .'' [20] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets and this proposal is consistent with those views in that it is a price cut driven by competition.

Penny Pilot Options

The Exchange's proposal to add a new note ''d'' to Chapter XV, Section 2(1),

[13] The Customer and Professional Penny Pilot Options Customer and Professional Rebate to Add Liquidity Tiers 1–8 are described in Chapter XV, Section 2(1).

[14] Specifically the Participant's System would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality (''System Eligibility''). The NOM Participant's System would also need to cause NOM to be one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer (''NBBO''), regardless of size or time, but allow any user to manually override NOM as the default destination on an order-by-order basis.

[15] The term ''Joint Back Office'' or ''JBO'' applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO will be priced the same as a Broker-Dealer as of September 1, 2014. A JBO participant is a Participant that maintains a JBO arrangement with a clearing broker-dealer (''JBO Broker'') subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed in Chapter XIII, Section 5.

[16] Mini Options are described in Chapter XV, Section 2(4).

[17] A Participant will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to NOM. The Exchange believes that the MARS Payment will subsidize the costs of NOM Participants in providing the routing services.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] *Id.* [sic] at 539 (quoting Securities Exchange [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

regarding the Penny Pilot Options Customer Rebate to Add Liquidity, to offer NOM Participants an opportunity to earn an additional $0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to any qualifying Penny Pilot Options Customer Rebate to Add Liquidity Tiers 1–8,[21] provided the NOM Participant qualifies for MARS Payment Tiers 1, 2 or 3,[22] is reasonable because NOM Participants will be incentivized to send more order flow to NOM. The Exchange believes that requiring Participants to qualify for MARS Payment Tiers 1, 2 or 3 is reasonable because it is designed to attract higher volumes of electronic equity and ETF options volume to the Exchange. With this proposal, in order to qualify for a MARS Payment, NOM Participants must execute a requisite number of orders which add liquidity and are routed to NOM through a participating NOM Participant's System. The Exchange believes that it is reasonable to offer NOM Participants the greater of the current note ''c'' [23] or new note ''d'' incentive because the NOM Participant would be able to receive the greater of the two rebates with this proposal. Today, Participants are entitled to certain incentives with note ''c'', provided they qualify for the Tier 8 Customer Rebate to Add Liquidity in Penny Pilot Options.[24]

The Exchange's proposal to add a new note ''d'' to Chapter XV, Section 2(1), regarding the Penny Pilot Options Customer Rebate to Add Liquidity to offer NOM Participants an opportunity to earn an additional $0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to any qualifying Penny Pilot Options Customer Rebate to Add Liquidity Tiers 1–8, provided the NOM Participant qualifies for MARS Payment Tiers 1, 2 or 3, is equitable and not unfairly discriminatory because the Exchange would uniformly pay this newly proposed note ''d'' incentive to NOM Participants that executed the requisite MARS volume and qualified for a Customer Rebate to Add Liquidity tier in Penny Pilot Options. The Exchange believes it is equitable and not unfairly discriminatory to offer this additional note ''d'' incentive only to Customers, because Customer liquidity attracts other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Also, the Exchange believes that it is equitable and not unreasonably discriminatory to offer NOM Participants the greater of the current note ''c'' or new note ''d'' incentive because the Exchange would uniformly pay the greater of these two rebates to qualifying NOM Participants. The Exchange's proposal to require Participants to qualify for MARS Payment Tiers 1, 2 or 3 in order to receive the additional $0.03 per contract rebate in note ''d'' is equitable and not unfairly discriminatory because all Participants will be subject to this requirement to qualify for the note ''3'' [sic] added incentive on their Customer orders.

Non-Penny Pilot Options

The Exchange's proposal to delete an offer to reduce a fee offered to Non-Customer Participants (Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer) in note ''3,'' which reduces the Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.03 per contract in that month, when they qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month is reasonable because these fees will continue to offset the Exchange's incentives to increase the Customer Non-Penny Pilot Options Rebate to Add Liquidity up to $1.00 per contract.[25] All Participants, other than Customers, will continue to be assessed the same Non-Penny Pilot Options Fees for Removing Liquidity. Customers continue to be assessed the lowest Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract. The Exchange believes that despite the increase to the fee, market participants will continue to send order flow to NOM.

The Exchange's proposal to delete an offer to reduce a fee offered to Non-Customer Participants (Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer) in note ''3,'' which reduces the Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.03 per contract in that month, when they qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month is equitable and not unfairly discriminatory because no Participant would be eligible for the fee reduction. Today, Customers are not eligible for this fee reduction because they are assessed a lower Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract.

The Exchange's proposal to extend the offer in note ''4'' to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.08 per contract, provided Participants qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2–8, is reasonable because the Exchange believes that additional Participants would be able to qualify for the lower fee with the addition of Tiers 7 and 8 to the qualifying tiers.

The Exchange's proposal to extend the offer in note ''4'' to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.08 per contract, provided Participants qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2–8, is equitable and not unfairly discriminatory because the Exchange will continue to uniformly assess the lower fee to Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2–8. The Exchange believes that it is equitable and not unfairly discriminatory to offer NOM Marker Makers the ability to reduce the Non-Penny Pilot Options Fee for Removing Liquidity, as compared to other market participants, because of the obligations borne by these NOM Market Makers.[26] Encouraging NOM Market

[21] *See* note 4 above.

[22] The proposed MARS Payment Tiers are described in the Purpose section of the rule change.

[23] *See* note 6 above.

[24] The Tier 8 Customer Rebate to Add Liquidity in Penny Pilot Options pays a $0.48 per contract rebate to Participant [sic] that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month or add (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month and (2) have certified for the Investor Support Program set forth in Rule 7014.

[25] *See* Chapter XV, Section 2(1) at note ''1.'' A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2, 3, 4, 5 or 6 in a month will receive an additional $0.10 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month. A Participant that qualifies for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month will receive an additional $0.20 per contract Non-Penny Pilot Options Rebate to Add Liquidity for each transaction which adds liquidity in Non-Penny Pilot Options in that month.

[26] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations.

Makers to add greater liquidity benefits all Participants in the quality of order interaction and enhanced execution quality.

MARS

MARS Eligible Contracts

The Exchange's proposal to replace the MARS Payment of $0.10 per contract and the 5,000 Eligible Contracts minimum with a 3 tiered MARS Payment and Average Daily Volume schedule is reasonable because all qualifying NOM Participants may continue to qualify for a MARS Payment and may obtain a MARS Payment for less volume executed on NOM and a higher rebate for a greater amount of volume executed on NOM. The Exchange believes that these amendments will attract higher volumes of electronic equity and ETF options volume to the Exchange, which will benefit all NOM Participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The expanded MARS Payments should enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.

The Exchange's proposal to replace the 5,000 Eligible Contracts with ADVs of either: 2,500, 5,000 or 10,000 Eligible Contracts is reasonable because a greater number of NOM Participants may be eligible for MARS Payments. The Exchange is offering NOM Participants with less than 5,000 Eligible Contracts to receive a MARS Payment with this proposal. Today, 5,000 Eligible Contracts entitles NOM Participants to a $0.10 per contract MARS Payment. The Exchange will continue to pay NOM Participants which execute 5,000 contracts a MARS Payment, but a lower MARS Payment of $0.09 per contract as compared to $0.10 per contract. While this is a lower MARS Payment as compared to today, those NOM Participants would receive no MARS Payment today if they fell short of the 5,000 Eligible Contracts minimum. With this proposal, those NOM Participants with at least 2,500 ADV of Eligible Contracts will be paid a $0.07 per contract MARS Payment.[27] Finally, the Exchange proposes to pay NOM Participants that execute 10,000 Eligible Contracts a higher MARS Payment of $0.11 per contract. The Exchange is offering those Participants that desire to transact higher ADVs the opportunity to earn a higher MARS Payment than is offered today and is also paying NOM Participants with lower ADVs a MARS Payment with this proposal.

The Exchange's proposal to replace the 5,000 Eligible Contracts with ADVs of either: 2,500, 5,000 or 10,000 Eligible Contracts is equitable and not unfairly discriminatory because the criteria for Eligible Contracts and ADVs will be uniformly applied to all qualifying NOM Participants.

The Exchange believes that the 3 tiered Eligible Contracts is reasonable because the Exchange is only counting add liquidity from Firms, Non-NOM Market Makers, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed. The Exchange is not counting remove liquidity and therefore the ADV levels reflect what the Exchange believes to be appropriate levels of commitment from NOM Participants to receive the subsidy. The Exchange's expansion of the levels of commitment to 3 tiers offers NOM Participants additional opportunities to receive a MARS Payment.

The Exchange believes that the 3 tiered Eligible Contracts is equitable and not unfairly discriminatory because the Exchange will uniformly calculate the number of Eligible Contracts for all NOM Participants.

MARS Payment

The Exchange's proposal to replace the $0.10 per contract MARS Payment with a 3 tiered MARS Payment based on Eligible Contract ADVs is reasonable because NOM Participants may receive a MARS Payment for lower volume or a higher MARS Payment for higher volume with this proposal. The Exchange is offering to pay a $0.07 per contract MARS Payment to NOM Participants that transact 2,500 ADV of Eligible Contracts. NOM Participants that were unable to achieve the 5,000 Eligible Contract minimum may now be entitled to a MARS Payment with this lower ADV. Also, the 2,500 ADV is half of the current 5,000 minimum and the MARS Payment is more than half of the $0.10 per contract MARS Payment offered today. The Exchange believes that this first tier will attract a greater number of NOM Participants. The Exchange is lowering the $0.10 per contract MARS Payment offered today to $0.09 per contract for the same volume offered today, 10,000 [sic] Eligible Contracts. While the Exchange is offering a slightly lower MARS Payment for the same number of Eligible Contracts required today to receive the current $0.10 per contract MARS Payment, it is also proposing to offer a higher rebate of $0.11 per contract for 10,000 ADV of Eligible Contracts. The Exchange believes the proposed 3 tiered MARS Payments is reasonable because the tier structure will allow NOM Participants to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System.

The Exchange's proposal to replace the $0.10 per contract MARS Payment with a 3 tiered MARS Payment based on Eligible Contract ADVs is equitable and not unfairly discriminatory because the Exchange will uniformly pay all NOM Participants the rebates specified in the proposed 3 tiered MARS Payments provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to pay the applicable MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System, as compared to only executed Firm orders, is reasonable because the Exchange is expanding the MARS Payment to all Eligible Contracts and this will attract higher volumes of electronic equity and ETF options volume to the Exchange from non-NOM Participants as well as NOM Participants. The Exchange believes that as a result of this proposed amendment, NOM Participants will be entitled to higher payments provided they transact the requisite number of Eligible Contracts.

The Exchange's proposal to pay the applicable MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM

Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[27] No MARS Payment is paid if volume is less than 2,500 ADV in a month.

Participant's System, as compared to only executed Firm orders, is equitable and not unfairly discriminatory because the Exchange will uniformly calculate the MARS Payment for all NOM Participants and uniformly pay the MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to pay the proposed MARS Payment to NOM Participants that have System Eligibility and have executed the Eligible Contracts, even when a different NOM Participant may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists on other options exchanges such as Phlx which pays a Qualified Contingent Cross (''QCC'') Rebate for floor transactions.[28] Today, this arrangement on Phlx results in a situation where the floor broker is earning a rebate and one or more different Phlx members are potentially liable for the Exchange transaction charges applicable to QCC Orders. With the QCC rebates applicable to transactions executed on the trading floor, Phlx does not offer a front-end for order entry; unlike some of the competing exchanges, Phlx has argued that it is necessary from a competitive standpoint to offer this rebate to the executing floor broker on a QCC Order.[29] Also, all qualifying NOM Participants would be uniformly paid the subsidy on all qualifying volume that was routed by them to the Exchange and executed.

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. 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 rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response and because market participants may readily adjust their order routing practices, 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, the proposed amendments to certain Penny Pilot and Non-Penny Pilot Options pricing as well as MARS do not impose an undue burden on inter-market competition because the Exchange's execution services are completely voluntary and subject to extensive competition.

Penny Pilot Options

The Exchange's proposal to add a new note ''d'' to Chapter XV, Section 2(1), regarding the Penny Pilot Options Customer Rebate to Add Liquidity to offer NOM Participants an opportunity to earn an additional $0.03 per contract Penny Pilot Options Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month, in addition to any qualifying Penny Pilot Options Customer Rebate to Add Liquidity Tiers 1–8, provided the NOM Participant qualifies for MARS Payment Tiers 1, 2 or 3, does not impose an undue burden on intra-market competition because the Exchange would uniformly pay this newly proposed note ''d'' incentive to NOM Participants that executed the requisite MARS volume and qualified for a Customer Rebate to Add Liquidity tier in Penny Pilot Options. The Exchange's proposal to only offer this additional note ''d'' incentive only to Customers does not impose an undue burden on intra-market competition because Customer liquidity attracts other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attract Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to require Participants to qualify for MARS Payment Tiers 1, 2 or 3 in order to receive the additional $0.03 per contract rebate in note ''d'' does not impose an undue burden on intra-market competition because all Participants will be subject to this requirement to qualify for the note ''3'' [sic] added incentive on their Customer orders. The Exchange also believes that offering Participants the greater of the note ''c'' or note ''d'' incentives does not impose an undue burden on intra-market competition because Participants will uniformly receive the greater of these two rebates.

Non-Penny Pilot Options

The Exchange's proposal to delete an offer to reduce a fee offered to Non-Customer Participants (Professional, Firm, Non-NOM Market Maker, NOM Market Maker and Broker-Dealer) in note ''3,'' which reduces the Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.03 per contract in that month, when they qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 7 or 8 in a month does not impose an undue burden on intra-market competition because no Participant would be eligible for the fee reduction. Today, Customers are not eligible for this fee reduction because they are assessed a lower Non-Penny Pilot Options Fee for Removing Liquidity of $0.85 per contract.

The Exchange's proposal to extend the offer in note ''4'' to reduce the NOM Market Maker Non-Penny Pilot Options Fee for Removing Liquidity from $1.10 to $1.08 per contract, provided Participants qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2–8, does not impose an undue burden on intra-market competition because the Exchange will continue to uniformly assess the lower fee to Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tiers 2–8. Offering NOM Marker Makers the ability to reduce the Non-Penny Pilot Options Fee for Removing Liquidity, as compared to other market participants does not impose an undue burden on intra-market competition because of the obligations borne by these NOM Market Makers.[30]

[28] *See* Phlx's Pricing Schedule. A Floor QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the NBBO; and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Phlx Rule 1064(e). *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56).

[29] *See also* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56) (Order Granting Approval of Proposed Rule Change Establishing a Qualified Contingent Cross Order for Execution on the Floor of the Exchange).

[30] *See* note 26 above.

MARS

MARS Eligible Contracts

The Exchange's proposal to replace the 5,000 Eligible Contracts with ADVs of either: 2,500, 5,000 or 10,000 does not impose an undue burden on intra-market competition because the criteria for Eligible Contracts and ADVs will be uniformly applied to all qualifying NOM Participants. Also, only counting add liquidity from Firms, Non-NOM Market Makers, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed does not impose an undue burden on intra-market competition because the Exchange will uniformly calculate the number of Eligible Contracts for all NOM Participants.

MARS Payment

The Exchange's proposal to replace the $0.10 per contract MARS Payment with a 3 tiered MARS Payment based on Eligible Contract ADVs does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the proposed 3 tiered MARS Payments provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange does not impose an undue burden on intra-market competition because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to pay the applicable MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System, does not impose an undue burden on intra-market competition because the Exchange will uniformly calculate the MARS Payment for all NOM Participants and uniformly pay the MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System.

The Exchange believes that paying the proposed MARS Payment to qualifying NOM Participants that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different NOM Participant, other than the NOM Participant receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange and would be uniformly applied to all qualifying NOM Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[31]

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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–015 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–NASDAQ–2016–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–015, and should be submitted on or before March 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03390 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(ii).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77128; File No. SR–NYSEArca–2015–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To List and Trade Shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF Under NYSE Arca Equities Rule 8.600

February 12, 2016.

On December 10, 2015, NYSE Arca, Inc. (''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 list and trade shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on December 30, 2015.[3] On January 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On January 27, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.[5] On February 11, 2016, the Exchange submitted Amendment No. 3 to the proposed rule change.[6] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[7] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 13, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates March 29, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2015–107), as modified by Amendment Nos. 1, 2, and 3 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03391 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 76761 (December 23, 2015), 80 FR 81564.

[4] In Amendment No. 1, which replaced and superseded the original filing in its entirety, the Exchange clarified the Funds' direct and indirect principal and other investments; the determination of the value of certain underlying assets for purposes of the Funds' net asset value calculation; and the availability of price information for certain underlying assets. Because Amendment No. 1 is a technical amendment that adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-1.pdf*).

[5] In Amendment No. 2, the Exchange made additional clarifying changes regarding the Funds' other investments; the availability of price information for certain underlying assets; and the dissemination of the Portfolio Indicative Value. Because Amendment No. 2 is a technical amendment that adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment (Amendment No. 2 to the proposed rule change is available at: *http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-2.pdf*).

[6] In Amendment No. 3, the Exchange expanded the application of the criteria for non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio so that they will apply on a continual basis. Because Amendment No. 3 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77129; File No. SR–BX–2016–010]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates Applicable to Firms and To Adopt Tiers Applicable to Options Overlying SPY

February 12, 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 February 1, 2016, NASDAQ 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 its Options Pricing at Chapter XV Section 2, entitled ''BX Options Market—Fees and Rebates,'' which governs pricing for BX members using the BX Options Market (''BX Options''). The Exchange proposes to modify certain fees and rebates (per executed contract) to: (1) Adopt fees and rebates applicable to Firm[3] and (2) adopt tiers applicable to options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'').[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

[4] SPY options are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index, and are Penny Pilot Options. The Penny Pilot was established in June 2012 and extended in 2015. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) regarding certain fees and rebates [5] (known as ''fees and rebates'') to (1) adopt fees and rebates applicable to Firm; and (2) adopt tiers applicable to options overlying SPY (the ''SPY Option Tier Schedule''). The proposed modified fees and rebates (per executed contract) and new SPY Option Tier Schedule would apply to Customers,[6] BX Options Market Makers,[7] Non-Customers [8] and Firms.

Each specific change is described in detail below.

Currently, Chapter XV, Section 2 subsection (1) reads as follows:

(1) Fees for Execution of Contracts on the BX Options Market:

FEES AND REBATES

[Per executed contract]

	Customer	BX Options Market Maker	Non-Customer [1]
Penny Pilot Options:			
Rebate to Add Liquidity	#	[2] $0.10	N/A
Fee to Add Liquidity	#	[3] $0.39	$0.45
Rebate to Remove Liquidity	#	N/A	N/A
Fee to Remove Liquidity	N/A	#	$0.46
Non-Penny Pilot Options:			
Rebate to Add Liquidity	*	N/A	N/A
Fee to Add Liquidity	*	[5] $0.50/$0.95	$0.98
Rebate to Remove Liquidity	*	N/A	N/A
Fee to Remove Liquidity	N/A	*	$0.89

[1] A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.
[2] The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker.
[3] The Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.
[4] Reserved
[5] The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

PENNY PILOT OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
When	Customer	Customer	Customer	BX Options Market Maker.	BX Options Market Maker.
Trading with	Non-Customer or BX Options Market Maker.	Customer	Non-Customer, BX Options Market Maker, or Customer.	Customer	Non-Customer or BX Options Market Maker.
Tier 1:					
Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	$0.00	$0.39	$0.00	$0.39	$0.46.
Tier 2:					
Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	$0.10	$0.39	$0.25	$0.39	$0.46.
Tier 3:					
Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	$0.20	$0.39	$0.35	$0.30	$0.46.

[5] Fees and rebates are per executed contract. Chapter XV, Section 2(1).

[6] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV.

[7] BX Options Market Makers may also be referred to as ''Market Makers''. The term ''BX Options Market Maker'' or (''M'') means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

[8] Note 1 to Chapter XV, Section 2 states: ''[1]A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.'' Firm is proposed to be removed from the note.

* NON-PENNY PILOT OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
When	Customer	Customer	Customer	BX Options Market Maker.	BX Options Market Maker.
Trading with	Non-Customer or BX Options Market Maker.	Customer	Non-Customer, BX Options Market Maker, or Customer.	Customer	Non-Customer or BX Options Market Maker.
Tier 1:					
Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	$0.00	$0.85	$0.80	$0.89	$0.89.
Tier 2:					
Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	$0.10	$0.85	$0.80	$0.89	$0.89.
Tier 3:					
Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	$0.20	$0.85	$0.80	$0.60	$0.89.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options [9] and for Non-Penny Pilot Options to add a new Firm column. The proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.[10] The Exchange notes that by adding the new Firm column it is not changing any fees and rebates for Firm. Rather, all fees and rebates applicable to Firm are now in the new Firm column but remain exactly the same as they are currently for Firm when it is part of the Non-Customer column. Commensurate with the proposed Firm column, the Exchange also proposes to change notes 1 and 2 so that these notes read properly. The Exchange proposes to take out ''Firm'' in note 1 and to add ''Firm'' in note 2.

The proposed change keeps current fees and rebates assessments intact. Thus, for Penny Pilot Options: The Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at $0.45 for Non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Remove Liquidity would remain at $0.46 for non-Customer and would be the same for Firm. Thus, for Non-Penny Pilot Options: The Rebate to Add Liquidity would remain at N/A for Non-Customer and would be the same for Firm; the Fee to Add Liquidity would remain at $0.98 for non-Customer and would be the same for Firm; the Rebate to Remove Liquidity would remain at N/A for Non-Customer and would be the same for Firm; and the Fee to Add Liquidity would remain at $0.89 for non-Customer and would be the same for Firm.

Chapter XV, Section 2 subsection (1) reflecting the proposed new Firm column is set forth below.

Change 2—Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY Options and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Exchange proposes new The Tier 1, Tier 2, and Tier 3 requirements which will be similar to tiers in the current Penny Pilot Options Tier Schedule; and a new Tier 4.

Specifically, the Exchange proposes to add SPY Options Tiers 1–4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm [11]), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity for BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

Proposed Tier 1 in the SPY Options Tier Schedule will be where a BX Participant (''Participant'') executes less than 0.05% of total industry customer equity and exchange traded fund (''ETF'') option average daily volume (''ADV'') contracts per month. Proposed Tier 1 will range from a $0.00 rebate to a $0.42 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.00 (no rebate will be paid); [12]

[9] The greatest volume options traded on the Exchange and in the options market are Penny Pilot Options, and in particular SPY Options, and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

[10] Currently, note 1 states: ''A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.''

[11] Commensurate with establishing a Firm column, and in particular indicating Firm in the new SPY Options Tier Schedule, the Exchange proposes to add Firm in the Non-Penny Pilot Options Tier Schedule (*e.g.,* Rebate to Add Liquidity, Rebate to Remove Liquidity, Fee to Remove Liquidity).

[12] The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.42; [13]
—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.00; [14] and
—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.42.[15]

Proposed Tier 2 in the SPY Options Tier Schedule will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 2 will range from a $0.25 rebate to a $0.42 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.10.[16]
—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.42; [17]
—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.25; [18] and
—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.42.[19]

Proposed Tier 3 in the SPY Options Tier Schedule will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 3 will range from a $0.37 rebate to a $0.39 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.20.[20]
—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.39; [21]
—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.37; [22] and
—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.39.[23]

Proposed Tier 4 in the SPY Options Tier Schedule, which has no equivalent in the Penny Pilot Options Tier Schedule, will be where Participant executes greater than 5,000 ADV in BX Price Improvement Auction (''PRISM'') Agency Contracts.[24] If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other SPY tier rates that the Participant may that [sic] qualify for. Proposed Tier 4 will range from a $0.37 rebate to a $0.32 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.25.
—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.32;
—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.37; and
—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.25.

In addition, the Exchange proposes several explanatory notes at the end of the SPY Options Tier Schedule:

—BX Options Market Maker fee to add liquidity in SPY Options will be $0.00 when trading with Firm, Non-Customer, or BX Options Market Maker;
—Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.33 per contract, regardless of counterparty;
—Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.46 per contract, regardless of counterparty;
—BX Options Market Maker fee to remove liquidity in SPY Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker;
—Customer fee to add liquidity in SPY Options when contra to another Customer is $0.33 per contract; and
—Volume from all products listed on BX Options will apply to the SPY Options Tiers. Chapter XV, Section 2 subsection (1) reflecting all proposed changes will read as follows:

(1) Fees for Execution of Contracts on the BX Options Market:

FEES AND REBATES

[Per executed contract]

	Customer	BX Options Market Maker	Non-Customer [1]	Firm
Penny Pilot Options (Excluding Options in SPY):				
Rebate to Add Liquidity	#	[2] $0.10	N/A	N/A
Fee to Add Liquidity	#	[3] $0.39	$0.45	$0.45
Rebate to Remove Liquidity	#	N/A	N/A	N/A

[13] There is no similar fee in the current Penny Pilot Options Tier Schedule.

[14] The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add [sic] Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

[15] The Fee to Remove Liquidity is $0.39 in the current Penny Pilot Options Tier Schedule. However, in the new rebate the Exchange proposes to add that the rebate is also applicable when trading with Firm, which is proposed to be separate from Non-Customer. For purposes of conformity, Firm is proposed to be added to the Rebate to Add Liquidity for Customer in the Penny Pilot Tier Schedule, the SPY Options Tier Schedule, and the Non-Penny Pilot Tier Schedule.

[16] The new Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

[17] There is no similar fee in the current Penny Pilot Options Tier Schedule.

[18] The new Rebate to Remove Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

[19] The Fee to Remove Liquidity is $0.39 in the current Penny Pilot Options Tier Schedule.

[20] The Rebate to Add Liquidity is similar to what is in the current Penny Pilot Options Tier Schedule.

[21] There is no similar fee in the current Penny Pilot Options Tier Schedule.

[22] The Rebate to Remove Liquidity is $0.35 in the current Penny Pilot Options Tier Schedule.

[23] The Fee to Remove Liquidity is $0.30 in the current Penny Pilot Options Tier Schedule.

[24] PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an ''Initiating Participant'') may electronically submit for execution an order it represents as agent on behalf of customer, n6 [sic] broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant [sic]. *See* Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (order approving BX PRISM).

FEES AND REBATES—Continued

[Per executed contract]

	Customer	BX Options Market Maker	Non-Customer [1]	Firm
Fee to Remove Liquidity	N/A	#	$0.46	$0.46
Non-Penny Pilot Options:				
Rebate to Add Liquidity	*	N/A	N/A	N/A
Fee to Add Liquidity	*	[5] $0.50/$0.95	$0.98	$0.98
Rebate to Remove Liquidity	*	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	*	$0.89	$0.89

[1] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.
[2] The Rebate to Add Liquidity will be paid to a BX Options Market Maker only when the BX Option Market Maker is contra to a Non-Customer, Firm, or BX Options Market Maker.
[3] The Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.
[4] Reserved.
[5] The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker only when the BX Options Market Maker is contra to a Customer.

PENNY PILOT OPTIONS TIER SCHEDULE

[Excluding SPY Options]

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
When:	Customer	Customer	Customer	BX Options Market Maker.	BX Options Market Maker.
Trading with:	Non-Customer, BX Options Market Maker, or Firm.	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm.	Customer	Non-Customer, BX Options Market Maker, or Firm.
Tier 1:					
Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	$0.00	$0.39	$0.00	$0.39	$0.46.
Tier 2:					
Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	$0.10	$0.39	$0.25	$0.39	$0.46.
Tier 3:					
Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	$0.20	$0.39	$0.35	$0.30	$0.46.

SPY OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity
When:	Customer	BX Options Market Maker.	Customer	BX Options Market Maker.
Trading with:	Non-Customer, BX Options Market Maker, or Firm.	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm.	Customer.
Tier 1:				
Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	$0.00	$0.42	$0.00	$0.42.
Tier 2:				
Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	$0.10	$0.42	$0.25	$0.42.
Tier 3:				
Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	$0.20	$0.39	$0.37	$0.39.

SPY OPTIONS TIER SCHEDULE—Continued

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity
Tier 4:				
Participant executes greater than 5,000 ADV in PRISM Agency Contracts.	$0.25	$0.32	$0.37	$0.25.

• BX Options Market Maker fee to add liquidity in SPY Options will be $0.00 when trading with Firm, Non-Customer, or BX Options Market Maker.
• Firm fee to add liquidity and fee to remove liquidity in SPY Options will be $0.33 per contract, regardless of counterparty.
• Non-Customer fee to add liquidity and fee to remove liquidity in SPY Options will be $0.46 per contract, regardless of counterparty.
• BX Options Market Maker fee to remove liquidity in SPY Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
• Customer fee to add liquidity in SPY Options when contra to another Customer is $0.33 per contract.
• Volume from all products listed on BX Options will apply to the SPY Options Tiers.

*NON-PENNY PILOT OPTIONS TIER SCHEDULE

	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
When:	Customer	Customer	Customer	BX Options Market Maker.	BX Options Market Maker.
Trading with:	Non-Customer, BX Options Market Maker, or Firm.	Customer	Non-Customer, BX Options Market Maker, Customer, or Firm.	Customer	Non-Customer, BX Options Market Maker, or Firm.
Tier 1:					
Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.	$0.00	$0.85	$0.80	$0.89	$0.89.
Tier 2:					
Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.	$0.10	$0.85	$0.80	$0.89	$0.89.
Tier 3:					
Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month.	$0.20	$0.85	$0.80	$0.60	$0.89.

The Exchange is proposing fees and rebate changes and adopting the SPY Options Tier Schedule at this time because it believes that this will provide incentives for execution of contracts, and in particular SPY Options contracts, on the BX Options Market.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[26] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is 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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues* [sic] and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [28] (''NetCoalition'') the D.C. 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.[29] 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.'' [30]

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';

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4), (5).

[27] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[28] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[29] *See id.* at 534–535.

[30] *See id.* at 537.

[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'. . . .'' [31] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2 to modify subsection (1) to adopt fees and rebates applicable to Firm, and to adopt a new SPY Option Tier Schedule. The proposed modified fees and rebates and new SPY Option Tier Schedule would, as discussed, apply to Customers, BX Options Market Makers, Non-Customers, and Firms. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add Firm Column

In Change 1, the Exchange proposes modifications to its fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column; and to make changes to notes to properly reflect the use of the new Firm column. The proposed Firm column would have exactly the same assessments or rates as the current Non-Customer column, which now includes Firm.

The proposed change is reasonable because it simply establishes a new Firm column but keeps current fees and rebate assessments intact. The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.[32] The proposed change is also reasonable because it continues, through the fees and rebates schedule, to incentivize Participants to direct Penny Pilot Options liquidity[33] and Non-Penny Pilot Options liquidity to the Exchange.

The proposed rule change to fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and to make changes to notes to properly reflect the use of the new Firm column, is equitable and not unfairly discriminatory. This is because the Exchange's proposal keeps current fees and rebate assessments intact, and the fees and rebates schedule will continue to apply uniformly to all similarly situated Participants.

The fees and rebates schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, and notes that some market participants like BX Options Market Makers commit to various obligations. For example, transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[34]

The Exchange believes that by making the proposed Firm column change, it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

Change 2—Penny Pilot Options: Modify Fees and Rebates To Add SPY Options Tiers

In Change 2, the Exchange proposes modifications to its current Penny Pilot Options Tier Schedule to indicate that this particular schedule does not apply to SPY Options, and that for SPY Options pricing there will be a separate SPY Options Tier Schedule. The Tier 1, Tier 2, and Tier 3 requirements in the proposed SPY Options Tier Schedule will be similar to the current Penny Pilot Options Tier Schedule. The Exchange also proposes a new Tier 4 for the SPY Options Tier Schedule. Specifically, the Exchange proposes to add SPY Options Tiers 1–4 for Rebate to Add Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, or Firm), Fee to Add Liquidity for BX Market Maker (when trading with Customer), Rebate to Remove Liquidity for Customer (when trading with Non-Customer, BX Options Market Maker, Customer, or Firm), and Fee to Remove Liquidity or [sic] BX Options Market Maker (when trading with Customer). The Exchange also proposes several explanatory notes applicable to the SPY Option Tier Schedule.

The Exchange believes that excluding SPY Options pricing form the Penny Pilot Options Tier Schedule and establishing a separate SPY Options Tier Schedule is reasonable because of the nature of SPY options. These are most heavily traded options on the Exchange as well as in the industry.

The Exchange believes that the proposed SPY Options Tier Schedule is reasonable because it is not a novel, untested structure but rather is similar to what is offered by other options markets,[35] and, is based on the Exchange's Penny Pilot Options Tier Schedule. The proposed Tiers in the SPY Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[36] Tier 1 in the SPY Options Tier Schedule is, similarly to Tier 1 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month. Tier 2 in the SPY Options Tier Schedule is, similarly to Tier 2 in the Penny Pilot Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. And Tier 3 in the SPY Options Tier Schedule is, similarly to Tier 3 in the Penny Pilot Options Tier Schedule, set up to [sic] Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. The fees and rebates that BX Options Market Makers and Customers are assessed are, as has been discussed at length, comparable to

[31] *Id.* at 539 (quoting Securities Exchange [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

[32] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (''NOM''), NASDAQ PHLX LLC (''Phlx''), and Chicago Board Options Exchange (''CBOE'').

[33] Penny Pilot Options, and in particular SPY Options, represent the greatest volume options traded on the Exchange and in the options market and the Exchange has taken this into account when structuring and modifying its fee and rebate schedule.

[34] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers.''

[35] *See, e.g.,* the pricing schedule of Phlx. *See also, e.g.,* the pricing schedule of NASDAQ Options Market (''NOM'').

[36] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NOM, Phlx, and Chicago Board Options Exchange (''CBOE'').

the fees and rebates in the Penny Pilot Options Tier Schedule. The Exchange believes that it is reasonable to also establish Tier 4 in the in the [sic] SPY Options Tier Schedule in order to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in SPY where the Participant executes greater than 5,000 ADV in certain PRISM Contracts. By so doing, the Exchange encourages Participants to trade Prism Contracts, which have been recently approved for trading.[37]

In addition, the Exchange believes that making changes to add the SPY Options Tier Schedule in terms of Rebate to Add Liquidity and Fee to Add Liquidity, and Rebate to Remove Liquidity and Fee to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The SPY Options Tier Schedule is reasonable in that it is, like the Penny Pilot Options Tier Schedule, set up to incentivize Participants to direct liquidity to the Exchange; using volume from all products listed on BX Options will further incentivize Participants. As Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, in the SPY Options Tier Schedule the Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm is higher ($0.20) than the Penny Pilot [sic] Tier 1 Rebate to Add Liquidity ($0.00); and the Tier 3 Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm is higher ($0.37) that [sic] the Tier 2 Rebate to Remove Liquidity ($0.25). Similarly, the Fee to Add Liquidity when BX Option Market Maker trading with Customer is lesser for Tier 3 ($0.39) than for Tier 1 ($0.42); and the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is less for Tier 3 ($0.39) than for Tier 1 ($0.42).

The Exchange believes that it is reasonable to add notes to the SPY Options Tier Schedule as they are explanatory in nature. Five such notes explain that unlike how new Tiers 1–4 function, certain fees (*e.g.* BX Options Market Maker, Firm, Non-Customer, and Customer) remain the same regardless of counterparty. The Exchanges believes that it is also reasonable for conformity to indicate Firm across fees and rebates, the new SPY Options Tier Schedule, the Penny Pilot Options Tier Schedule, and the Non-Penny Pilot Options Tier Schedule.

Establishing the SPY Options Tier Schedule, which includes new Tiers 1–4, is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Tiers 1, 2, 3, and 4 will apply uniformly to all similarly situated Participants. Customers would earn a Rebate to Add Liquidity and be assessed a Fee to Add Liquidity according to the Tiers, and BX Market Makers would earn a Rebate to Remove Liquidity [sic] and a Fee to Remove Liquidity according to the same Tiers per the SPY Options Tier Schedule; and certain fees would be the same regardless of counterparty. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because some market participants like BX Options Market Makers commit to obligations such as that transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.

The Exchange believes that by making the proposed Penny Pilot Options changes it is incentivizing Participants to execute more volume on the Exchange to further enhance liquidity in this market.

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. Specifically, the Exchange does not believe that its proposal to make changes to its Penny Pilot Options and Non-Penny Pilot Options fees and rebates and to establish a SPY Options Tiers Schedule will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates and [sic] for Penny Pilot Options and Non-Penny Pilot Options and establishing a SPY Options Tiers Schedule in order to remain competitive in the current environment.

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. 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 rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (*e.g.,* Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional

[37] *See* Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (order approving BX PRISM).

corresponding increase in order flow from other market participants.

Moreover, unlike others market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.[38]

In this instance, the proposed changes to the fees and rebates for Penny Pilot Options and for Non-Penny Pilot Options to add a new Firm column, and establishing a SPY Options Tiers Schedule, do not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. 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. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[39] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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, 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–2016–010 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–BX–2016–010. 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–2016–010 and should be submitted on or before March 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03392 Filed 2–18–16; 8:45 am]

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[38] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers''.

[39] 15 U.S.C. 78s(b)(3)(A)(ii).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77122; File No. 4–697]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and ISE Mercury, LLC

February 11, 2016.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on February 9, 2016, ISE Mercury, LLC (''ISE Mercury'') and the Financial Industry Regulatory Authority, Inc. (''FINRA'') (together with ISE Mercury, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a plan for the allocation of regulatory responsibilities, dated February 8, 2016 (''17d–2 Plan'' or the ''Plan''). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.[4] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members'') for compliance with certain rules that are substantially

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

identical across multiple SROs. Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[5] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[8] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[9] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both ISE Mercury and FINRA.[10] Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the ''ISE Mercury Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every ISE Mercury rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to ISE Mercury members that are also members of FINRA and the associated persons therewith (''Dual Members'').

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of ISE Mercury that are substantially similar to the applicable rules of FINRA,[11] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification (''Common Rules''). In the event that a Dual Member is the subject of an investigation relating to a transaction on ISE Mercury, the plan acknowledges that ISE Mercury may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.[12]

Under the Plan, ISE Mercury would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving ISE Mercury's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any ISE Mercury rules that are not Common Rules.[13]

The text of the proposed 17d–2 Plan is as follows:

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND ISE MERCURY, LLC PURSUANT TO RULE 17d–2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (''FINRA'') and ISE Mercury, LLC (''ISE Mercury''), is made this 8th day of February, 2016 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and ISE Mercury may be referred to individually as a ''party'' and together as the ''parties.''

WHEREAS, FINRA and ISE Mercury desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and ISE Mercury desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and ISE Mercury hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

[5] 15 U.S.C. 78q(d)(1).

[6] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[8] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[9] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[10] The proposed 17d–2 Plan refers to these common members as ''Dual Members.'' *See* Paragraph 1(c) of the proposed 17d–2 Plan.

[11] *See* paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). *See also* paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either ISE MERCURY rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that ISE MERCURY shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

[12] *See* paragraph 6 of the proposed 17d–2 Plan.

[13] *See* paragraph 2 of the proposed 17d–2 Plan.

(a) ''*ISE Mercury Rules*'' or ''*FINRA Rules''* shall mean the rules of ISE Mercury or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the ISE Mercury Rules that are substantially similar to the applicable FINRA Rules set forth in *Exhibit 1* in that examination for compliance with such rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule.

(c) ''*Dual Members*'' shall mean those ISE Mercury members that are also members of FINRA and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 13.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, ISE Mercury furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rule (the ''Certification''). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the ISE Mercury Rules or FINRA Rules, ISE Mercury shall submit an updated list of Common Rules to FINRA for review which shall add ISE Mercury Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE Mercury Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE Mercury Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and ISE Mercury shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the ''Retained Responsibilities''):

(a) surveillance and enforcement with respect to trading activities or practices involving ISE Mercury's own marketplaces, including without limitation ISE Mercury's Rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (*i.e.,* registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any ISE Mercury Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, ISE Mercury shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to ISE Mercury by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide ISE Mercury with ninety (90) days advance written notice in the event FINRA decides to impose any charges to ISE Mercury for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, ISE Mercury shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any ISE Mercury Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify ISE Mercury of those apparent violations for such response as ISE Mercury deems appropriate. In the event ISE Mercury becomes aware of apparent violations of the Common Rules, discovered pursuant to the performance of the Retained Responsibilities, ISE Mercury shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of all the Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on ISE Mercury, ISE Mercury may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance. FINRA shall make available to ISE Mercury all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish ISE Mercury any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, ISE Mercury acknowledges and agrees to take all reasonable steps to maintain its confidentiality. ISE Mercury shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all

applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the ISE Mercury Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise ISE Mercury of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the ISE Mercury Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep ISE Mercury advised of its actions in this regard for such subsequent proceedings as ISE Mercury may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) meets the ISE Mercury requirements for general membership or for specified categories of membership or participation in ISE Mercury, such as (A) Primary Market Maker Membership (''PMM''); (B) Competitive Market Maker Membership (''CMM''); (C) Electronic Access Membership (''EAM'') (or any similar type of ISE Mercury membership or participation that is created after this Agreement is executed); or (ii) meets the ISE Mercury requirements to be associated with, or employed by, a ISE Mercury member or participant in any capacity, such a Designated Trading Representative (''DTR'') (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of ISE Mercury, or a person associated with, or requesting association with, a member or participant of ISE Mercury.

9. Branch Office Information. FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise ISE Mercury of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. Customer Complaints. ISE Mercury shall forward to FINRA copies of all customer complaints involving Dual Members received by ISE Mercury relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by ISE Mercury or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as may be agreed by the parties), except as provided in paragraph 4.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, ISE Mercury and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

15. Separate Agreement. This Agreement is wholly separate from (1) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, the Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, the New York Stock Exchange, LLC, the NYSE MKT LLC, the NYSE Arca Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and the NASDAQ OMX PHLX, LLC approved by the Commission on December 5, 2012 involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants or (2) the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., BOX Options Exchange, LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc. and Miami International Securities Exchange, LLC, approved by the Commission on December 5, 2012 involving options-related market surveillance matters and such agreements as may be amended from time to time.

16. Notification of Members. ISE Mercury and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

17. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

18. Limitation of Liability. Neither FINRA nor ISE Mercury nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or ISE Mercury and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or ISE Mercury with respect to any of the responsibilities to be performed by each of them hereunder.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or

affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, FINRA and ISE Mercury join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE Mercury of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

21. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By _____

Name:

Title:

ISE MERCURY, LLC

By _____

Name:

Title:

EXHIBIT 1

ISE MERCURY CERTIFICATION OF COMMON RULES

ISE Mercury hereby certifies that the requirements contained in the rules listed below for ISE Mercury are identical to, or substantially similar to, the comparable FINRA Rules or SEC Rules identified.

ISE Mercury rule	FINRA or SEC rule [1]
400 Just and Equitable Principles of Trade	FINRA Rule 2010 Standards of Commercial Honor and Just and Equitable Principles of Trade; FINRA Rule 0140(a) Applicability.
408(a)(1) Prevention of the Misuse of Material, Nonpublic Information	Section 15(f) of the Securities Exchange Act of 1934.
409 Disciplinary Action #	FINRA Rule 4530(a)(1)(A) and (2) Reporting Requirements.
420 Anti-Money Laundering Compliance Program #	FINRA Rule 3310 Anti-Money Laundering Compliance Program.
603 Termination of Registered Persons	FINRA By-Laws, Article V, Section 3.
604 Continuing Education for Registered Persons [2] #	FINRA Rule 1250 Continuing Education Requirements.
614 Statements of Financial Condition to Customers	Rule 17a–5 of the Securities Exchange Act of 1934.
622 Transfer of Accounts	FINRA rule 11870 Customer Account Transfer Contracts.
626 Telephone Solicitation	FINRA Rule 3230 Telemarketing.
1400(a) Maintenance, Retention, and Furnishing of Books, Records and Other Information [3].	FINRA Rule 4511(a) Books and Records—Requirements.

INRA shall not have Regulatory Responsibilities regarding notification or reporting to ISE Mercury. In addition, FINRA shall only have Regulatory Responsibilities to the extent the exercise of discretion by ISE Mercury is the same as FINRA.

[1] ISE Mercury will be responsible for any significant differences between its rules and the comparable FINRA rule identified, until such time amendments to such rule(s) become operative.

[2] FINRA shall not have Regulatory Responsibilities with regard to the application of the rule to the Series 56 registration.

[3] FINRA shall not have Regulatory Responsibilities regarding the requirement to "keep current and preserve such books and records as the Exchange may prescribe;" responsibility for such requirement remains with ISE Mercury.

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act [14] and Rule 17d–2 thereunder,[15] after March 7, 2016, the Commission may, by written notice, declare the plan submitted by ISE Mercury and FINRA, File No. 4–697, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d–2 Plan and to relieve ISE Mercury of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–697 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–697. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of ISE Mercury and 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 4–697 and should be submitted on or before March 7, 2016.

[14] 15 U.S.C. 78q(d)(1).

[15] 17 CFR 240.17d–2.

[16] 17 CFR 200.30–3(a)(34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03300 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Schedule 14D–9F, SEC File No. 270–339, OMB Control No. 3235–0382.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14D–9F (17 CFR 240.14d–103) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) is used by any foreign private issuer incorporated or organized under the laws of Canada or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. We estimate that Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours (2 hours per response x 6 responses).

Written comments are invited on: (a) Whether this 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) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 12, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03403 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 14f–1, SEC File No. 270–127, OMB Control No. 3235–0108.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Exchange Act Rule 14f–1 (17 CFR 240.14f–1), if a person or persons have acquired securities of an issuer in a transaction subject to Sections 13(d) or 14(d) of the Exchange Act, and changes a majority of the directors of the issuer otherwise than at a meeting of security holders, then the issuer must file with the Commission and transmit to security holders information related to the change in directors within 10 days prior to the date the new majority takes office as directors. The information filed under Rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 64 respondents for a total annual reporting burden of 1,152 hours (18 hours per response x 64 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 12, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03400 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77125; File No. SR–Phlx–2016–14]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1066

February 12, 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 February 4, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 1066, Certain Types of Floor-Based (Non-PHLX XL) Orders Defined, as described further below.

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 the proposal is to update Rule 1066 in several ways by deleting obsolete provisions. Rule 1066 describes the order types that can be executed on the options trading floor, as opposed to electronically through the Phlx XL trading system.[3]

First, the Exchange proposes to delete the following two order types related to the opening: (i) Opening-only-market order;[4] and (ii) limit on opening order.[5] Both of these order types became obsolete when the Exchange automated the opening process.[6] Rule 1017(c), Orders Represented by Floor Brokers, clearly states that to be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically.[7] Thus, these order types that are only valid on the opening can no longer be entered manually under Rule 1066.[8]

Second, the Exchange proposes to delete Commentary .01 to Rule 1066, which governs spread, straddle and combination orders respecting foreign currency options. This commentary is obsolete because the Exchange no longer lists American style foreign currency options such that there can no longer be a spread, straddle or combination order involving American and European style contracts.[9] The Exchange continues to list European style foreign currency options contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by updating Rule 1066 to eliminate obsolete provisions. Obsolete opening-related order types could potentially confuse investors, as could references to an expiration style that is not offered respecting foreign currency options.

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 proposal merely updates obsolete provisions. The proposal affects all participants who trade on the options trading floor equally, such that it does not impact intra-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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, 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–2016–14 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–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[3] *See* Rule 1080.

[4] An opening-only-market order is a market order which is to be executed in whole or in part during the opening rotation of an options series or not at all. *See* Rule 1066(c)(5).

[5] A limit on opening order is a limit order which is to be executed in whole or in part during the opening rotation of an options series or not at all. *See* Rule 1066(c)(9).

[6] In May 2009, the Exchange enhanced its trading system, including automating the opening process. *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] Floor Brokers enter orders onto the electronic book using the Options Floor Broker Management System. *See* Rule 1063(e).

[8] Rule 1080(b)(i)(A) permits the electronic entry of these order types.

[9] American style options can be exercised at any time until they expire. *See* Rule 1000(b)(34).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(a)(iii).

[13] 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.

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–2016–14 and should be submitted on or before March 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03388 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31996; File No. 812–14532]

Innovator Management LLC, et al.; Notice of Application

February 12, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) 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 be effected at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the open-end investment company to deposit securities into, and receive securities from, such investment company in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares beyond the limits of section 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Innovator Management LLC (the ''Innovator''), Academy Funds Trust (the ''Trust''), and Quasar Distributors, LLC (the ''Distributor'').

FILING DATES: The application was filed on August 12, 2015, and amended on December 3, 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 March 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Innovator and the Trust, 325 Chestnut Street, Suite 512, Philadelphia, PA 19106; Distributor, 615 East Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Parisa Haghshenas, Senior Counsel at (202) 551–6723, or Holly L. Hunter-Ceci, Branch Chief, at (202) 551–6825 (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. The Trust is registered under the Act as an open-end management investment company.

2. Innovator is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and will be the investment adviser to the Initial Funds (as described in Appendix A of the application). Any other Adviser (defined below) will also be registered as an investment adviser under the Advisers Act. Each Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be subject to registration under the Advisers Act.

3. Quasar is, and each distributor for a Fund will be, a broker-dealer registered under the Securities Exchange Act of 1934, as amended (''Exchange Act'') and will act as distributor and principal underwriter of one or more of the Funds. The distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the Initial Funds and any future series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future that operate as exchange-traded funds (''ETFs'') and that track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (''Fixed Income Funds'') (''Future Funds'' and together with the Initial Funds, ''Funds''). Each Fund will (a) be advised by Innovator or an entity controlling, controlled by, or under common control with Innovator (each, an ''Adviser'') and

(b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, assets and other positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets, exclusive of collateral held from securities lending, in the component securities of its respective Underlying Index (''Component Securities''), or in the case of Fixed Income Funds, in the Component Securities of its respective Underlying Index and TBA Transactions[2] representing Component Securities. Funds that track Foreign Indexes are referred to as ''Foreign Funds,'' and may include Component Securities and depositary receipts representing foreign securities such as American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs'')(''Depository Receipts'') representing such Component Securities (or, in the case of Foreign Funds tracking Underlying Indexes for which Depositary Receipts are themselves Component Securities, underlying stocks in respect of such Depositary Receipts).[3] A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. At the end of each Business Day (defined below), the applicable Adviser for each Long/Short Fund and 130/30 Fund will provide full portfolio transparency on the Fund's Web site (''Web site'') by making available the identities and quantities of the Portfolio Holdings, including short positions and financial instruments that will form the basis for the Fund's calculation of NAV. In addition, with respect to each Self-Indexing Fund (defined below), the Web site will contain, each day that that NYSE, the relevant Exchange on which the Shares are listed (''Listing Exchange'') and the Trust are open for business and includes any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), before the commencement of trading of Shares on the Exchange (defined below),[5] the identities and quantities of the portfolio securities and other assets held by each Self-Indexing Fund that will form the basis for the Self-Indexing Fund's calculation of NAV at the end of the Business Day. The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities in its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that the returns of each Fund will have an annual tracking error of less than 5% relative to its Underlying Index.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains an Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the applicable Adviser, which has or will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Advisers, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of an Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

[1] Applicants represent that all existing entities that intend to rely on the requested order have been named as applicants, and that any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. Applicants acknowledge that a Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. Applicants represent that a 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, and that no affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each 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 able 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.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively referred to herein as ''Accounts''), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the potential ability of an affiliated person to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the affiliated person who may have access to or knowledge of changes to an Underlying Index's composition methodology or the constituent securities in an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Business Day, each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Exchange, the identities and quantities of the Portfolio Holdings held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Applicants believe that the disclosure of Portfolio Holdings would be unlikely to lead to ''front-running'' (where other persons would trade ahead of the Fund and the investors assembling the Deposit Instruments (as defined below) for purchases of Creation Units) any more than is the case with the ETFs now trading. Similarly, Applicants assert that the frequent disclosures of Portfolio Holdings would not lead to ''free riding'' (where other persons mirror the Fund's investment strategies without paying the Fund's advisory fees) any more than such disclosures cause this problem in connection with the ETFs now trading.

12. Applicants do not believe the potential for conflicts of interest raised by an Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Applicants contend that both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, Innovator has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by Innovator or an associated person (''Inside Information Policy''). Any other Adviser and/or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[9] and Inside Information Policy of each Adviser and Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit[10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. If the requested order is granted and the Adviser is required to prepare a Part 2 of its Form ADV, the Adviser will include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of an Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by an Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

15. The Shares of each Fund 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'').[11] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[12] 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

[8] In this regard, applicants cite rule 17j–1 under the Act and section 204A under the Advisers Act and rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] Applicants represent that each Adviser has also adopted or will adopt a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[11] Applicants acknowledge that 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''). Applicants further acknowledge that 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.

[12] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

are not tradeable round lots;[13] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[14] will be excluded from the Deposit Instruments and the Redemption Instruments;[15] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[16] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. 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 Cash Amount, as described above; (b) if, on a given Business Day, the 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, the Fund determines to require the purchase or redemption, as applicable, to be made *entirely in cash;*[17] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash *in lieu* of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[18]

17. Creation Units for Funds will consist of specified large aggregations of Shares, *e.g.,* at least 25,000 Shares, and it is expected that the initial price of a Creation Unit for Future Funds will be a minimum of $1 million and will fall in the range of $1 million to $10 million, and that the initial trading price per individual Share of each Fund will fall in the range of $10 to $100. All orders to purchase Shares of a Fund in Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association or other widely disseminated means, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[19] The Distributor will be responsible for delivering the Fund's prospectus to those persons purchasing Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

[13] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[14] 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.

[15] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[16] A Fund may only use sampling for this purpose if the sample: (i) is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (as defined below) on a given Business Day.

[17] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[18] 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).

[19] Where a Fund permits an ''in-kind'' purchaser to substitute cash in lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as market makers (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. The price of Shares trading on an Exchange will be based on a current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include, among others, institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[20] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help to ensure that Shares will not trade at a material discount or premium in relation to their NAV.

22. Shares are not individually redeemable; owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund in Creation Units only. To redeem through the applicable Fund, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. A redeeming investor will pay a Transaction Fee, imposed in the same amount and manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Although the Trust will be classified and registered under the Act as an open-end management investment company, the Funds will not be advertised or marketed or otherwise ''held out'' as a traditional open-end investment companies or a ''mutual funds.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

[20] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

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, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately 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 each Fund to register as an open-end management investment company and issue individual Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Creation Units on the secondary market and the price of the individual shares of a Creation Unit, taken together, should not vary materially from the NAV of a Creation Unit.

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 an 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 occurring on any Exchange will be effected at negotiated prices, not on the basis of NAV next calculated after receipt of any sale order. The Shares will trade on and away from the Listing Exchange at all times on the basis of current bid/offer prices. Thus, purchases and sales of Shares of each Fund will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been intended to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of 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 believe that the first two purposes would not seem to be relevant issues for secondary trading by dealers in Shares of the Fund. Applicants state that (a) secondary market trading in Shares do not directly involve a Fund's assets and will not result in dilution for

owners of such Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help ensure that Shares will not trade at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on delivery cycles in local markets for the underlying foreign securities held by a Foreign Fund. Applicants have been advised that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds holding Redemption Instruments, which require a delivery process in excess of seven calendar days, may provide payment or satisfaction of redemptions within not more than the maximum number of calendar days required for such payment or satisfaction in the principal local foreign market(s) where transactions in the Portfolio Holdings of each such Foreign Fund customarily clear and settle, but in all cases no later than fourteen calendar days following the tender of a Creation Unit.[21]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such 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 limits of section 12(d)(1)(A) and (B) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker-dealer registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence such as through the threat of large scale redemptions of the acquired fund's shares, layering of fees and expenses and unnecessary complexity. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[22] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition limiting the ability of a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any 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 a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a 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 limitation would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for 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'').

15. Applicants propose other conditions to limit the potential for

[21] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[22] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds 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 or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve duplication or layering of fees. 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 (''disinterested directors or trustees''), 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. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges or service fees 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.[23]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial purchases of Shares made in reliance on the requested order by declining to enter into a FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and 17(a)(2) of the Act

19. Sections 17(a)(1) and 17(a)(2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. 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 a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with an 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 an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). To the extent that there are twenty or fewer holders of Creation Units of all of the Funds or of one or more particular Funds, some or all of such holders will be at least 5 percent owners of such Funds, and one or more may hold in excess of 25 percent of such Funds, as the case may be and would therefore be deemed to be affiliated persons of such Funds either under Section 2(a)(3)(A) or Section 2(a)(3)(C).

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, 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) 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, to effectuate purchases and redemptions ''in-kind.''

21. 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. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner 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, but rather assert that such procedures

[23] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of Applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[24] Applicants state that the terms of the proposed arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by 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.[25] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF 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 index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. A Fund will not be advertised or marketed as an 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 Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, 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 the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing, Long/Short and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act

[24] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. 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 an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[25] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a 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.

(''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, under rule 12b-l under the Act) received from a Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any other 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 (i) the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03397 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Industry Guides, SEC File No. 270–069, OMB Control No. 3235–0069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Industry Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*) registration statements and certain other Exchange Act filings. The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience the Commission estimates the total annual burden imposed by the Industry Guides to be one hour.

Written comments are invited on: (a) Whether this 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) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 12, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03398 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77137; File No. SR–NASDAQ–2015–144]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Amend Rules 5810(4), 5810(c), 5815(c) and 5820(d) To Provide Staff With Limited Discretion To Grant a Listed Company That Failed To Hold Its Annual Meeting of Shareholders an Extension of Time To Comply With the Annual Meeting Requirement

February 12, 2016.

I. Introduction

On December 9, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to provide staff of NASDAQ's Listing Qualifications Department (''Staff'') with limited discretion to grant a listed company, that failed to timely hold its annual meeting of shareholders, a certain period of time to comply with the annual meeting requirement.[4] The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Companies listed on the Exchange must comply with various continued listing requirements, one of which is to hold an annual meeting no later than one year after the end of the company's fiscal year.[6] Currently, if an Exchange-listed company fails to hold its annual meeting, Staff has no discretion to allow additional time for the company to regain compliance. Instead, Staff is required to issue a Delisting Determination, subjecting the company to immediate suspension and delisting, unless the company appeals the Delisting Determination to the Hearings Panel.[7] The only other Exchange rules where a listed company is subject to immediate suspension and delisting is when a company fails to timely solicit proxies and when the Staff determines that the company's continued listing raises a public interest concern.[8] For all other deficiencies under the NASDAQ Listing Rules, a listed company is provided with either the opportunity to submit a plan to regain compliance or given a fixed cure period to regain compliance.[9]

The Exchange asserted in its filing that there are a variety of mitigating reasons why a listed company may fail to timely hold an annual meeting of shareholders.[10] For example, the Exchange states that it has observed

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] As described in more detail below, the total amount of time a listed company that fails to hold an annual meeting of shareholders can remain listed on the Exchange will not be changing under the proposed rule change.

[5] *See* Securities Exchange Act Release No. 76731 (December 22, 2015), 80 FR 81573 (''Notice'').

[6] Each company listing common stock or voting preferred stock, and their equivalents, must hold an annual meeting of shareholders no later than one year after the end of the company's fiscal year and solicit proxies for that meeting. *See* Exchange Rules 5620(a) and (b), respectively. The proposed rule change will also apply to Exchange listed companies that are limited partnerships required to hold an annual meeting. A company that is a limited partnership is not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. *See* Exchange Rules 5615(a)(4)(D) and (F); *see also* Notice, *supra* note 5, at 81573 n.3.

[7] *See* Exchange Rule 5810(c)(1). A listed company may request review of a Staff delisting determination by a Hearings Panel. *See* Exchange Rule 5815. A timely request for a hearing will stay the suspension and delisting pending the issuance of a written Panel Decision. *See* Exchange Rule 5815(a)(1)(A).

[8] *See* Exchange Rule 5810(c)(1); *see also* Notice, *supra* note 5, at 81573.

[9] *See* Exchange Rules 5810(c)(2) and (3); *see also* Notice, *supra* note 5, at 81573. Generally, a listed company is allowed 45 calendar days to submit a plan of compliance for certain deficiencies set forth in Exchange Rule 5810(c)(2)(i)–(iii). Upon review of the plan, Staff may grant the company up to 180 calendar days from the date of Staff's initial notification of the company's non-compliance to regain compliance. *See* Exchange Rule 5810(c)(2)(A) and (B); *see also* Exchange Rule 5810(c)(2)(F), which provides a company 60 calendar days to submit a plan to regain compliance for filing deficiencies. If upon review of the company's plan Staff determines that an extension is not warranted, Staff will issue a Delisting Determination, which triggers the company's right to request review by a Hearings Panel. *See* Exchange Rule 5815; *see also* Exchange Rule 5810(c)(2)(F).

[10] *See* Notice, *supra* note 5, at 81573.

cases where a listed company was required to reschedule the annual meeting after the meeting's deadline in order to provide its shareholders more time to review proxy materials in connection with a shareholder proxy contest.[11] The Exchange also stated that it had encountered listed companies that could not hold an annual meeting because the company was delinquent in filing periodic reports and, as a result, could not include the required financial information in a proxy statement.[12]

Accordingly, the Exchange has proposed to amend Exchange Rules 5810(4), 5810(c), 5815(c) and 5820(d) to provide listed companies that fail to hold a timely annual meeting with the ability to submit a plan of compliance for Staff's review.[13] In its filing, the Exchange proposed to amend Exchange Rule 5810(c)(1) by deleting the language that a failure of a listed company to timely hold its annual shareholders' meeting results in an immediate suspension and delisting. The Exchange also proposed to amend Exchange Rule 5810(c)(2)(A)(iii) by including references to Exchange Rules 5620(a) (Meeting of Shareholders) and 5615(a)(4)(D) (Partner Meetings of Limited Partnerships) under the list of deficiencies for which a listed company may submit a plan of compliance for Staff review.

Under proposed Exchange Rule 5810(c)(2)(G), in the case of deficiencies from the annual meeting requirements of Exchange Rules 5620(a) and 5615(a)(4)(D), Staff's notice shall provide the listed company with 45 calendar days to submit a plan to regain compliance with these provisions; provided, however, that the company shall not be provided with an opportunity to submit such a plan if review of a prior Staff Delisting Determination with respect to the company is already pending.[14] In determining whether to grant the company an extension to comply with the annual meeting requirement, and the length of any such extension, Staff will consider certain factors, which should be addressed in the company's compliance plan, including the likelihood that the listed company would be able to hold an annual meeting within the exception period, the company's past compliance history, the reasons for the failure to timely hold an annual meeting, corporate events that may occur within the exception period, the company's general financial status, and the company's disclosures to the market.[15] Under proposed Exchange Rule 5810(c)(2)(G), Staff would be limited to grant an extension upon review of the compliance plan, to no more than 180 calendar days from the deadline to hold the annual meeting. As noted above, the deadline to hold an annual meeting of shareholders is one year after the end of the company's fiscal year.[16] The Exchange is also making other conforming changes to the provisions in Exchange Rule 5810(c)(2)(B) to make clear that annual meeting deficiencies are governed by the new provisions in Exchange Rule 5810(c)(2)(G), rather than the plan review provisions that apply to other deficiencies.

The Exchange also has proposed to amend, in conjunction with the changes described above, Exchange Rules 5815(c) and 5820(d) to limit the maximum length of an extension that a NASDAQ Hearings Panel or the NASDAQ Listing and Hearing Review Council (''Council''), respectively, may grant a listed company for the failure to hold an annual meeting to no more than 360 calendar days from the date of non-compliance.[17] Under the Exchange's current rules, when a non-compliant company receives a Delisting Determination, it may appeal that determination to the Hearings Panel, which can grant an exception from the continuing listed standards (which require compliance with the annual meeting requirement) for a maximum of 180 calendar days from the date of the Delisting Determination,[18] and the company may further appeal an unfavorable Hearings Panel decision to the Council, which can grant an exception from the continuing listed standards for a maximum of 360 calendar days from the date of the Delisting Determination.[19] Therefore, under both the proposed rule change and the current rules, the total amount of time that a company could remain listed while not in compliance with the annual meeting requirement is 360 calendar days.[20]

Furthermore, the Exchange proposes to amend Exchange Rule 5810(4) to make clear that a Public Reprimand Letter is not an available notification type for unresolved deficiencies from the standards of Exchange Rules 5250(c) (Obligation to File Periodic Financial Reports), and the annual meeting requirements of Exchange Rules 5615(a)(4)(D), and 5620(a).

Lastly, the Exchange noted in its filing that a listed company that submits a plan of compliance and is not subject to the Exchange's all-inclusive annual listing fee program (''Fee Program'') prior to January 1, 2018 will be subject to the $5,000 compliance plan review fee, in addition to any other fees incurred in the appellate process, whereas a company that has opted-in to the Fee Program will not.[21]

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 rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the

[11] *See* Notice, *supra* note 5, at 81573–74.

[12] *See* Notice, *supra* note 5, at 81574. Under the current rules, the Exchange states that a listed company could receive an extension of time to regain compliance with the periodic filing requirement. However, if during any such compliance period the company subsequently fails to hold an annual meeting of shareholders for any reason, Staff would be required to immediately issue a Delisting Determination for both the periodic filing delinquency and the annual meeting deficiency, notwithstanding that the extended compliance period for the periodic filing delinquency has not expired. *See* Rule 5810(c)(2)(A); *see also* Notice, *supra* note 5, at 81574.

[13] *See* Notice, *supra* note 5, at 81574.

[14] *See* proposed Exchange Rule 5810(c)(2)(G)(i). The Exchange also proposes that Staff may extend the deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the listed company as is necessary to make a determination regarding whether to grant such an extension. *See id.*

[15] *See* proposed Exchange Rule 5810(c)(2)(G)(ii). Under this proposal, Staff review on whether to grant additional time to comply will be based on information provided by a variety of sources, which may include the listed company, its audit committee, its outside auditors, the staff of the Commission, and any other regulatory body. *See id.*

[16] *See* proposed Exchange Rule 5810(c)(2)(G)(ii). In its filing, the Exchange noted that it has observed that a substantial majority of listed companies that received delisting notices for failing to hold their annual meetings regain compliance within a six month period. *See* Notice, *supra* note 5, at 81574 n.15.

[17] *See* proposed Exchange Rules 5810(c)(1)(G) and 5820(d)(5).

[18] *See* Exchange Rule 5815(c)(1)(A). As noted above, an appeal to the Hearings Panel results in an automatic stay of the suspension and delisting.

[19] *See* Exchange Rule 5820(d)(1).

[20] *See* Notice, *supra* note 5, at 81574 (Exchange representing that the total time that a listed company may be granted to regain compliance with the annual meeting requirement is unchanged from the current NASDAQ Listing Rules).

[21] *See* Exchange Rule 5810(c)(2)(A). Effective January 1, 2018, all listed companies will be subject to the Fee Program and the $5,000 fee will no longer be applicable to any company. *See* Exchange Rule IM–5910–1 and IM–5920–1; *see also* Notice, *supra* note 5, at 81574. In addition, all listed companies, regardless of whether they participate in the Fee Program or not, are subject to the $10,000 fee for each of the review by the Hearing Panel and appeal to the Council set forth in Exchange Rules 5815(a)(3) and 5820(a), respectively. *See* Notice, *supra* note 5, at 81574. Listed companies may be subject to these fees at different times depending on if and when they regain compliance. *See id.*

[22] In approving the proposed rule changes, the Commission has considered their impact on

Continued

Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. In particular, the Commission believes that the goal of ensuring that listed companies have met their requirement to hold an annual meeting of shareholders under the Exchange's Listing Rules is of critical importance to allow shareholders the ability to exercise their rights to participate in corporate governance matters, such as the election of directors. As a publicly listed company, it is at a company's annual meeting that shareholders will typically exercise their right to vote on such important corporate matters as the election of directors. For these same reasons, it is also important that companies that have failed to timely hold an annual meeting of shareholders do not remain listed on a national securities exchange if such deficiency is not cured in a timely manner.

As discussed above, the Exchange believes that, in some cases, there may be mitigating reasons for why a listed company failed to fulfill its annual meeting requirement, and for which immediate suspension and delisting may not be an appropriate outcome under the circumstances.[24] In these cases, the proposed rule change gives Staff discretion to analyze whether the reason for the annual meeting deficiency and the plan to regain compliance merit an exception to immediate suspension and delisting.[25] In this regard, the Commission notes that under the Exchange's current rules, a listed company receiving a Staff Delisting Determination for a failure to hold an annual meeting may immediately appeal the determination to a Hearings Panel, which generally results in an automatic stay of the suspension and delisting pending the issuance of a written Panel Decision.[26] In practice, it is the Commission's understanding from the Exchange that listed companies will often appeal a suspension and delisting determination for failure to hold an annual meeting in order to receive the automatic stay from the Hearings Panel. As such, the proposed rule change provides Staff with the ability to analyze particular instances of non-compliance with the annual meeting requirement prior to any appeal to the Hearings Panel, and if Staff deems it warranted, allow a non-compliant company to carry out a compliance plan for a limited time that could enable the company to become compliant again without the need to appeal to the Hearings Panel (or Council).

Importantly, the Commission notes that the maximum time allowed by the proposed requirements for a deficient company to remain listed while trying to regain compliance with the annual meeting requirement (360 calendar days) would be the same as the maximum time allowed by the current requirements for a deficient company (that appeals to both the Hearings Panel and Council, and is granted the maximum permitted extensions of time by those adjudicatory bodies) to remain listed while not in compliance with the annual meeting requirement (also 360 calendar days).[27] The difference under the proposed rule change is that, pursuant to Staff's discretion, the non-compliant company may be granted an exception from the continued listed requirements of up to 180 calendar days from the annual meeting deadline (*i.e.,* the first 180-days of the overall 360-day time period) in order to potentially fulfill a compliance plan and avoid a Delisting Determination.[28] By contrast, under the Exchange's current rules, since there is no opportunity for a compliance plan, the full 360-day period is spent before the Hearings Panel and the Council, assuming the non-compliant company has appealed its Delisting Determination to both the Hearings Panel and Council and been granted the maximum allowable exceptions from the continued listing requirements by those adjudicatory bodies. In the Commission's view, the fact that the current maximum time period that a company could remain listed while not in compliance with the annual meeting requirement will be unchanged under the proposal suggests that the proposal is reasonably designed to continue to afford adequate protection to investors with respect to companies that fail to hold an annual meeting in the time required under the Exchange rules.

Moreover, the Commission emphasizes that, under the proposal, Staff retains the discretion not to grant an exception from the continued listing requirements to a company that has failed to hold its annual meeting on time. The Commission expects Staff to exercise this discretion carefully and discerningly. Staff's analysis in this regard would include consideration of the factors set forth in proposed Exchange Rule 5810(c)(2)(G)(ii), which the deficient company also would be required to discuss in its compliance plan. The Commission expects Staff to carefully scrutinize these factors when conducting its analysis, and not to grant an exception from the continued listing requirements when Staff believes that such an exception is not warranted or it is unlikely the company will be able to hold its annual meeting within the time permitted. For example, a listed company that demonstrates a history of failures to hold a timely annual meeting could, and most likely should, still be subject to immediate suspension and delisting.[29]

Additionally, the Exchange rules will continue to provide Staff with the ability to send an immediate Delisting Determination to a deficient company when Staff has determined that, after review of the facts and circumstances of the deficiency, continued listing raises a

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78s(b)(4).

[24] *See* Notice, *supra* note 5, at 81575.

[25] *See* proposed Exchange Rule 5810(c)(2)(G).

[26] *See supra* note 7. The Commission notes that the proposed factors, set forth in proposed Exchange Rule 5810(c)(2)(G)(ii), that would be used to determine whether to grant an exception for the failure to hold an annual meeting, and the length of any such exception, are substantially similar to the factors used by a Hearings Panel to determine whether to grant a further stay of a Staff Delisting Determination. *See* Exchange Rule 5815(a)(1)(B).

[27] Compare proposed Rules 5815(c)(1)(G) and 5820(d)(5) with current rules 5815(c)(1)(A) and 5820(d)(1); *see also* Notice, *supra* note 5, at 81574 (Exchange representing that the total time that a listed company may be granted to regain compliance with the annual meeting requirement is unchanged from the current NASDAQ Listing Rules).

[28] If the non-complaint company is ultimately unsuccessful in this regard, however, and is issued a Delisting Determination, the Hearings Panel and Council may grant an additional exception only out to 360 calendar days from the annual meeting deadline. In other words, if a non-compliant company receives the full 180-day exception from Staff in order to attempt to carry out a compliance plan but does not regain compliance by the end of that 180-day period and is therefore issued a Delisting Determination, it would only have 180 more days to avail itself of its appeal rights.

[29] *See* proposed Exchange Rule 5810(c)(2)(G)(ii). The Commission notes that such a company would have a right to appeal the determination to a Hearings Panel, which will generally stay the suspension and delisting.

public interest concern.[30] Accordingly, the Commission believes the proposed rule change will continue to enable the Exchange to immediately suspend and delist companies that have failed to hold an annual meeting when the circumstances warrant it, but at the same time will provide the Exchange with flexibility to address instances in which the failure to hold an annual meeting, in the Exchange's discretion, counsels in favor of giving the non-compliant company an opportunity to regain compliance for a limited time period without being subject to immediate suspension and delisting or having to avail themselves of the Hearings Panel process to stay the action. The Commission believes, therefore, that the proposed rule change is designed to protect investors and the public interest, as well as to promote just and equitable principles of trade.

The Commission further notes that, as an additional protection of investors and the public interest, a listed company that receives notification that it is deficient in satisfying the annual meeting requirement will continue to be required to publicly disclose that it has received notification of non-compliance with the annual meeting requirement.[31] In addition, the Exchange publicly discloses a list of companies that are non-compliant with the continued listing standards and the listing standards with which they failed to comply.[32] Furthermore, by making it clear in the proposed rules that a Public Reprimand Letter does not apply to deficiencies from the requirement to hold an annual meeting, the Commission believes that the proposal should benefit the public interest and protect investors by helping to ensure that deficient companies are subject to suspension and delisting for failure to hold an annual meeting and ensures that the only cure under the Exchange rules is for the company to hold its annual meeting.[33] Accordingly, for the foregoing reasons, the Commission believes that the proposed rule change is reasonably designed to further the goals of Section 6(b)(5) of the Act.

The Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,[34] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that assessing the $5,000 compliance plan review fee for deficiencies from the annual meeting requirement on listed companies that have not opted-in to the Fee Program is reasonable and equitably allocated because it is the same fee that is charged for other deficiencies that allow for the submission of a plan of compliance.[35] Furthermore, the Commission believes that assessing different fees between listed companies that elect to participate in the Fee Program and those that do not are consistent with the approach allowed when the Fee Program was adopted.[36]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[37] that the proposed rule change (SR–NASDAQ–2015–144), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03442 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Exchange Rule 5810(c)(1).

[31] *See* Exchange Rule 5810(b) and IM–5810–1. *See also* Item 3.01 of Commission Form 8–K, which requires that a registrant disclose any notification from the exchange that maintains its principal listing that the registrant does not satisfy a rule or standard for continued listing on the exchange.

[32] *See* Exchange List of Non-Compliant Companies, *available at https://listingcenter.nasdaq.com/NonCompliantCompanyList.aspx.*

[33] Exchange Rule 5805(j) defines a ''Public Reprimand Letter'' as a letter issued by Staff or a written decision of an Adjudicatory Body in cases where the listed company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A–3 of the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction.

[34] 15 U.S.C. 78s(b)(5).

[35] *See* proposed Exchange Rule 5810(c)(2)(A)(iii); *see also supra* note 21.

[36] *See* Notice, *supra* note 5, at 81575.

[37] 15 U.S.C. 78f(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 13e–1, SEC File No. 270–255, OMB Control No. 3235–0305.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–1 (17 CFR 240.13e–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) makes it unlawful for an issuer who has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act to purchase any of its equity securities during the tender offer, unless it first files a statement with the Commission containing information required by the rule. This rule is in keeping with the Commission's statutory responsibility to prescribe rules and regulations that are necessary for the protection of investors. The information filed under Rule 13e–1 must be filed with the Commission and is publicly available. We estimate that it takes approximately 10 burden hours per response to provide the information required under Rule 13e–1 and that the information is filed by approximately 10 respondents. We estimate that 25% of the 10 hours per response (2.5 hours) is prepared by the company for a total annual reporting burden of 25 hours (2.5 hours per response × 10 responses).

Written comments are invited on: (a) Whether this 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) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 12, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–03399 Filed 2–18–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9451]

30-Day Notice of Proposed Information Collection: Affidavit of Identifying Witness

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 March 21, 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, by mail to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L/LA 44132 Mercure Cir., P.O. Box 1227, Sterling, VA 20166–1227, by phone at (202) 485–6373, or by email at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Affidavit of Identifying Witness.
- *OMB Control Number:* 1405–0088.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L/LA).
- *Form Number:* DS–0071.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 61,000.
- *Estimated Number of Responses:* 61,000.
- *Average Time per Response:* 5 min.
- *Total Estimated Burden Time:* 5,083 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

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 Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. It is used by Passport Services to collect information for the purpose of establishing the identity of the applicant. This affidavit is completed by the identifying witness when the applicant is unable to establish his or her identity to the satisfaction of a person authorized to accept passport applications.

Methodology

The Affidavit of Identifying Witness is submitted in conjunction with an application for a U.S. passport. Due to legislative mandates, Form DS–0071 is only available at acceptance facilities, passport agencies, and U.S. embassies and consulates. This form must be completed and signed in the presence of an authorized Passport Agent, Acceptance Agent, or Consular Officer.

Dated: January 20, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–03477 Filed 2–18–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9443]

Advisory Committee on Private International Law: Public Meeting on Online Dispute Resolution; Correction

AGENCY: Department of State.

ACTION: Notice of public meeting; correction.

SUMMARY: The Department of State published a **Federal Register** Notice on February 5, 2016, in 81 FR 6324 notifying the public of an Advisory meeting on Online Dispute Resolution being held on Tuesday February 23rd. The notice contained an incorrect day. This document corrects the day.

FOR FURTHER INFORMATION CONTACT: Tricia Smeltzer, Paralegal, Office of Private International Law, Office of Legal Advisor, Department of State; phone: 202–776–8423, email: *smeltzertk@state.gov.*

Correction

In the FR Doc 2016–02304, appearing on page 6324 in the **Federal Register** of February 5, 2015 (81 FR 6324), in the second column, in the third paragraph, in *Time and Place,* the first sentence is corrected to read:

> The meeting of the ACPIL ODR Study Group will take place on Tuesday February 23, from 10 a.m. to 12 noon EST at 2430 E Street NW., South Building (SA 4S) (Navy Hill), Room 240.

Dated: February 9, 2016.

Timothy Schnabel,

Attorney—Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State,

[FR Doc. 2016–03253 Filed 2–18–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on SH 249, From South of FM 1774/FM 149 in Pinehurst to FM 1774 North of Todd Mission, Montgomery and Grimes Counties, Texas

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by TxDOT and Federal Agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The environmental

review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014 and executed by FHWA and TxDOT. The actions relate to a proposed highway project, SH 249, from south of FM 1774/FM 149 in Pinehurst to FM 1774 north of Todd Mission, in Montgomery and Grimes Counties in the State of Texas. Those actions grant licenses, permits, and approvals for the project. Under MAP–21 section 1319, TxDOT has issued a combined Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for this action.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on July 18, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Swonke, P.G., Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: SH 249, from south of FM 1774/FM 149 in Pinehurst to FM 1774 north of Todd Mission, in Montgomery and Grimes Counties. The project will be a 15-mile-long, four-mainlane, controlled-access tollway with intermittent frontage roads within a typical 400-foot-wide right-of-way (ROW). The proposed freeway will be on new alignment. The actions by TxDOT and the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) issued on January 12, 2016, and in other documents in the TxDOT project file. The FEIS/ROD, and other documents in the TxDOT project file are available by contacting TxDOT at the addresses provided above. The TxDOT FEIS/ROD can be viewed and downloaded from the project Web site at *https://www.txdot.gov/inside-txdot/projects/studies/houston/sh249-extension.html* or by visiting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, TX 77007; the TxDOT Bryan District Office at 2591 North Earl Rudder Freeway, Bryan, TX 77803; or the TxDOT Montgomery County Area Office at 901 N. FM 3083 East, Conroe, TX 77303.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: February 8, 2016.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2016–03031 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on MoPac (Loop 1) Intersections, Travis County, Texas

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by TxDOT and Federal Agencies.

SUMMARY: This notice announces actions taken by Texas Department of Transportation (TxDOT) and Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, MoPac (Loop 1) Intersections from north of Slaughter Lane to south of La Crosse Avenue, Travis County, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 18, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Swonke, P.G., Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m. to 5:00 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: MoPac (Loop 1) Intersections, Travis County, Texas. The proposed improvements will involve grade separating the cross streets of Slaughter Lane and La Crosse Avenue such that MoPac will pass under the existing cross streets. Traffic traveling northbound and southbound in this corridor will no longer need to

stop at a signalized intersection to travel through the area. The proposed improvements to MoPac consist of two 12-foot lanes with one auxiliary lane in each direction, and 10-foot outside shoulders and 4-foot inside shoulders in each direction. The construction limits extend from approximately 2,500 feet north of Slaughter Lane to approximately 3,700 feet south of La Crosse Avenue, which results in a total project length of 2.07 miles. The construction limits allow the intersection improvements to tie back into the existing MoPac facility north of Slaughter Lane and south of La Crosse Avenue. The proposed improvements will be constructed within existing right-of-way.

The actions by TxDOT and the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (Final EA) for the project, approved on December 22, 2015, in the Finding of No Significant Impact (FONSI) issued on December 22, 2015, and in other documents in the TxDOT administrative record. The Final EA, FONSI, and other documents in the administrative record file are available by contacting TxDOT at the address provided above. The Final EA and FONSI can be viewed on the project Web site at *www.mopacsouth.com/intersections/overview.php.*

This notice applies to all TxDOT decisions and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. Executive Orders: E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13287, Preserve America; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112, Invasive Species; E.O. 12372, Intergovernmental Review of Federal Programs.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

Authority: 23 U.S.C. 139(l)(1).

Issued on: February 8, 2016.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2016–03033 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2016–0002–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: FRA hereby gives notice that it is submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for Emergency Processing under the Paperwork Reduction Act of 1995. FRA is republishing its February 12, 2016, Notice, *see* 81 FR 7628, to include two accompanying documents that were not included with that Notice. FRA requests that OMB authorize the collection of information identified below seven days after publication of this Notice for a period of 180 days.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources

expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Organizations and individuals desiring to submit comments on these information collection requirements should send them directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St. NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov*

Below is a brief summary of the currently approved ICR that FRA will submit for clearance by OMB as required under the PRA:

Title: Bridge Safety Standards.

OMB Control Number: 2130–0586.

Abstract: On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94). Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to FRA. *See* 49 CFR 1.89.

FRA is revising its currently approved information collection to account for the additional burden that will be incurred by States and political subdivisions of States requesting a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. FRA has developed a new form titled ''Bridge Inspection Report Public Version Request Form'' (see below) to facilitate such requests by States and their political subdivisions. Additionally, FRA is revising its currently approved information collection to account for the additional burden that will be incurred by railroads to provide the public version of a bridge inspection report upon agency request to FRA.

As background, on July 15, 2010, FRA published its Bridge Safety Standards Final Rule. *See* 75 FR 41281. The final rule on bridge safety standards normalized and established federal requirements for railroad bridges. The final rule established minimum requirements to assure the structural integrity of railroad bridges and to protect the safe operation of trains over those bridges. The final rule required railroads/track owners to implement bridge management programs to prevent the deterioration of railroad bridges and to reduce the risk of human casualties, environmental damage, and disruption to the Nation's transportation system that would result from a catastrophic bridge failure. Bridge management programs were required to include annual inspection of bridges as well as special inspections, which must be conducted if natural or accidental events cause conditions that warrant such inspections. Lastly, the final rule required railroads/track owners to audit bridge management programs and bridge inspections and to keep records mandated under 49 CFR part 237. This final rule culminated FRA's efforts to develop and promulgate bridge safety regulations and fulfilled the Railroad Safety Improvement Act of 2008 (Pub. L. 110–432, Division A) mandate.

The information collected is used by FRA to ensure that railroads/track owners meet Federal standards for bridge safety and comply with all the requirements of this regulation. In particular, the collection of information is used by FRA to confirm that railroads/track owners adopt and implement bridge management programs to properly inspect, maintain, modify, and repair all bridges that carry trains over them for which they are responsible. Railroads/track owners must conduct annual inspections of railroad bridges. Further, railroads/track owners must incorporate provisions for internal audit into their bridge management program and must conduct internal audits of bridge inspection reports. The internal audit information is used by railroads/track owners to verify that the inspection provisions of the bridge management program are being followed and to continually evaluate the effectiveness of their bridge management program and bridge inspection activities. FRA uses this information to ensure that railroads/track owners implement a safe and effective bridge management program and bridge inspection regime.

As provided under 49 CFR 1320.13, FRA is requesting emergency processing for this new collection of information as specified in the Paperwork Reduction Act of 1995 and its implementing regulations. FRA cannot reasonably comply with normal clearance procedures since they would be reasonably likely to disrupt the collection of information. With the recent passage of the FAST Act, FRA expects States and their political subdivisions to immediately request a public version of bridge inspection reports that affect critical infrastructure within their jurisdiction to ensure public safety. Upon receipt of such requests, FRA will require railroads to submit to the agency a public version of the most recent bridge inspection report. Therefore, FRA is requesting OMB approval as soon as possible (*i.e.,* 7 days after publication of this Notice) for this collection of information.

Form Number(s): FRA F 6180.167.

Affected Public: States/Political Subdivisions of States and Businesses.

Respondent Universe: 50 States/State Political Subdivisions and 693 Railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
NEW FAST ACT REQUIREMENTS				
—Form FRA F 6180.167	50 States/State Political Subdivision.	75 forms	5 minutes	6 hours.
—Railroad Submission to FRA of Bridge Inspection Report—Public Version.	693 Railroads	75 reports	60 minutes	75 hours.
237.3—Notifications to FRA of Assignment of Bridge Responsibility.	693 Railroads	15 notifications	90 minutes	22.5 hours.
—Signed Statement by Assignee Concerning Bridge Responsibility.	693 Railroads	15 signed statements	30 minutes	7.5 hours.
237.9—Waivers—Petitions	693 Railroads	6 petitions	4 hours	24 hours.
23731/33—Development/Adoption of Bridge Management Program.	693 Railroads	5 plans	24 hours	120 hours.
237.57—Designation of Qualified Individuals	693 Railroads	1,000 designations	30 minutes	400 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
237.71—Determination of Bridge Load Capacities.	693 Railroads	2,000 determinations	8 hours	16,000 hours.
237.73—Issuance of Instructions to Railroad Personnel by Track Owner.	693 Railroads	2,000 instructions	2 hours	4,000 hours.
237.105—Special Bridge Inspections and Reports/Records.	693 Railroads	7,500 insp. and reports/ records.	12.50 hours	93,750 hours.
—Special Underwater Inspections	693 Railroads	50 insp. and Reports/rcds.	40 hours	2,000 hours
237.107 and 237.109—Nationwide Annual Bridge Inspections—Reports.	693 Railroads	15,450 insp. & reports	4 hours	61,800 hours.
—Records	693 Railroads	15,450 records	1 hour	15,450 hours.
—Report of Deficient Condition on a Bridge	693 Railroads	50 reports	30 minutes	25 hours.
237.111—Review of Bridge Inspection Reports by RR Bridge Engineers.	693 Railroads	2,000 insp. rpt. reviews	30 minutes	1,000 hours.
—Prescription of Bridge Insp. Procedure Modifications After Review.	693 Railroads	200 insp. proc. modifications	30 minutes	100 hours.
237.131—Design of Bridge Modifications or Bridge Repairs.	693 Railroads	1,250 designs	16 hours	20,000 hrs.
—Bridge Modification Repair Reviews/Supervisory Efforts.	693 Railroads	1,250 br. mod. repair reviews	1.50 hours	1,875 hours.
—Common Standard Designed by Railroad Bridge Engineer.	693 Railroads	50 standards	24 hours	1,200 hours.
237.153—Audits of Inspections	693 Railroads	725 insp. audits	80 hours/24 hours/6 hours.	5,534 hours.
237.155—Documents and Records—Establishment of RR Monitoring and Info. Technology Security Systems for Electronic Recordkeeping.	693 Railroads	5 systems	80 hours	400 hours.
—Employees Trained in System	693 Railroads	100 employees	8 hours	800 hours.

Total Estimated Responses for New FAST Act Requirements: 150.

Total Estimated Responses for Entire Information Collection: 49,271.

Total Estimated Total Annual Burden for New FAST Act Requirements: 81 hours.

Total Estimated Total Annual Burden Entire Information Collection: 224,689 hours.

Type of Request: Emergency Clearance to the revision of a currently approved information collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 12, 2016.

Corey Hill,

Acting Executive Director.

Federal Railroad Administration
Bridge Inspection Report Public Version Request Form

OMB Control No. 2130-####

Public reporting burden for this information collection is estimated to average 5 minutes per response, including the time for searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. According to the Paperwork Reduction Act of 1995, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 2130-####. All responses to this collection of information are voluntary. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden to: Information Collection Officer, Federal Railroad Administration, 1200 New Jersey Ave S.E., Washington D.C. 20590.

Requester's Name:

Requester's Title:

Requester's Address:

Requester's Email:

Telephone Number:

Bridge Identification:
(Street name, waterway, other identifiable land feature, etc.)

Railroad Owning Bridge:
(if known)

Requester's State or political subdivision:

I hereby certify that I am a duly elected or appointed representative of the State or the political subdivision of a State indicated above, this request is being made in my official capacity, and the bridge is located within my jurisdiction. (check one)

Yes

No

Clicking the submit button will open your default email application allowing you to send the filled form to: FRABridgeReportRequest@dot.gov

FRA F 6180.167 (02-2016) OMB Control No. 2130-#### Approval Expires MM/DD/YYYY

FAST Act Bridge Inspection Report Requests

The Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94) (Dec. 4, 2015), Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to the Federal Railroad Administration (FRA). *See* 49 CFR 1.89. The text of Section 11405 of the FAST Act is provided in attachment 1.

Frequently Asked Questions

Q. Who can make a request for a bridge inspection report under Section 11405 of the FAST Act?

A. Section 11405 of the FAST Act permits a State or a political subdivision of a State to file a request for a public version of a bridge inspection report for a bridge located in that State or political subdivision's jurisdiction. Thus, any duly elected or appointed official of a State or political subdivision of a State, acting in his or her official capacity, may file a request. This includes officials of a State, city, county, town, municipality or other political subdivision of a State.

Q. What information do I need to provide in my request?

A. Go to FRA's Web site (*www.fra.dot.gov*) and click on the Bridge Inspection Report link and fill out the ''Bridge Inspection Report Public Version Request Form'' (FRA F 6180.167) in its entirety (a link to the form is provided at the end of these questions). Please provide the following information:

- Your name and title;
- Official address;
- Email address;
- Telephone number;
- Identification of the individual bridge(s) for which you are requesting a public version of a bridge inspection report(s). Bridge identification information could include a street name, a nearby intersecting street, a waterway or a recognizable land feature where appropriate;
- Name of the railroad that owns and/or operates over the requested bridge(s) (if known); and
- An indication that the request is being made in your official capacity as a representative of a State or a political subdivision of a State. The bridge(s) for which the inspection report(s) is sought must be within the jurisdiction of the political subdivision of the State you represent.

Q. How do I file my request?

A. You can file a request by going to FRA's Web site (*www.fra.dot.gov*) and clicking on the Bridge Inspection Report link. There you will find the ''*Bridge Inspection Report Public Version Request Form''* (FRA F 6180.167). Please complete this pdf fillable form by providing all of the information listed in the question above and click on the ''submit'' box when completed. This will automatically create an email that will send the completed form directly to FRA. A link to the form has also been provided at the end of these questions below.

If you are unable to submit the form to FRA directly, please fill out the ''*Bridge Inspection Report Public Version Request Form''* (FRA F 6180.167) and attached it in an email to *FRABridgeInspectionReportRequest@dot.gov.* Requests will only be accepted through this email address with the proper form completely filled out and attached.

Q. How will FRA handle a request?

A. FRA will evaluate the request and, if found to be compliant with law, FRA will promptly request that the railroad responsible for the bridge provide a public version of the most recent inspection report(s) to FRA. Once FRA has received the report(s), FRA will review the report(s) to ensure that at least the minimum information required by law has been provided. Once determined to be satisfactory, the report(s) will be sent to the requester electronically by reply to the request unless the requester provides an alternate email address to send the report to.

Q. What information must a railroad include in the public version of the bridge inspection report provided to FRA?

A. The FAST Act requires the following information to be included in a public version of a bridge inspection report:

1. The date of the last inspection;
2. Length of bridge;
3. Location of bridge;
4. Type of bridge (superstructure);
5. Type of structure (substructure);
6. Features crossed by the bridge;
7. Railroad contact information; and
8. A general statement on the condition of the bridge.

Q. How much time does a railroad have to provide the public version of a bridge inspection report to FRA?

A. FRA interprets the statute to require a railroad to provide a requested report containing at least the minimum specified information within a reasonable amount of time. FRA believes that a reasonable time for a railroad to provide a requested report is within 30 days of receipt of FRA's request.

Q. How long will it take FRA to produce a public version of a bridge inspection report to a requester?

A. FRA will handle these requests as expeditiously as possible and generally expects to respond to most requests by providing the requester with a public version of a bridge inspection report within 45 days of receipt of the request.

(*Link to Form will be located here*)

Attachment 1 to Frequently Asked Questions

FAST Act—SECTION 11405—BRIDGE INSPECTION REPORTS

Section 417(d) of the Rail Safety Improvement Act of 2008 (49 U.S.C. 20103 note) is amended—(1) by striking ''The Secretary'' and inserting the following: ''(1) IN GENERAL.—The Secretary''; and (2) by adding at the end the following: ''(2) AVAILABILITY OF BRIDGE CONDITION.—

''(A) IN GENERAL.—A State or political subdivision of a State may file a request with the Secretary for a public version of a bridge inspection report generated under subsection (b)(5) for a bridge located in such State or political subdivision's jurisdiction.

''(B) PUBLIC VERSION OF REPORT.—If the Secretary determines that the request is reasonable, the Secretary shall require a railroad to submit a public version of the most recent bridge inspection report, such as a summary form, for a bridge subject to a request under subparagraph (A). The public version of a bridge inspection report shall include the date of last inspection, length of bridge, location of bridge, type of bridge, type of structure, feature crossed by bridge, and railroad contact information, along with a general statement on the condition of the bridge.

''(C) PROVISION OF REPORT.—The Secretary shall provide to a State or political subdivision of a State a public version of a bridge inspection report submitted under subparagraph (B).

''(D) TECHNICAL ASSISTANCE.—The Secretary, upon the reasonable request of State or political subdivision of a State, shall provide technical assistance to such State or political subdivision of a State to facilitate the understanding of a bridge inspection report.''

[FR Doc. 2016–03441 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Toyota

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Toyota Motor North America, Inc.'s, (Toyota) petition for an exemption of the Lexus RX vehicle line in accordance with 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2017 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–439, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated December 1, 2015, Toyota requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Lexus RX vehicle line beginning with MY 2017. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR part 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Toyota provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Lexus RX vehicle line. Toyota stated that its MY 2017 Lexus RX vehicle line and RX hybrid vehicle model (HV) will be installed with a ''smart entry and start'' system and an engine immobilizer device as standard equipment. Toyota further explained that the ''smart entry and start'' system on its Lexus RX vehicle line will have slightly different components than those on its RX HV model. Key components of the ''smart entry and start'' system on the Lexus RX vehicle line will include an engine immobilizer, a certification electronic control unit (ECU), engine switch, steering lock ECU, security indicator, door control receiver, electrical key, an electronic control module (ECM) and an ID code box. The key components installed on its RX HV model will also include a power switch and a power source HV–ECU. Toyota stated that it will also install an audible and visual alarm system on its Lexus RX vehicle line as standard equipment and that there will be position switches installed on the vehicle to protect the hood and doors from unauthorized tampering/opening. Toyota further explained locking of the doors can be accomplished through use of a conventional key, wireless switch incorporated within the keyfob or its

smart entry system, and that unauthorized tampering with the hood or door without using one of these methods will cause the position switches to trigger the alarm system.

Toyota's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In addressing the specific content requirements of § 543.6, Toyota provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Toyota conducted tests based on its own specified standards. Toyota provided a detailed list of the tests conducted (*i.e.,* high and low temperature, strength, impact, vibration, electro-magnetic interference, etc.). Toyota stated that it believes that its device is reliable and durable because it complied with its own specific design standards and the antitheft device is installed on other vehicle lines for which the agency has granted a parts-marking exemption. Toyota stated that the antitheft device is already installed as standard equipment on its MY 2003 Lexus RX vehicle line and the MY 2006 RX HV model. The theft rate for the Toyota Lexus RX vehicle line using an average of three model years' data (MYs 2011–2013) is 0.3679, which is well below the 3.5826 median theft rate. As an additional measure of reliability and durability, Toyota stated that its vehicle key cylinders are covered with casting cases to prevent the key cylinder from easily being broken. Toyota further explained that the numerous key cylinder combinations and key plates it uses for its gutter keys would make it very difficult to unlock the doors without using a valid key. If a valid key is used, the key cylinders spin out and its locks will not work.

Toyota stated that its Lexus RX vehicles' ''smart entry and start'' system allows the driver to press the engine switch button located on the instrument panel to start the vehicle. Once the driver pushes the engine switch button, the certification ECU verifies the electrical key. When the key is verified, the certification ECU, ID code box and steering lock ECU receive confirmation of the valid key, and the certification ECU allows the ECM to start the engine. With the RX HV model ''smart entry and start'' system, once the driver pushes the power switch button, the certification ECU verifies the key, the certification ECU, ID code box and steering lock ECU receive confirmation of a valid key, and then the certification ECU will allow the ECM to start the vehicle.

Toyota stated that with its ''smart entry and start'' system, the immobilizer device is activated when the engine switch is pushed from the ''ON'' ignition status to any other ignition status, the certification ECU performs the calculation of the immobilizer and the immobilizer signals the ECM to activate the device. On the RX HV model, the ''smart entry and start'' system's immobilizer device is activated when the power switch is pushed from the ''ON'' ignition status to any other ignition status, the certification ECU performs the calculation of the immobilizer and the immobilizer signals the HV–ECU to activate the device. Deactivation of its smart key-installed systems occurs when the doors are unlocked and the device recognizes the key code. Deactivation of the conventional key system occurs when the door is unlocked and the key is turned to the ''ON'' position.

Toyota also compared its proposed device to other devices NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements (*i.e.,* Toyota Camry, Corolla, Prius, RAV4, Highlander, Sienna, Lexus LS, and Lexus GS vehicle lines) which have all been granted parts-marking exemptions by the agency. The theft rates for the Toyota Camry, Corolla, Prius, RAV4, Highlander, Sienna, Lexus LS, and Lexus GS vehicle lines using an average of three model years' data (2011–2013) are 1.3030, 1.3988, 0.2464, 0.4100, 0.4603, 0.5124, 0.4879 and 0.9116 respectively. Therefore, Toyota has concluded that the antitheft device proposed for its Lexus RX vehicle line is no less effective than those devices on the lines for which NHTSA has already granted full exemption from the parts-marking requirements. Toyota stated that it believes that installing the immobilizer as standard equipment reduces the theft rate and expects the Lexus RX vehicle line to experience comparable effectiveness, and ultimately be more effective than parts-marking labels.

Based on the supporting evidence submitted by Toyota on its device, the agency believes that the antitheft device for the Lexus RX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Toyota has provided adequate reasons for its belief that the antitheft device for the Toyota Lexus RX vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Toyota provided about its device.

For the foregoing reasons, the agency hereby grants in full Toyota's petition for exemption for the Toyota Lexus RX vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Toyota decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the

line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016–03443 Filed 2–18–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Guidance Necessary To Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules.

DATES: Written comments should be received on or before April 19, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: TD 9451—Guidance Necessary To Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).

OMB Number: 1545–2019.

Regulation Project Number:

Abstract: This document contains a final regulation that provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 225,375.

Estimated Time per Respondent: 1 hour, 40 minutes.

Estimated Total Annual Burden Hours: 375,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 12, 2016.

Kerry Dennis,

IRS Tax Analyst.

[FR Doc. 2016–03446 Filed 2–18–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (VA Financial Services Center (VA–FSC) Vendor File Request Form); Activity Under OMB Review

AGENCY: Financial Services Center, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Department of Veterans Affairs—Financial Services Center (VA–FSC) will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 21, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW (VA–FSC Vendor File Request Form)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–NEW (VA–FSC Vendor File Request Form)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA–FSC Vendor File Request Form.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The mission of the Nationwide Vendor File Division of the Department of Veterans Affairs—Financial Services Center (VA–FSC) is to add, modify, or delete vendor records

in the Financial Management Services (FMS) Vendor File. The VA–FSCs FMS Vendor File controls aspects of when, where, and how vendors are paid. There are currently more than 2.4M active vendor records in FMS.

In 1987, Treasury implemented several initiatives to encourage agencies to convert their vendor and miscellaneous payment activity from checks to the Automated Clearing House (ACH) payments. By 1996, the Debt Collection Improvement Act (DCIA) mandated the use of electronic funds transfer (EFT) for federal payments. In order to comply with these federal requirements, the VA and other Federal Agencies have used OMB # 1510–0056/ Standard Form 3881 (SF 3881) to collect the essential payment data from vendors (*i.e.* Name, Address, SSN/TaxID, Financial Institution, Routing and Transit Number and Bank Account Number) to establish payment files. However, because SF 3881 lacks the necessary information fields to communicate the type of Vendor record required (*i.e.* commercial, individual, veteran, employee, etc.) the VA–FSC required all SF 3881 submissions to have an accompanying Vendorizing Cover Sheet included to ensure proper document processing.

The new Vendorizing Form (VA10091) streamlines the data required to establish a vendor record (from the SF 3881 and Vendorizing Cover Sheet) into a single form.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 229 on 30 November 2015.

Affected Public: Businesses or other for-profit, not-for-profit institutions; State, Local or Tribal Government; VA employees; Veterans; Caregivers.

Estimated Annual Burden: 37,500 burden hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once per applicant, unless there is a change of name, address, banking information.

Estimated Number of Respondents: 150,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–03401 Filed 2–18–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Commission on Care; Meeting of the Commission on Care

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 29, 2016, and Tuesday, March 1, 2016, at the Dallas VA Medical Center, 4500 S. Lancaster Rd., Dallas, TX 75216, in the VA Community Center—Building 75. The meeting will convene at 8:30 a.m. (CST) and end by 5:00 p.m. (CST) on Monday, February 29, 2016. The meeting will convene at 8:30 a.m. (CST) and end by 4:00 p.m. (CST) on Tuesday, March 1, 2016. The meetings are open to the public. A telephone conference line will be available for a limited number of remote attendees to observe meeting deliberations.

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 wishing to attend may register by emailing the Designated Federal Officer, John Goodrich, at *john.goodrich@va.gov.* Remote attendees joining by telephone must email Mr. Goodrich by 12:00 p.m. (CST) on Friday, February 26, 2016, to request dial-in information.

Dated: February 12, 2016.

John Goodrich,

Designated Federal Officer, Commission on Care.

[FR Doc. 2016–03440 Filed 2–18–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection (Monthly Record of Training and Wages) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 21, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0176.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1905c is used to record a chapter 31 participant's progress in on-the-job training and certain other special programs. This form assist a case manager to monitor a program participant's training to ensure the participant is progressing and learning the skills necessary to carry out the duties of the occupational goal.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 63877 on October 21, 2015.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,600 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,800.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–03402 Filed 2–18–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Part 240

Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–77104; File No. S7–06–15]

RIN 3235–AL73

Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting amendments to Exchange Act rules 3a71–3 and 3a71–5 that address the application of the *de minimis* exception to security-based swap transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such person located in a U.S. branch or office, or by personnel of such person's agent, located in a U.S. branch or office.

DATES: *Effective Date:* April 19, 2016. *Compliance Date:* The later of (a) February 21, 2017 or (b) the SBS Entity Counting Date, as defined in Section VII of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Carol McGee, Assistant Director, Richard Gabbert, Senior Special Counsel, or Margaret Rubin, Special Counsel, Office of Derivatives Policy, at 202–551–5870, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending Exchange Act rule 3a71–3 (addressing the cross-border implementation of the *de minimis* exception to the ''security-based swap dealer'' definition and the definition of certain terms) and Exchange Act rule 3a71–5 (regarding availability of an exception from the dealer *de minimis* analysis for cleared anonymous transactions that fall within rule 3a71–3(b)(1)(iii)(C)).

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I. Background

A. Scope of This Rulemaking

In April 2015, the Commission proposed to amend certain rules and to re-propose a rule regarding the application of Title VII of the Dodd-Frank Act [1] (''Title VII'') to cross-border security-based swap transactions and persons engaged in those transactions.[2] The proposed amendments included rules regarding the application of the *de minimis* exception to the dealing activity of non-U.S. persons carried out, in relevant part, by personnel located in the United States,[3] and the application of Regulation SBSR [4] to such transactions and to transactions effected by or through a registered broker-dealer, along with certain related issues. We also re-proposed a rule regarding the application of business conduct requirements to the foreign business and U.S. business of registered security-based swap dealers.[5]

In this release, we are adopting rule amendments relating specifically to the first of these issues: The application of the *de minimis* exception to non-U.S. persons that are engaged in dealing activity with other non-U.S. persons using personnel located in the United States. Consistent with the proposal, these amendments focus on the activity of the person or persons acting in a dealing capacity in the transaction. Specifically, Exchange Act rule 3a71–3(b)(1)(iii)(C) requires a non-U.S. person to include in its *de minimis* calculation

[1] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to Title VII in this release are to Subtitle B of Title VII.

[2] Application of Certain Title VII Requirements to Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent, Exchange Act Release No. 74834 (April 29, 2015), 80 FR 27443 (May 13, 2015) (''U.S. Activity Proposing Release'').

[3] In this release, unless otherwise noted, we use the terms ''personnel located in the United States'' or ''personnel located in a U.S. branch or office'' interchangeably to refer to personnel of the non-U.S. person engaged in security-based swap dealing activity who are located in a U.S. branch or office, or to personnel of an agent of such non-U.S. person who are located in a U.S. branch or office.

[4] Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14563 (March 19, 2015) (''Regulation SBSR Adopting Release'').

[5] Each of these issues had previously been considered in our May 23, 2013 proposal, in which we proposed rules regarding the application of Title VII in the cross-border context more generally. *See* Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30967 (May 23, 2013) (''Cross-Border Proposing Release'').

any transaction with a non-U.S.-person counterparty that is, in connection with its dealing activity, arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office or by personnel of the non-U.S. person's agent located in a U.S. branch or office. This test (''U.S. Activity Test'') focuses on the location of the personnel acting on behalf of the non-U.S. person engaged in dealing activity. This approach focuses on the activities of non-U.S. persons that are most likely to raise the types of concerns addressed by Title VII security-based swap dealer regulation. At the same time, it avoids the unnecessary complexity of the initially proposed application of the *de minimis* exception to transactions between two non-U.S. persons based on the location of dealing activity. The final rules do not require a non-U.S. person engaging in dealing activity to consider the location of any activity carried out by or on behalf of its counterparty in determining whether the transaction needs to be included in its own *de minimis* calculation.

We are not addressing in this release any of the other elements of the April 2015 proposal. We anticipate addressing the remaining issues (including the application of business conduct standards, of Regulation SBSR to certain transactions, and the application of clearing and trade execution requirements more generally) in subsequent releases.[6]

Further, we note that these rules complete our rulemaking implementing the *de minimis* exception for security-based swap dealers. However, in the Intermediary Definitions Adopting Release we adopted rule 3a71–2 establishing a phase-in period in connection with a person's status as a security-based swap dealer and other regulatory requirements arising from dealer status.[7] We established a $3 billion notional threshold for the *de minimis* exception with respect to single-name credit default swaps (''CDS''), subject to a phase-in level of $8 billion.[8] During the phase-in period Commission staff will study the security-based swap market as it evolves under the new regulatory framework, resulting in a report that will consider the operation of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions. As we explained in the Intermediary Definitions Adopting Release, at the end of the phase-in period, we will take into account the report, as well as public comment on the report, in determining whether to terminate the phase-in period or propose any changes to the rules implementing the *de minimis* exception, including any increases or decreases to both the $3 billion threshold for credit default swaps and the $150 million threshold for other types of security-based swaps.[9]

B. The Dodd-Frank Act

As we have previously noted, Title VII of the Dodd-Frank Act provides for a comprehensive new regulatory framework for swaps and security-based swaps.[10] Under this framework, the Commodity Futures Trading Commission (''CFTC'') regulates ''swaps'' while the Commission regulates ''security-based swaps,'' and the Commission and CFTC jointly regulate ''mixed swaps.'' Security-based swap transactions are largely cross-border in practice,[11] and the various market participants and infrastructures operate in a global market. A key part of this framework is the regulation of security-based swap dealers, which may transact extensively with counterparties established or located in other jurisdictions and, in doing so, may conduct sales and trading activity in one jurisdiction and book the resulting transactions in another. These market realities and the potential impact that these activities may have on U.S. persons and potentially the U.S. financial system have informed our consideration of these rules.

In developing these final rules, we have consulted and coordinated with the CFTC and the prudential regulators[12] in accordance with the consultation mandate of the Dodd-Frank Act.[13] We also have consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC (over-the-counter) derivatives.[14] Through these discussions and the Commission staff's participation in various international task forces and working groups,[15] we have gathered information about foreign regulatory reform efforts and their impact on and relationship with the U.S. regulatory regime. The Commission has taken and will continue to take these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.[16]

[6] *Cf.* Letter from Citadel, dated February 2, 2016, at 12 (urging the Commission to address the scope of the Title VII mandatory clearing or trading requirement ''in the context of those specific rulemakings, rather than in an overarching cross-border rule'').

[7] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (April 27, 2012), 77 FR 30595, 30640 (May 23, 2012) (''Intermediary Definitions Adopting Release'').

[8] *See* Exchange Act rule 3a71–2. The threshold and phase-in levels for other types of security-based swaps are $150 million and $400 million, respectively. *See id.*

[9] *See* Intermediary Definitions Adopting Release, 77 FR 30640–41 and n.523.

[10] *See* U.S. Activity Proposing Release, 80 FR 27446.

[11] *See* Section II.A.3, *infra,* regarding the preponderance of cross-border activity in the security-based swap market.

[12] The term ''prudential regulator'' is defined in section 1a(39) of the Commodity Exchange Act, 7 U.S.C. 1a(39), and that definition is incorporated by reference in section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to the definition, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of a security-based swap dealer or major security-based swap participant if the entity is directly supervised by that regulator.

[13] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.'' *See* Letter from Managed Funds Association, dated July 13, 2015 (''MFA Letter''), at 4 (emphasizing need for Commission and its U.S. counterparts to develop a single, harmonized approach to cross-border derivatives regulation).

[14] For example, senior representatives of authorities with responsibility for regulation of OTC derivatives have met on a number of occasions to discuss international coordination of OTC derivatives regulations. *See, e.g.,* Report of the OTC Derivatives Regulators Group to G20 Leaders on Cross-Border Implementation Issues November 2015 (November 2015), available at: *http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/odrgreportg20_1115.pdf.*

[15] Commission representatives participate in the Financial Stability Board's Working Group on OTC Derivatives Regulation (''ODWG''), both on the Commission's behalf and as the representative of the International Organization of Securities Commissions (''IOSCO''), which is co-chair of the ODWG. A Commission representative serves as one of the co-chairs of the IOSCO Task Force on OTC Derivatives Regulation. Commission representatives participate in joint working groups of the Committee on Payments and Market Infrastructures (''CPMI'') and IOSCO that examine key data elements of OTC derivatives transactions and participated in the Financial Stability Board's review of OTC derivatives trade reporting. Commission representatives also participate in international working groups that impact OTC derivatives financial market infrastructures, such as CPMI–IOSCO joint working groups that assess legal and regulatory frameworks for central counterparties and trade repositories and that examine central counterparty resilience and recovery.

[16] *See* Section 752(a) of the Dodd-Frank Act (providing in part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment

Continued

C. Relevant Proposing Releases

As discussed in further detail below, we have twice proposed rules related to the application of the dealer *de minimis* calculations to security-based swap transactions that involve activity in the United States. In both proposals, we discussed the global nature of the security-based swap market and explained our view that dealing activity carried out by a non-U.S. person through a branch, office, affiliate, or agent acting on its behalf in the United States may raise concerns that Title VII addresses, even if a significant proportion—or all—of those transactions involve non-U.S.-person counterparties.[17]

We initially proposed to require any non-U.S. person engaged in dealing activity to include in its *de minimis* calculation any ''transaction conducted within the United States.'' [18] Thus, under the Cross-Border Proposing Release, a non-U.S. person engaged in security-based-swap dealing activity would have been required to include in its *de minimis* calculation any dealing transaction entered into with another non-U.S. person that was conducted in the United States by either the non-U.S. person engaged in dealing activity or its counterparty. In our April 2015 proposal, we proposed a modified approach to applying the dealer *de minimis* exception to transactions between two non-U.S. persons based on activity in the United States that focused exclusively on the location of personnel engaged in relevant activity in connection with a non-U.S. person's dealing activity.[19]

D. Relevant CFTC Guidance

As discussed in our April 2015 proposal, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a Staff Advisory (''CFTC Staff Advisory'') in November 2013 that addressed the applicability of the CFTC's transaction-level requirements to certain activity by non-U.S. registered swap dealers arranged, negotiated, or executed by personnel or agents of the non-U.S. swap dealer located in the United States.[20] The CFTC subsequently solicited and received public comment on various aspects of the CFTC Staff Advisory,[21] and we discussed these comments in our April 2015 proposal.[22] On August 13, 2015, the CFTC staff extended no-action relief related to the CFTC Staff Advisory until the earlier of September 30, 2016, or the effective date of any CFTC action addressing related issues.[23]

E. Overview of Comments Received

As we discuss in more detail below, we received fifteen comment letters in response to our U.S. Activity Proposing Release. These comment letters address a range of issues, including the scope of the proposed U.S. Activity Test and concerns about its use as a trigger for the counting of transactions toward the *de minimis* thresholds of non-U.S. persons, as well as other issues—such as external business conduct, regulatory reporting and public dissemination, and mandatory trade execution and clearing—that we anticipate addressing in subsequent releases. Several commenters expressed support for our proposed U.S. Activity Test, and one commenter expressed general support for the rules proposed in the U.S. Activity Proposing Release.[24] Several commenters, however, raised concerns about the use of the U.S. Activity Test to identify transactions that non-U.S. persons are required to include in their dealer *de minimis* calculations, arguing, among other things, that capturing these transactions would not advance the mitigation of risk, which commenters identified as the principal concern of Title VII dealer regulation,[25] would impose excessive costs on market participants,[26] and would cause market fragmentation and decreased liquidity for U.S. market participants.[27]

II. Economic Considerations and Baseline Analysis

These final rules will determine when a non-U.S. person engaged in dealing activity and whose obligations under a security-based swap are not guaranteed by a U.S. person and that is not a conduit affiliate is required to include in its dealer *de minimis* threshold calculations transactions with another non-U.S. person.[28] To provide context for understanding our final rules and the related economic analysis that follows, this section provides an overview of the current state of the security-based swap market and the existing regulatory framework; it also identifies economic considerations that we believe underlie the likely economic effects of these rules.

A. Baseline

To assess the economic impact of the final rules described in this release, we are using as our baseline the security-based swap market as it exists at the time of this release, including applicable rules we have already adopted but excluding rules that we have proposed but not yet finalized.[29] The analysis includes the statutory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act and rules adopted in the Intermediary Definitions Adopting Release, the Cross-Border

of consistent international standards with respect to the regulation (including fees) of swaps.'').

[17] *See* Cross-Border Proposing Release, 78 FR 31000–01; U.S. Activity Proposing Release, 80 FR 27463.

[18] Cross-Border Proposing Release, 78 FR 30999–31000.

[19] *See* U.S. Activity Proposing Release, 80 FR 27459.

[20] *See* CFTC Staff Advisory No. 13–69, ''Division of Swap Dealer and Intermediary Oversight Advisory: Applicability of Transaction-Level Requirements to Activity in the United States'' (November 14, 2013), available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-69.pdf*.

In the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (July 17, 2013), 78 FR 45292 (July 26, 2013) (''CFTC Cross-Border Guidance''), the CFTC defined transaction-level requirements to include the following: (i) Required clearing and swap processing; (ii) margining (and segregation) for uncleared swaps; (iii) mandatory trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards. *See* CFTC Cross-Border Guidance, 78 FR 45333.

[21] *See* Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347 (January 8, 2014) (''CFTC Request for Comment'').

[22] *See* U.S. Activity Proposing Release, 80 FR 27461–63.

[23] *See* Extension of No-Action Relief: Transaction-Level Requirements for Non-U.S. Swap Dealers, CFTC Letter No. 15–48 (August 13, 2015), available at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-48.pdf*.

[24] *See* Letter from Chris Barnard, dated June 26, 2015 (''Chris Barnard Letter''), at 2.

[25] *See, e.g.,* Letter from International Swaps and Derivatives Association (''ISDA''), dated July 13, 2015 (''ISDA Letter''), at 5–6.

[26] *See* Letter from Institute of International Bankers, dated July 13, 2015 (''IIB Letter''), at 7; ISDA Letter at 6; Letter from Securities Industry and Financial Markets Association and Financial Services Roundtable, dated July 13, 2015 (''SIFMA/FSR Letter''), at 6; Letter from HSBC, dated July 13, 2015 (''HSBC Letter''), at 1–3; Letter from Securities Industry and Financial Markets Association, dated January 13, 2015 (''SIFMA Sequencing Letter''), at 5.

[27] *See, e.g.,* SIFMA/FSR Letter at 2, 6; IIB Letter at 2; ISDA Letter at 5.

[28] Pursuant to Exchange Act rules 3a71–3(b)(1)(ii) and (iii)(B), any transaction of a non-U.S. person engaged in dealing activity and that is a conduit affiliate or whose counterparty to the security-based swap has rights of recourse against a U.S. person that is controlling, controlled by, or under common control with the non-U.S. person is already required to be counted toward the non-U.S. person's *de minimis* thresholds regardless of where personnel of the non-U.S. person arranges, negotiates, or executes the transactions.

[29] We also considered, where appropriate, the impact of rules and technical standards promulgated by other regulators, such as the CFTC and the European Securities and Markets Authority, on practices in the security-based swap market.

Adopting Release,[30] the SDR Rules and Core Principles Adopting Release,[31] the SBS Entity Registration Adopting Release,[32] and the Regulation SBSR Adopting Release,[33] as these final rules—even if compliance is not yet required—are part of the existing regulatory landscape that market participants expect to govern their security-based swap activity. The following sections describe current security-based swap market activity, participants, common dealing structures, counterparties, and patterns of cross-border and cross-market participation.

1. Available Data Regarding Security-Based Swap Activity

Our understanding of the market is informed in part by available data on security-based swap transactions, though we acknowledge that limitations in the data limit the extent to which we can quantitatively characterize the market.[34] Because these data do not cover the entire market, we have developed an understanding of market activity using a sample of transactions data that includes only certain portions of the market. We believe, however, that the data underlying our analysis here provide reasonably comprehensive information regarding single-name CDS transactions and the composition of participants in the single-name CDS market.

Specifically, our analysis of the state of the current security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2014. According to data published by the Bank for International Settlements (''BIS''), the global notional amount outstanding in single-name CDS was approximately $9.04 trillion,[35] in multi-name index CDS was approximately $6.75 trillion, and in multi-name, non-index CDS was approximately $611 billion. The total gross market value outstanding in single-name CDS was approximately $366 billion, and in multi-name CDS instruments was approximately $227 billion.[36] The global notional amount outstanding in equity forwards and swaps as of December 2014 was $2.50 trillion, with total gross market value of $177 billion.[37] As these figures show (and as we have previously noted), although the definition of security-based swaps is not limited to single-name CDS, single-name CDS contracts make up a majority of security-based swaps, and we believe that the single-name CDS data are sufficiently representative of the market to inform our analysis of the state of the current security-based swap market.[38]

We note that the data available to us from TIW do not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties;[39] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW data should provide sufficient information to permit us to identify the types of market participants active in the security-based swap market and the general pattern of dealing within that market.[40]

One commenter recommended that we collect a more complete set of data to more precisely estimate the number of non-U.S. persons that would be affected by the proposed rules.[41] Given the absence of comprehensive reporting requirements for security-based swap transactions, and the fact that the location of personnel that arrange, negotiate, or execute a security-based swap transaction is not currently available in TIW, a more precise estimate of the number of non-U.S. persons affected by this rule is not currently feasible. However, because we assume that all transactions by dealers classified as non-U.S. persons with other persons classified as non-U.S. persons on U.S. reference entities are arranged, negotiated, or executed by personnel located in the United States, we believe our analysis of the available data reflects a reasonable estimate for identifying broad market effects and estimating the number of firms that would likely assess the location of their dealing activity.[42]

[30] *See* Application of ''Security-Based Swap Dealer'' and ''Major-Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities, Exchange Act Release No. 72472 (June 25, 2014), 79 FR 47277 (August 12, 2014 (republication)) (''Cross-Border Adopting Release'').

[31] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (February 11, 2015), 80 FR 14437 (March 19, 2015) (''SDR Rules and Core Principles Adopting Release'').

[32] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (August 5, 2015), 80 FR 48963 (August 14, 2015) (''SBS Entity Registration Adopting Release'').

[33] *See* Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14563 (March 19, 2015) (''Regulation SBSR Adopting Release'').

[34] We also rely on qualitative information regarding market structure and evolving market practices provided by commenters, both in letters and in meetings with Commission staff, and knowledge and expertise of Commission staff.

[35] The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

[36] *See* semi-annual OTC derivatives statistics at December 2014, Table 19, available at *http://www.bis.org/statistics/dt1920a.pdf* (accessed July 29, 2015).

[37] These totals include both swaps and security-based swaps, as well as products that are excluded from the definition of ''swap,'' such as certain equity forwards.

[38] While other repositories may collect data on transactions in total return swaps on equity and debt, we do not currently have access to such data for these products (or other products that are security-based swaps). Consistent with the Cross-Border Proposing Release, we believe that data related to single-name CDS provide reasonably comprehensive information for purposes of this analysis, as such transactions appear to constitute roughly 74 percent of the security-based swap market as measured on the basis of gross notional outstanding. *See* Cross-Border Proposing Release, 78 FR 31120 n.1301.

Also consistent with our approach in that release, with the exception of the analysis regarding the degree of overlap between participation in the single-name CDS market and the index CDS market (cross-market activity), our analysis below does not include data regarding index CDS as we do not currently have sufficient information to classify index CDS as swaps or security-based swaps.

[39] Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, we have assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, we have assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, we have classified accounts as ''U.S. counterparties'' when they have reported a registered office location in the United States. We note, however, that this classification is not necessarily identical in all cases to the definition of ''U.S. person'' under Exchange Act rule 3a71–3(a)(4).

[40] The challenges we face in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for security-based swap market participants. The Commission has adopted rules regarding trade reporting, data elements, and public reporting for security-based swaps that are designed to, when fully implemented, provide the Commission with additional measures of market activity that will allow us to better understand and monitor activity in the security-based swap market. *See* Regulation SBSR Adopting Release, 80 FR 14699–14700.

[41] *See* ISDA Letter at 3, 7 (arguing that the Commission lacks complete data to estimate the number of non-U.S. persons that use U.S. personnel to arrange, negotiate, or execute security-based swap transactions or the number of registered U.S. broker-dealers that intermediate these transactions and that this ''makes it difficult or impossible for the Commission to formulate a useful estimate of the market impact, cost and benefits of the Proposal''; suggesting that the Commission ''gather[ ] more robust and complete data prior to finalizing a rulemaking that will have meaningful impact on a global market.'').

[42] *See* Section V.A.1, *infra.*

2. Security-Based Swap Market: Market Participants and Dealing Structures

a. Security-Based Swap Market Participants

Activity in the security-based swap market is concentrated among a relatively small number of entities that act as dealers in this market. In addition to these entities, thousands of other participants appear as counterparties to security-based swap contracts in our sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. We observe that most non-dealer users of security-based swaps do not engage directly in the trading of swaps, but trade through banks, investment advisers, or other types of firms acting as dealers or agents. Based on an analysis of the counterparties to trades reported to the TIW, there are 1,875 entities that engaged directly in trading between November 2006 and December 2014.[43]

As shown in Table 1, below, close to three-quarters of these entities (DTCC-defined ''firms'' shown in TIW, which we refer to here as ''transacting agents'') were identified as investment advisers, of which approximately 40 percent (about 30 percent of all transacting agents) were registered as investment advisers under the Investment Advisers Act of 1940 (''Investment Advisers Act'').[44] Although investment advisers comprise the vast majority of transacting agents, the transactions they executed account for only 11.5 percent of all single-name CDS trading activity reported to the TIW, measured by number of transaction-sides (each transaction has two transaction sides, *i.e.,* two transaction counterparties). The vast majority of transactions (83.7 percent) measured by number of transaction-sides were executed by ISDA-recognized dealers.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2014, REPRESENTED BY EACH COUNTERPARTY TYPE[45]

Transacting agents	Number	Percent	Transaction share
Investment Advisers	1,425	76.0	11.5%
—SEC registered	*571*	*30.5*	*7.7%*
Banks	252	13.4	4.3%
Pension Funds	27	1.4	0.1%
Insurance Companies	38	2.0	0.2%
ISDA-Recognized Dealers[46]	17	0.9	83.7%
Other	116	6.2	0.2%
Total	1,875	99.9	100%

Principal holders of CDS risk exposure are represented by ''accounts'' in the TIW.[47] The staff's analysis of these accounts in TIW shows that the 1,875 transacting agents classified in Table 1 represent 10,900 principal risk holders. Table 2, below, classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[48] For instance, banks in Table 1 allocated transactions across 327 accounts, of which 23 were represented by investment advisers. In the remaining 304 instances, banks traded for their own accounts. Meanwhile, ISDA-recognized dealers in Table 1 allocated transactions across 75 accounts.

[43] These 1,875 entities, which are presented in more detail in Table 1, below, include all DTCC-defined ''firms'' shown in TIW as transaction counterparties that report at least one transaction to TIW as of December 2014. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. *See, e.g.,* Cross-Border Proposing Release, 78 FR 31120 n.1304. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC's Investment Adviser Public Disclosure database, and a firm's public Web site or the public Web site of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA Web site.

[44] *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the security-based swap market, without relying on an intermediary, on behalf of principals. For example, a university endowment may hold a position in a security-based swap that is established by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

[45] Adjustments to these statistics from the proposal reflect updated classifications of counterparties and transactions classification resulting from further analysis of the TIW data.

[46] For the purpose of this analysis, the ISDA-recognized dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: JP Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Credit Agricole, Wells Fargo and Nomura. *See, e.g., http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf.*

[47] ''Accounts'' as defined in the TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' provided by Exchange Act rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person may have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

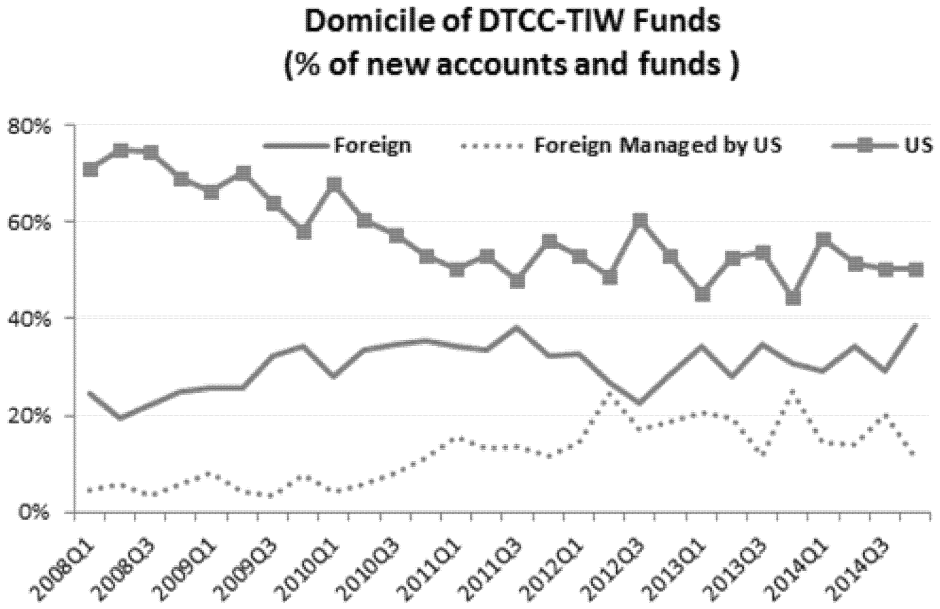
[48] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and may include investment advisers registered with a state or a foreign authority.

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SECURITY-BASED SWAP MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2014 [49]

Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent [50]	
Private Funds	3,168	1,569	50%	1,565	49%	34	1%
DFA Special Entities	1,141	1,088	95%	33	3%	20	2%
Registered Investment Companies	800	768	96%	30	4%	2	0%
Banks (non-ISDA-recognized dealers)	327	17	5%	6	2%	304	93%
Insurance Companies	232	150	65%	21	9%	61	26%
ISDA-Recognized Dealers	75	0	0%	0	0%	75	100%
Foreign Sovereigns	72	53	74%	3	4%	16	22%
Non-Financial Corporations	61	43	70%	3	5%	15	25%
Finance Companies	13	6	46%	0	0%	7	54%
Other/Unclassified	5,011	3,327	66%	1,452	29%	232	5%
All	10,900	7,021	64%	3,113	29%	766	7%

Among the accounts, there are 1,141 Dodd-Frank Act-defined special entities and 800 investment companies registered under the Investment Company Act of 1940.[51] Private funds comprise the largest type of account holders that we were able to classify, and, although not verified through a recognized database, most of the funds we were not able to classify appear to be private funds.[52]

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with a domicile outside the United States that are associated with a firm that also has a domicile outside the United States (referred to below as "Foreign"), and (3) new accounts with a domicile outside the United States that are associated with a firm that has a domicile in the United States (collectively referred to below as "Foreign Managed by US").[53] Unique new accounts are aggregated, and percentages are computed, on a quarterly basis, from January 2008 through December 2014.



[49] Adjustments to these statistics from the proposal reflect updated counterparty and transaction classification resulting from additional analysis of the TIW data.

[50] This column reflects the number of participants who are also trading for their own accounts.

[51] *See* 15 U.S.C. 80a1–80a64. There remain approximately 5,000 DTCC ''accounts'' unclassified by type. Although unclassified, each was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

[52] For the purposes of this discussion, ''private fund'' encompasses various unregistered pooled investment vehicles, including hedge funds, private equity funds, and venture capital funds.

[53] *See* note 39, *supra* (explaining how domiciles for firms were identified for purposes of this analysis).

b. Participant Domiciles

As depicted in Figure 1 above, the domiciles of new accounts participating in the market have shifted over time. It is unclear whether these shifts represent changes in the types of participants active in this market, changes in reporting, or changes in transaction volumes in particular underliers. For example, the increased percentage of new entrants that are foreign accounts may reflect an increase in participation by foreign account holders in the security-based swap market, and the increased percentage of the subset of new entrants that are foreign accounts managed by U.S. persons also may reflect more specifically the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli.[54] On the other hand, apparent changes in the percentage of new accounts with foreign domiciles may reflect improvements in reporting by market participants to TIW, an increase in the percentage of transactions between U.S. and non-U.S. counterparties, and/or increased transactions in single-name CDS on U.S. reference entities by foreign persons.[55]

c. Market Centers

A market participant's domicile, however, does not necessarily correspond to where it engages in security-based swap activity. In particular, financial groups engaged in security-based swap dealing activity operate in multiple market centers and carry out such activity with counterparties around the world.[56] Several commenters noted that many market participants that are engaged in dealing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlier is traded.[57] Thus, although a significant amount of the dealing activity in security-based swaps on U.S. reference entities involves non-U.S. dealers, we understand that these dealers tend to carry out much of the security-based swap trading and related risk-management activities in these security-based swaps within the United States.[58] Some dealers have explained that being able to centralize their trading, sales, risk management and other activities related to U.S. reference entities in U.S. operations (even when the resulting transaction is booked in a foreign entity) improves the efficiency of their dealing business.[59]

Consistent with these operational concerns and the global nature of the security-based swap market, the available data appear to confirm that participants in this market are in fact active in market centers around the globe. Although, as noted above, the available data do not permit us to identify the location of personnel in a transaction, TIW transaction records indicate that firms that are likely to be security-based swap dealers operate out of branch locations in key market centers around the world, including New York, London, Tokyo, Hong Kong, Chicago, Sydney, Toronto, Frankfurt, Singapore and the Cayman Islands.[60]

Given these market characteristics and practices, participants in the security-based swap market may bear the financial risk of a security-based swap transaction in a location different from the location where the transaction is arranged, negotiated, or executed, or where economic decisions are made by managers on behalf of beneficial owners. And market activity may occur in a jurisdiction other than where the market participant or its counterparty books the transaction. Similarly, a participant in the security-based swap market may be exposed to counterparty risk from a counterparty located in a jurisdiction that is different from the market center or centers in which it participates.

d. Common Business Structures for Firms Engaged in Security-Based Swap Dealing Activity

A financial group that engages in a global security-based swap dealing business in multiple market centers may choose to structure its dealing business in a number of different ways. This structure, including where it books the transactions that constitute that business and how it carries out market-facing activities that generate those transactions, reflects a range of business and regulatory considerations, which each financial group may weigh differently.

A financial group may choose to book all of its security-based swap transactions, regardless of where the transaction originated, in a single, central booking entity. That entity generally retains the risk associated with that transaction, but it also may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap.[61] Alternatively, a financial group may book security-based swaps arising from its dealing business in separate affiliates, which may be located in the jurisdiction where it originates the risk associated with the security-based swap or, alternatively, the jurisdiction where it manages that risk.[62] Some financial groups may book transactions originating in a particular region to an affiliate established in a jurisdiction located in that region.[63]

Regardless of where a financial group determines to book its security-based swaps arising out of its dealing activity, it is likely to operate offices that perform sales or trading functions in one or more market centers in other jurisdictions. Maintaining sales and trading desks in global market centers permits the financial group to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in other jurisdictions,[64] for example, when a counterparty's home financial markets

[54] *See* Charles Levinson, ''U.S. banks moved billions in trades beyond the CFTC's reach,'' Reuters (August 21, 2015), available at: *http://www.reuters.com/article/2015/08/21/usa-banks-swaps-idUSL3N10S57R20150821*.

[55] As noted above, the available data do not include all security-based swap transactions but only transactions in single-name CDS that involve either (1) at least one account domiciled in the United States (regardless of the reference entity) or (2) single-name CDS on a U.S. reference entity (regardless of the U.S.-person status of the counterparties).

[56] *See* U.S. Activity Proposing Release, 80 FR 27449–52.

[57] *See* IIB Letter at 2; SIFMA/FSR Letter at 6; ISDA Letter at 5. One commenter indicated that a significant number of interdealer transactions between two non-U.S. dealers involve trades arranged, negotiated, or executed within the United States, although this commenter did not specifically identify what underliers these trades involved. *See* MFA/AIMA Letter at 7, note 34.

[58] *See* IIB Letter at 2; SIFMA/FSR Letter at 6; ISDA Letter at 5.

[59] *See* IIB Letter at 2; SIFMA/FSR Letter at 6; ISDA Letter at 5.

[60] TIW transaction records contain a proxy for the domicile of an entity, which may differ from branch locations, which are separately identified in the transaction records.

[61] *See* U.S. Activity Proposing Release, 80 FR 27463; Cross-Border Proposing Release, 78 FR 30977–78.

[62] *See, e.g.,* HSBC Letter at 2; SIFMA/FSR Letter at 6–7.

[63] There is some indication that this booking structure is becoming increasingly common in the market. *See, e.g.,* ''Regional swaps booking replacing global hubs,'' Risk.net (September 4,

are closed.[65] A financial group engaged in a security-based swap dealing business also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can take advantage of local expertise in such products or that can gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market.[66] Some financial groups prefer to centralize risk management, pricing, and hedging for specific products with the personnel responsible for carrying out the trading of such products to mitigate operational risk associated with transactions in those products.[67]

The financial group affiliate that books these transactions may carry out related market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the financial group may determine that another affiliate in the financial group employs personnel who possess expertise in relevant products or who have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap dealing activity on its behalf in that jurisdiction.[68] In these cases, the affiliate that books these transactions and its affiliated agent may operate as an integrated dealing business, each performing distinct core functions in carrying out that business.

Alternatively, the financial group affiliate that books these transactions may in some circumstances determine to engage the services of an unaffiliated agent through which it can engage in dealing activity. For example, a financial group may determine that using an interdealer broker may provide an efficient means of participating in the interdealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently.[69] A financial group may also use unaffiliated agents that operate at its direction. Such an arrangement may be particularly valuable in enabling a financial group to service clients or access liquidity in jurisdictions in which it has no security-based swap operations of its own.

We understand that financial group affiliates (whether affiliated with U.S.-based financial groups or not) that are established in foreign jurisdictions may use any of these structures to engage in dealing activity in the United States, and that they may seek to engage in dealing activity in the United States to transact with both U.S.-person and non-U.S.-person counterparties. In transactions with non-U.S.-person counterparties, these foreign affiliates may affirmatively seek to engage in dealing activity in the United States because the sales personnel of the non-U.S.-person dealer (or of its agent) in the United States have existing relationships with counterparties in other locations (such as Canada or Latin America) or because the trading personnel of the non-U.S.-person dealer (or of its agent) in the United States have the expertise to manage the trading books for security-based swaps on U.S. reference securities or entities. We understand that some of these foreign affiliates engage in dealing activity in the United States through their personnel (or personnel of their affiliates) in part to ensure that they are able to provide their own counterparties, or those of financial group affiliates in other jurisdictions, with access to liquidity (often in non-U.S. reference entities) during U.S. business hours, permitting them to meet client demand even when the home markets are closed.[70] In some cases, such as when seeking to transact with other dealers through an interdealer broker, these foreign affiliates may act, in a dealing capacity, in the United States through an unaffiliated, third-party agent.

e. Current Estimates of Number of Security-Based Wwap Dealers

As discussed above, security-based swap activity is concentrated in a relatively small number of dealers, which already represent a small percentage of all market participants active in the security-based swap market.[71] Based on analysis of 2014 data, our earlier estimates of the number of entities likely to register as security-based swap dealers remain largely unchanged.[72] Of the approximately 50 entities that we estimate may potentially register as security-based swap dealers, we believe it is reasonable to expect 22 to be non-U.S. persons.[73] Under the rules as they currently exist, we identified approximately 170 entities engaged in single-name CDS activity, with all counterparties, of $2 billion or more. Of those entities, 155 would be expected to incur assessment costs to determine whether they meet the ''security-based swap dealer'' definition. Approximately 57 of these entities are non-U.S. persons.[74]

Many of these dealers are already subject to other regulatory frameworks under U.S. law based on their role as intermediaries or on the volume of their positions in other products, such as swaps. Available data supports our prior estimates, based on our experience and understanding of the swap and security-based swap market, that of the 55 firms that might register as security-based swap dealers or major security-based swap participants, approximately 35 would also be registered with the CFTC as swap dealers or major swap participants.[75] Based on our analysis of TIW data and filings with the Commission, we estimate that 16 market participants expected to register as security-based swap dealers have already registered with the Commission as broker-dealers and are thus subject to Exchange Act and Financial Industry Regulatory Authority (''FINRA'') requirements applicable to such entities. Finally, as we discuss below, some dealers may be subject to similar

[64] These offices may be branches or offices of the booking entity itself, or branches or offices of an affiliated agent, such as, in the United States, a registered broker-dealer.

[65] *See* SIFMA/FSR Letter at 3; HSBC Letter at 2.

[66] *See* HSBC Letter at 2.

[67] *See* note 59, *supra.*

[68] *See* HSBC Letter at 2.

[69] We understand that interdealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their important role in facilitating transactions in less-liquid security-based swaps.

[70] *See* IIB Letter at 18–19.

[71] *See* II.A.2.a,, *supra.*

[72] *See* U.S. Activity Proposing Release, 80 FR 27452.

[73] These estimates are based on the number of accounts in TIW data with total notional volume in excess of *de minimis* thresholds, increased by a factor of two, to account for any potential growth in the security-based swap market, to account for the fact that we are limited in observing transaction records for activity between non-U.S. persons to those that reference U.S. underliers, and to account for the fact that we do not observe security-based swap transactions other than in single-name CDS. *See* U.S. Activity Proposing Release, 80 FR 27452. *See also* Intermediary Definitions Adopting Release, 77 FR 30725 n.1457.

[74] Adjustments to these statistics from the proposal reflect further analysis of the TIW data. *Cf.* U.S. Activity Proposing Release, 80 FR 27452 (providing an estimate of 56 entities that are non-U.S. persons).

[75] Based on our analysis of 2014 TIW data and the list of swap dealers provisionally registered with the CFTC, and applying the methodology used in the Intermediary Definitions Adopting Release, we estimate that substantially all registered security-based swap dealers would also be registered as swap dealers with the CFTC. *See* U.S. Activity Proposing Release, 80 FR 27458; SBS Entity Registration Adopting Release, 80 FR 49000. *See also* CFTC list of provisionally registered swap dealers, available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.*

requirements in one or more foreign jurisdictions.[76]

3. Security-Based Swap Market: Levels of Security-Based Swap Trading Activity

As already noted, firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2014 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer *de minimis* thresholds and trigger registration requirements intermediated transactions with a gross notional amount of approximately $8.5 trillion, over 60 percent of which was intermediated by top 5 dealer accounts.[77]

These dealers transact with hundreds or thousands of counterparties. Approximately 35 percent of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2014.[78] Approximately 9 percent of these accounts transacted with 500–1,000 unique counterparty accounts; another 35 percent transacted with 100–500 unique accounts, and only 22 percent of these accounts intermediated swaps with fewer than 100 unique counterparties in 2014. The median dealer account transacted with 453 unique accounts (with an average of approximately 759 unique accounts). Non-dealer counterparties transact almost exclusively with these dealers. The median non-dealer counterparty transacted with 3 dealer accounts (with an average of approximately 4 dealer accounts) in 2014.

Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to the TIW between January 2008 and December 2014, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty.

Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant and that interdealer transactions continue to represent a significant majority of trading activity, even as notional volume has declined over the past six years,[79] from more than $6 trillion in 2008 to less than $3 trillion in 2014.[80]

The high level of interdealer trading activity reflects the central position of a small number of dealers, each of which intermediates trades with many hundreds of counterparties.[81] While we are unable to quantify the current level of trading costs for single-name CDS, those dealers appear to enjoy market power as a result of their small number and the large proportion of order flow they privately observe.

[75] Based on our analysis of 2014 TIW data and the list of swap dealers provisionally registered with the CFTC, and applying the methodology used in the Intermediary Definitions Adopting Release, we estimate that substantially all registered security-based swap dealers would also be registered as swap dealers with the CFTC. *See* U.S. Activity Proposing Release, 80 FR 27458; SBS Entity Registration Adopting Release, 80 FR 49000. *See also* CFTC list of provisionally registered swap dealers, available at: *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer*.

[76] *See, e.g.,* ISDA Letter at 5, 6.

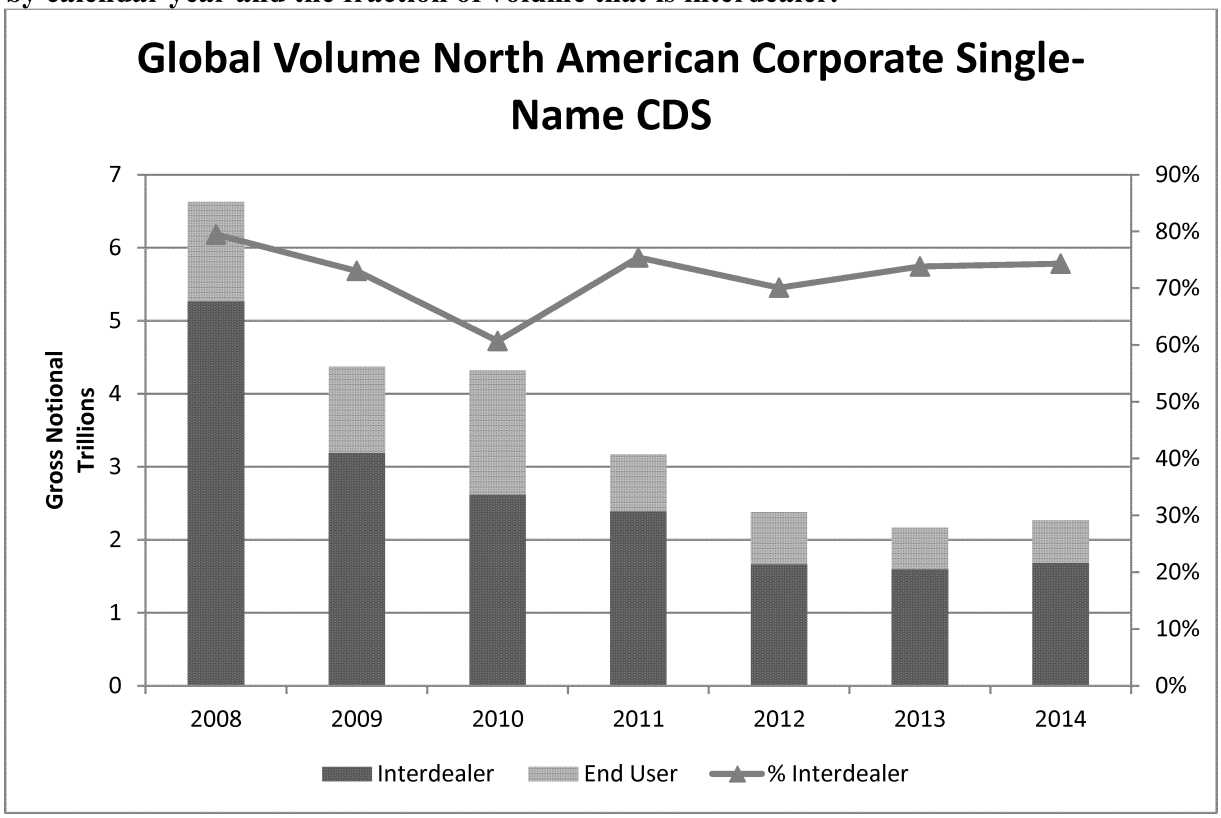
[78] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, we may infer that entities and financial groups, which may have multiple accounts, transact with at least as many counterparties as the largest of their accounts in terms of number of counterparties.

[79] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

[80] This estimate is lower than the gross notional amount of $8.5 trillion noted above as it includes only the subset of single-name CDS referencing North American corporate documentation. *See* note 77 and accompanying text, *supra.*

[81] One commenter criticized the analysis in the U.S. Activity Proposing Release as ''appear[ing] to suffer from certain defects'' because the data implied that security-based swap dealing was not a ''customer-driven business.'' *See* Letter from Citadel, dated July 13, 2015 (''Citadel Letter''), at 9. We note that our current estimate of the relative size of the interdealer business, based on our updated analysis, is somewhat lower than the 80 percent figure cited by the commenter. Nonetheless, we continue to estimate that interdealer transactions comprise the majority of price-forming transactions. Accordingly, it remains our view that dealers play a central role in the security-based swap market.

Figure 2: Global notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer. [82]



Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data we analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad, as shown in Figure 3 below. Using the self-reported registered office location of the TIW accounts as a proxy for domicile, we estimate that only 12 percent of the global transaction volume by notional volume between 2008 and 2014 was between two U.S.-domiciled counterparties, compared to 48 percent entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 40 percent entered into between two foreign-domiciled counterparties.[83]

If we consider the number of cross-border transactions instead from the perspective of the domicile of the corporate group (*e.g.,* by classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the percentages shift significantly. Under this approach, the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 32 percent, and to 51 percent for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty. By contrast, the proportion of activity between two foreign-domiciled counterparties drops from 40 percent to 17 percent. This change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks accounts for a higher percentage of security-based swap activity than U.S. subsidiaries of foreign firms and U.S. branches of foreign banks. It also demonstrates that financial groups based in the United States are involved in an overwhelming majority (approximately 83 percent) of all reported transactions in North American corporate single-name CDS.

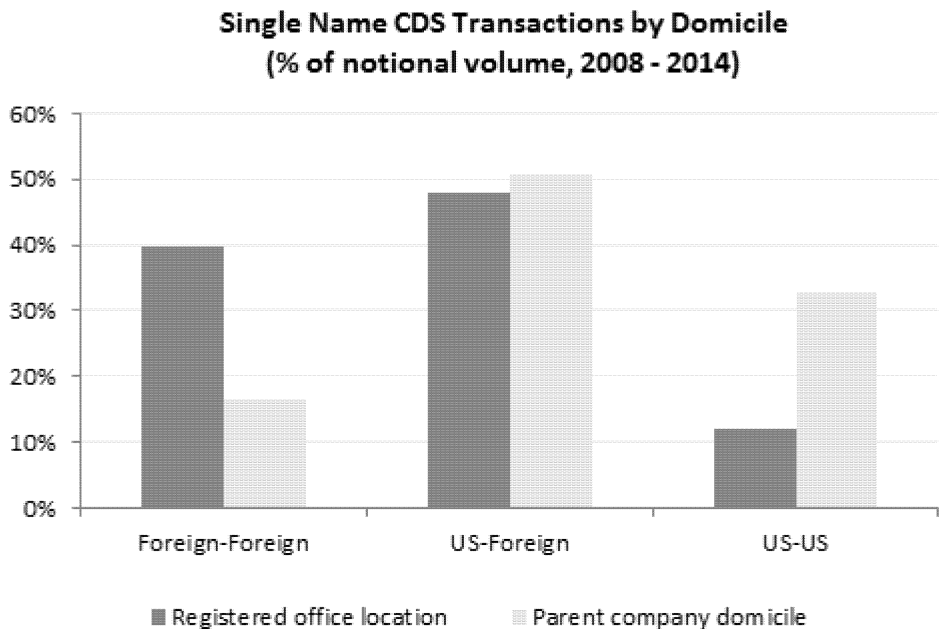
Financial groups based in the United States are also involved in a majority of interdealer transactions in North American corporate single-name CDS: Of transactions on North American corporate single-name CDS between two ISDA-recognized dealers and their branches or affiliates, 65 percent of transaction notional volume involved at least one account of an entity with a U.S. parent.

In addition, we note that a significant majority of North American corporate single-name CDS transactions occur in the interdealer market or between dealers and non-U.S.-person non-dealers, with the remaining (and much smaller) portion of the market consisting of transactions between dealers and U.S.-person non-dealers. Specifically, 79.5 percent of North American corporate single-name CDS transactions involved either two ISDA-recognized dealers or an ISDA-recognized dealer and a non-U.S.-person non-dealer. Approximately 20 percent of such transactions involved an ISDA-recognized dealer and a U.S.-person non-dealer.

[82] Adjustments to these statistics from the proposal reflect additional analysis of TIW data. *Cf.* U.S. Activity Proposing Release 80 FR 27453 (showing slightly different values for 2012 through 2014). For the purposes of this analysis, we assume that same-day cleared transactions reflect inter-dealer activity.

[83] For purposes of this discussion, we have assumed that the registered office location reflects the place of domicile for the fund or account, but we note that this domicile does not necessarily correspond to the location of an entity's sales or trading desk. *See* U.S. Activity Proposing Release, 80 FR 27541 n.44. *See also* note 39, *supra.*

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2014.



4. Global Regulatory Efforts

In 2009, the G20 Leaders—whose membership includes the United States, 18 other countries, and the European Union (''EU'')—addressed global improvements in the OTC derivatives markets. They expressed their view on a variety of issues relating to OTC derivatives contracts. In subsequent summits, the G20 Leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[84]

Many security-based swap dealers likely will be subject to foreign regulation of their security-based swap activities that are similar to regulations that may apply to them pursuant to Title VII, even if the relevant foreign jurisdictions do not classify certain market participants as ''dealers'' for regulatory purposes. Some of these regulations may duplicate, and in some cases conflict with, certain elements of the Title VII regulatory framework.[85]

Foreign legislative and regulatory efforts have focused on five general areas: Moving OTC derivatives onto organized trading platforms, requiring central clearing of OTC derivatives, requiring post-trade reporting of transaction data for regulatory purposes and public dissemination of anonymized versions of such data, establishing or enhancing capital requirements for non-centrally cleared OTC derivatives transactions, and establishing or enhancing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions. The rules being adopted in this release will affect a person's obligations with respect to the latter three of these requirements, as a person's status as a security-based swap dealer will affect its post-trade reporting obligations under Regulation SBSR,[86] and, as proposed, would subject it to capital, margin, and other risk mitigation requirements under the Title VII dealer framework, such as trade acknowledgement and verification requirements.[87]

Foreign jurisdictions have been actively implementing regulations in connection with each of these three categories of requirements. Regulatory transaction reporting requirements are in force in a number of jurisdictions including the EU, Hong Kong SAR, Japan, Australia, Brazil, Canada, China, India, Indonesia, South Korea, Mexico, Russia, Saudi Arabia, and Singapore; other jurisdictions are in the process of proposing legislation and rules to implement these requirements.[88] In addition, a number of major foreign jurisdictions have initiated the process of implementing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions.[89] Several jurisdictions

[84] *See, e.g.,* G20 Leaders' Final Declaration, November 2011, para. 24, available at: *https://g20.org/wp-content/uploads/2014/12/Declaration_eng_Cannes.pdf.*

[85] Several commenters raised concerns about the potential for overlap or conflict of Title VII security-based swap dealer requirements and similar requirements under foreign law. *See* Citadel Letter at 8; Letter from ICI Global, dated July 13, 2015 (''ICI Global Letter''), at 8; SIFMA/FSR Letter at 9; IIB Letter at 4, 6; ISDA Letter at 5, 10.

[86] *See* Regulation SBSR, Rule 901(a)(2)(ii).

[87] *See* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (October 18, 2012), 77 FR 70213 (November 23, 2012) (''Capital, Margin, and Segregation Proposing Release''); Trade Acknowledgment and Verification of Security-Based Swap Transactions, Exchange Act Release No. 63727 (January 14, 2011), 76 FR 3859 (January 21, 2011). The Commission anticipates that it may address the impact, if any, of a person's status as a registered security-based swap dealer on the first two of those requirements (application of the clearing requirement and trade execution requirement) in a subsequent release or releases.

[88] Information regarding ongoing regulatory developments described in this section was primarily obtained from progress reports on implementation of OTC derivatives market reforms published by the Financial Stability Board. These are available at: *http://www.financialstabilityboard.org/list/fsb_publications/index.htm.*

[89] In November 2015, the Financial Stability Board reported that 12 member jurisdictions participating in its tenth progress report on OTC derivatives market reforms had in force a legislative framework or other authority to require exchange of

have also taken steps to implement the Basel III recommendations governing capital requirements for financial entities, which include enhanced capital charges for non-centrally cleared OTC derivatives transactions.[90]

5. Cross-Market Participation

As noted above, persons registered as security-based swap dealers and major security-based swap participants are likely also to engage in swap activity, which is subject to regulation by the CFTC.[91] This overlap reflects the relationship between single-name CDS contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, prices of these products depend upon one another,[92] creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4,500 TIW accounts that participated in the market for single-name CDS in 2014 revealed that approximately 3,000 of those accounts, or 67 percent, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2014 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 64 percent; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 10 percent.[93]

Similarly, since the payoffs of security-based swaps are dependent upon the value of underlying securities, activity in the security-based swap market can be correlated with activity in underlying securities markets. Security-based swaps may be used in order to hedge or speculate on price movements of reference securities or the credit risk of reference securities. For instance, prices of both CDS and corporate bonds are sensitive to the credit risk of underlying reference securities. As a result, trading across markets may sometimes result in information and risk spillovers between these markets, with informational efficiency, pricing, and liquidity in the security-based swap market affecting informational efficiency, pricing, and liquidity in markets for related assets, such as equities and corporate bonds.[94]

B. Economic Considerations

These final rules, together with our previously adopted rules defining ''security-based swap dealer'' and applying that definition in the cross-border context, define the scope of entities that are subject to the Title VII dealer requirements. Although these final rules do not define specific substantive requirements, the scope of the definition will play a central role in determining the overall costs and benefits of particular regulatory requirements, and of the Title VII regulatory framework as a whole.[95] In evaluating the expected benefits and costs of our final rules in this context, we have identified several economic considerations relevant to our analysis that have informed our final rule, in light of the establishment in Title VII of the Dodd-Frank Act of a statutory framework to reduce risk, increase transparency, and promote market integrity within the financial system.[96]

First, as we have previously noted, the security-based swap market is a global market.[97] A significant proportion of single-name CDS transactions on U.S. reference entities is between counterparties that are based in different jurisdictions, and these counterparties may use personnel located in other jurisdictions to perform various functions in connection with these transactions.[98] Moreover, dealers that carry out a global business, as noted above, have significant flexibility in choosing how to structure their business.[99] In determining the scope of the rules specifying which transactions non-U.S. persons must include in their dealer *de minimis* calculations, we are aware both that non-U.S. persons engage in security-based swap dealing activity with other non-U.S. persons in the

margin for non-centrally cleared transactions and had published implementing standards or requirements for consultation or proposal. A further 11 member jurisdictions had a legislative framework or other authority in force or published for consultation or proposal. *See* Financial Stability Board, OTC Derivatives Market Reforms Tenth Progress Report on Implementation (November 2015), available at *http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf.*

[90] In November 2015, the Financial Stability Board reported that 18 member jurisdictions participating in its tenth progress report on OTC derivatives market reforms had in force standards or requirements covering more than 90 percent of transactions that require enhanced capital charges for non-centrally cleared transactions. A further three member jurisdictions had a legislative framework or other authority in force and had adopted implementing standards or requirements that were not yet in force. An additional three member jurisdictions had a legislative framework or other authority in force or published for consultation or proposal. *See* Financial Stability Board, OTC Derivatives Market Reforms Tenth Progress Report on Implementation (November 2015), available at *http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf.*

[91] *See* note 75 and accompanying text, *supra. See also* U.S. Activity Proposing Release, 80 FR 27458; SBS Entity Registration Adopting Release, 80 FR 49000.

[92] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.,* George Casella and Roger L. Berger, ''Statistical Inference'' (2002), at 171.

[93] The Commission recently revised its methodology for estimating cross-market participation of TIW accounts. This has resulted in an increase in the reported number of accounts that participated in both markets relative to previous Commission releases.

[94] *See* SBS Entity Registration Adopting Release, 80 FR 49003. Empirical evidence on the direction and significance of the CDS-bond market spillover is mixed. *See also* Massimo Massa & Lei Zhang, CDS and the Liquidity Provision in the Bond Market (INSEAD Working Paper No. 2012/114/FIN, 2012), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2164675* (considering whether the presence of CDS improves pricing and liquidity of investment grade bonds in 2001–2009); Sanjiv Ranjan Das, Madhu Kalimipalli & Subhankar Nayak, Did CDS Trading Improve the Market for Corporate Bonds?, 111 J. Fin. Econ. 495 (2014) (considering the effects of CDS trading on the efficiency, pricing error and liquidity of corporate bond markets); Martin Oehmke & Adam Zawadowski, The Anatomy of the CDS Market (Working Paper, 2014), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2023108* (suggesting a standardization and liquidity role of CDS markets and documenting cross-market arbitrage links between the CDS market and the bond market); and Ekkehart Boehmer, Sudheer Chava, & Heather Tookes, Related Securities and Equity Market Quality: The Cases of CDS, forthcoming, J. Fin. & Quant. Analysis (2015) (providing evidence that firms with traded CDS contracts on their debt experience significantly lower liquidity and price efficiency in equity markets when these firms are closer to default and in times of high market volatility).

[95] *See* Cross-Border Adopting Release, 79 FR 47327 (stating that the registration and regulation of entities as security-based swap dealers and major security-based swap participants would lead to programmatic costs and benefits).

[96] *See* Intermediary Definitions Adopting Release, 77 FR 30596.

[97] *See* Cross-Border Adopting Release, 79 FR 47282.

[98] *See* Section II.A.3, *supra.*

[99] *See* Section II.A.2d, *supra.*

United States and that U.S. financial groups may choose to restructure their business to ensure that transactions with non-U.S. persons that involve dealing activity in the United States are booked in non-U.S.-person affiliates.[100] Thus, the scope of our final framework could have a significant effect on the number of persons that ultimately register as security-based swap dealers and the proportion of security-based swap dealing activity carried out in the United States that will ultimately be carried out by such dealers.

Second, the final scope of our rules, and market participants' reactions to our rules (including rules already adopted as part of the Intermediary Definitions Adopting Release, and the Cross-Border Adopting Release) may affect competition between U.S.-person and non-U.S.-person dealers when they engage in security-based swap transactions with non-U.S. persons. In particular, without these rules, competitive disparities might arise between U.S.-person dealers, which would be subject to these rules, and non-U.S.-person dealers, which may not be, even if the non-U.S.-person dealers engage in dealing activity at levels exceeding the relevant *de minimis* thresholds using personnel located in the United States. This disparity in treatment likely would produce disparities in the costs that different types of dealers might bear, with significant effects on the structure and integrity of the security-based swap market.

Under currently existing rules, for example, even if a U.S.-person dealer and a non-U.S.-person dealer both engaged in dealing activity in the United States in connection with transactions involving non-U.S.-person counterparties, the non-U.S.-person dealer would be more likely to be able to engage in this activity without registering as a security-based swap dealer,[101] which would permit it, unlike the U.S.-person dealer, to avoid the costs associated with Title VII dealer requirements, including compliance with registration, books and records, and capital and margin requirements. To the extent that the non-U.S.-person dealer does not incur these costs, it would be likely to be able to offer more competitive pricing to its non-U.S.-person counterparties.

Similarly, a non-U.S. person seeking to trade in a security-based swap on a U.S. reference entity may prefer to enter into the transaction with a non-U.S.-person dealer rather than a U.S.-person dealer not only because the non-U.S.-person dealer may offer more competitive prices, but also because the non-U.S. counterparty may itself incur lower costs in transacting with a non-U.S. person dealer. For example, a non-U.S.-person counterparty may find transacting with the non-U.S.-person dealer that is not required to register as a security-based swap dealer to be more attractive because a transaction with that dealer may not involve a requirement to post collateral consistent with Title VII margin requirements, particularly if it can do so without surrendering the benefits associated with facing personnel located in the United States.

In addition, under currently existing rules, financial groups that use non-U.S. persons to carry out their dealing business with non-U.S.-person counterparties may be able to use profits from that dealing business to subsidize their dealing business with U.S.-person counterparties carried out through a registered security-based swap dealer. This cross-subsidization would allow them to gain further competitive advantage over financial groups whose dealers are U.S. persons, even with respect to transactions with U.S.-person counterparties.

These competitive disparities likely would create an incentive for financial groups (whether based in the United States or abroad) to book security-based swap transactions with non-U.S.-person counterparties in a non-U.S.-person affiliate while continuing to use affiliates or agents that are located in the United States to engage in dealing activity with those counterparties. As discussed further below, market participants may respond in different ways to these incentives, but any such response likely would lead to significant changes in market structure, exacerbating market fragmentation. The final amendments reflect our consideration of the likely competitive effects of the scope of Title VII dealer requirements on participants in the security-based swap market.

Third, as just noted, the scope of our rules may provide incentives for market fragmentation and negatively affect liquidity and pricing in the U.S. market. Subjecting certain transactions but not others to regulatory requirements, including the security-based swap dealer *de minimis* counting requirements, may lead certain dealers to seek to limit dealing activity with certain counterparties, to cease dealing with certain counterparties altogether, or to restructure their dealing business to minimize the volume that it carries out in a firm that is required to register as a security-based swap dealer.[102] One commenter noted that requiring certain transactions but not others to be subject to Title VII requirements may lead dealers to quote less competitive prices to counterparties for transactions that are subject to these requirements,[103] and it appears that some U.S.-based financial groups, in response to similar regulatory reforms, have already restructured their swap business to book their transactions in non-U.S.-person affiliates.[104] Such responses by market participants are likely to fragment security-based swap liquidity into two pools, one for U.S. persons and the other for non-U.S. persons, even if non-U.S.-person dealers continue to engage in security-based swap dealing activity with non-U.S. persons (including other dealers) in the United States. This fragmentation could adversely affect the security-based swap market's ability to efficiently allocate risk among its participants,[105] as discussed further below.[106]

Depending on the final scope of Title VII application, the nature of the fragmentation could have a particularly deleterious effect on pricing and liquidity for U.S. persons seeking to enter into security-based swap transactions. To the extent that dealers seek to carry out transactions with other dealers in affiliates that are not subject

[100] *See* Cross-Border Adopting Release, 79 FR 47285 (noting that ''market participants may shift their behavior'' in response to our cross-border application of Title VII requirements).

[101] We note that, under Exchange Act rule 3a71–3, a non-U.S.-person affiliate of a U.S. person is not required to include such transactions in its dealer *de minimis* threshold calculations if that non-U.S. person's counterparties do not have recourse to a U.S. person under the terms of the security-based swap and the non-U.S. person is not a conduit affiliate. *See* Exchange Act rule 3171–3(b)(1)(ii) and (iii) (applying the *de minimis* exception to cross-border dealing activity of conduit affiliates and non-U.S. persons).

[102] *See* IIB Letter at 2–3; ISDA Letter at 5; SIFMA/FSR Letter at 6. *See* Section V.B, *infra,* for further discussion of potential effects of the final rules on non-U.S. persons' incentives to use personnel located in U.S. branches or offices to arrange, negotiate, or execute security-based swap transactions. *See also* HSBC Letter at 2 (discussing the possibility of moving security-based swap trading relationships with non-U.S. customers from a U.S.-based affiliate to a registered security-based swap dealer affiliate while noting the impracticability of this response).

[103] *See* IIB Letter at 15 (explaining that a dealer may widen its bid-ask spread for security-based swaps that are subject to public dissemination requirements to account for the risk that, due to the requirements the dealer may not be able to hedge the security-based swap before it is publicly disclosed).

[104] *See* Charles Levinson, ''U.S. banks moved billions in trades beyond CFTC's reach,'' Reuters (August 21, 2015), available at: *http://www.reuters.com/article/2015/08/21/usa-banks-swaps-idUSL3N10S57R20150821.*

[105] *See* note 27, *supra* (citing IIB Letter at 2).

[106] *See* Section V.B.2, *infra.*

to Title VII security-based swap dealer requirements, the large interdealer market, which accounts for a large majority of all security-based swap transactions,[107] could shift to non-U.S. dealers that are not required to register as security-based swap dealers under currently existing rules. Such a shift likely would exacerbate the effects of market fragmentation on U.S. market participants, as security-based swap activity would be split into two very different pools: One very large pool of transactions unregulated by Title VII (interdealer trades, carried out primarily by unregistered non-U.S. persons, and transactions between unregistered non-U.S.-person dealers and non-U.S.-person non-dealers) and one much smaller pool limited to transactions between registered dealers (whether U.S. persons or non-U.S. persons) and U.S.-person counterparties.[108] The final amendments reflect our consideration of the relationship between the scope of Title VII dealer requirements and market fragmentation, including related effects on market liquidity and pricing, particularly for U.S. market participants.

Fourth, in addition to creating an incentive for market fragmentation, applying Title VII dealer requirements only to certain transactions carried out in the United States could affect the integrity of the U.S. security-based swap market as well as our ability to monitor the activity of participants in that market. To the extent that subjecting transactions involving dealing activity carried out by personnel located in the United States increases the likelihood that a non-U.S. person must register as a dealer, Title VII dealer recordkeeping requirements may enhance our ability to evaluate dealers' records for evidence of market manipulation or other abusive practices within the United States. For example, such records, when combined with information from other sources available to the Commission,[109] could help reveal situations where a registered security-based swap dealer is engaging in abusive or manipulative conduct with respect to a series of transactions in which it lays off risk from a transaction with a U.S.-person counterparty to a non-U.S.-person via an affiliated non-U.S.-person dealer, using personnel located in a U.S. branch or office. Absent these final amendments, the affiliated non-U.S.-person dealer might not need to register, which would inhibit our ability to evaluate the affiliated non-U.S.-person dealer's records for the offsetting transaction with the non-U.S.-person counterparty, or related transactions, effected by the same personnel located in a U.S. branch or office that effected the transaction with the U.S.-person counterparty. The final amendments thus reflect our consideration of the impact that the scope of Title VII dealer requirements under our final rules may have on our ability to detect abusive and manipulative practices in the security-based swap market.

Finally, the global security-based swap market is highly interconnected and highly concentrated.[110] As we have previously described, most market participants have only a few counterparties, but dealers can have hundreds of counterparties, consisting of both non-dealing market participants (including registered investment companies and private funds) and other dealers.[111] Furthermore, as we have described above, a majority of security-based swap trades are dealer-to-dealer, rather than dealer-to-non-dealer or non-dealer-to-non-dealer, and a large fraction of single-name CDS volume is between counterparties domiciled in different jurisdictions.[112] This interconnectedness facilitates the use of security-based swaps as a tool for sharing financial and commercial risks. The global scale of the security-based swap market allows counterparties to access liquidity across jurisdictional boundaries, providing U.S. market participants with opportunities to share these risks with counterparties around the world.[113]

However, as we have also noted, these opportunities for international risk sharing also represent channels for risk transmission.[114] In other words, the interconnectedness of security-based swap market participants provides paths for both liquidity and risk to flow throughout the system, meaning that it can be difficult to isolate risks to a particular entity or geographic segment. Because dealers facilitate the great majority of security-based swap transactions, with bilateral relationships that extend to potentially thousands of counterparties, liquidity problems or other forms of financial distress that begin in one entity or one corner of the globe can potentially spread throughout the network, with dealers as a central conduit.[115]

As we have previously recognized, a non-U.S.-person dealer affiliated with a U.S. financial group may pose ''reputational risk'' to its U.S. parent, irrespective of the existence of any explicit guarantee from a U.S. person.[116] This risk may affect the U.S. financial system in a number of ways. Specifically, if market participants generally expect a U.S. financial group to provide support to a foreign affiliate engaged in security-based swap dealing activity for reasons other than fulfilling obligations arising from an express guarantee from the U.S. financial group, financial contagion may spread to U.S. financial markets through the U.S. financial group, regardless of whether the U.S. parent financial group decides to support its foreign affiliate. If the U.S. financial group supports its foreign affiliate by bringing the foreign affiliate's liabilities onto its balance sheet, the resulting capital deficiencies on the parent's balance sheet may reduce its creditworthiness and increase the U.S. financial group's risk of default. Alternatively, if the financial group acts contrary to the expectations of market participants by deciding not to support the foreign affiliate, this could be

[107] *See* Section III.A.3, *supra,* for an analysis of the proportion of the security-based swap market that constitutes interdealer transactions. For the purposes of this analysis we classify any security-based swap transaction between two ISDA-recognized dealers as interdealer activity.

[108] Reducing the ability of market participants to find counterparties may increase bid-ask spreads. *See, e.g.,* Darrell Duffie, Nicolae Garleanu and Lasse Heje Pedersen, ''Over-the-Counter Markets'' Econometrica, Vol. 73, No. 6 (2005).

[109] Such information may include records of transactions reported to a swap data repository pursuant to rule 901(a)(2)(ii), which subjects all transactions that include a registered security-based swap dealer on a transaction side to regulatory reporting requirements.

[110] *See* Section II.A.2.a., *supra. See also* Cross-Border Adopting Release, 79 FR 47283.

[111] *See* Cross-Border Adopting Release, 79 FR 47283. Based on an analysis of 2014 transaction data by staff in the Division of Economic and Risk Analysis, the median account associated with market participants recognized by ISDA as dealers had 453 counterparties. The median of all other accounts (*i.e.,* those more likely to belong to non-dealers) was 3 counterparties. *See* Section 0, *supra.*

[112] *See* Section II.A.3, *supra. See also* Cross-Border Adopting Release, 79 FR 47283.

[113] *See* Cross-Border Adopting Release, 79 FR 47283.

[114] *See id.* As discussed in more detail below, several commenters argued that the Commission should not finalize the proposed rules because they encompassed transactions that pose no risk to the United States. *See* notes 159–160 and accompanying text, *infra* (citing IIB Letter at 3, 5; ISDA Letter at 4, 5–6, SIFMA/FSR Letter at 5; and HSBC Letter at 3).

[115] We have previously stated that spillover and contagion risks are important characteristics of the security-based swap market that are important considerations in our rulemaking. *See* Cross-Border Adopting Release, 79 FR 47284. In particular, given the structure of the security-based swap market and the concentration of security-based swap dealing activities among a relatively small number of firms, ''the failure of a single large firm active in the security-based swap market can have consequences beyond the firm itself,'' including that risk may eventually ''spill over into other jurisdictions and even other markets in which security-based swap dealers participate.'' *See id.*

[116] *See* U.S. Activity Proposing Release, 80 FR 27482.

viewed as a negative signal by investors about the U.S. financial group's risk of default. Consequently, even though the U.S. financial group is not exposed to any counterparty credit risk arising from its foreign affiliate's security-based swap transactions, it may still be exposed to reputational risk from its foreign affiliates engaged in security-based swap activity. The final amendments reflect our consideration of the likely effects of the scope of Title VII dealer requirements on the degree of reputational risk posed to U.S. persons by their foreign affiliates.[117]

Another potential channel of the propagation of risk is through liquidity shocks from the failure of one market participant to other participants in the same market.[118] In a highly concentrated market, the failure of a key liquidity provider poses a particularly high risk of propagating this kind of shock not only to its counterparties but to other participants, including other dealers. To the extent that U.S. persons are significant participants in the market, the liquidity shock may propagate to these U.S. persons, and from these U.S. persons to the U.S. financial system as a whole, even if the liquidity shock originates with the failure of a non-U.S. person liquidity provider. As already discussed, the security-based swap market is highly concentrated, with a relatively small number of dealers responsible for most of the activity in the market. Moreover, security-based swap activity carried out in U.S. market centers largely involves security-based swaps on U.S. reference entities,[119] and the overwhelming majority of non-dealer counterparties to these transactions are U.S. persons; similarly, a significant proportion of the dealers active in this market are either U.S. persons or foreign affiliates of U.S. financial groups.[120] In light of these market characteristics, we have considered the potential propagation of such risks through the failure of one or more non-U.S. persons engaged in dealing activity in the United States.[121]

III. Overview of Prior Proposals

The Exchange Act excepts from designation as a ''security-based swap dealer'' an entity that engages in a ''*de minimis*'' quantity of security-based swap dealing activity with or on behalf of customers.[122] Under the final rules adopted in the Intermediary Definitions Adopting Release, a person may take advantage of that exception if, in connection with CDS that constitute security-based swaps, the person's dealing activity over the preceding 12 months does not exceed a gross notional amount of $3 billion, subject to a phase-in level of $8 billion.[123] The phase-in level will remain in place until—following a study regarding the definitions of ''security-based swap dealer'' and ''major security-based swap participant''—we either terminate the phase-in period or establish an alternative threshold following rulemaking.[124]

As noted above, we have twice proposed rules to address the application of the security-based swap dealer *de minimis* exception to transactions between two non-U.S. persons on the basis of activity in the United States.[125] In the Cross-Border Proposing Release, we stated that a non-U.S. person engaged in dealing activity through a U.S. branch, office, or affiliate or by a non-U.S. person that otherwise engages in security-based swap dealing activity in the United States, particularly at levels exceeding the relevant *de minimis* thresholds, may raise concerns that Title VII addresses, even if a significant proportion—or all—of its transactions involve non-U.S.-person counterparties.[126] Accordingly, we initially proposed to require any non-U.S. person to include in its *de minimis* calculation any security-based swap transaction connected with its dealing activities that is a ''transaction conducted within the United States.''[127] We proposed to define ''transaction conducted within the United States'' as any ''security-based swap transaction that is solicited, negotiated, executed, or booked within the United States, by or on behalf of either counterparty to the transaction, regardless of the location, domicile, or residence status of either counterparty to the transaction.''[128] Thus, under this initially proposed definition, a non-U.S. person engaged in dealing activity would have been required to include in its *de minimis* calculation any dealing transaction entered into with another non-U.S. person that was conducted in the United States by either the non-U.S. person engaged in dealing activity or its counterparty or an agent of either the dealer or the counterparty.[129] Given the number of concerns raised by commenters in connection with this element of the Cross-Border Proposing Release, we subsequently determined that final resolution of this issue would benefit from further consideration and public comment.[130] Accordingly, we did not address this issue in our Cross-Border Adopting Release.

In light of comments received on the initial proposal, subsequent regulatory and other developments in the security-based swap market, and further consideration of policy concerns arising from these transactions, we proposed a modified approach in April 2015 that would amend Exchange Act rule 3a71–3 to address the regulatory concerns associated with dealing activity in the United States while mitigating many of the concerns expressed by commenters on the initial proposal. The modified approach did

[117] See Section IV.B.2, *infra* (noting, among other things, that, as the market develops, foreign affiliates that might otherwise avoid Title VII dealer requirements, including margin, may be required to register as security-based swap dealers because they arrange, negotiate, or execute transactions in connection with their dealing activity using personnel located in the United States).

[118] *See* Cross-Border Adopting Release, 79 FR 47284 (noting that ''the failure of a single large firm active in the security-based swap market can have consequences beyond the firm itself'' and that ''[o]ne firm's default may reduce the willingness of dealers to trade with, or extend credit to, both non-dealers and other dealers'').

[119] *See* note 57 and accompanying text, *supra.*

[120] *See* Section II.A.3, *supra.*

[121] For more on liquidity shocks and contagion, see Rodrigo Valdés, ''Emerging Market Contagion: Evidence and Theory'' (1996). *See also* Guillermo Calvo and Enrique Mendoza, ''Contagion, Globalization, and the Volatility of Capital Flows,'' *Capital Flows and the Emerging Economies* (2000).

[122] *See* Exchange Act section 3(a)(71)(D).

[123] *See* Exchange Act rule 3a71–2(a)(1)(i). Lower thresholds are set forth in connection with dealing activity involving other types of security-based swaps. *See* Exchange Act rule 3a71–2(a)(1)(ii).

[124] *See* Intermediary Definitions Adopting Release, 77 FR 30640–41. Exchange Act rule 3a71–2 establishes a phase-in period during which the *de minimis* threshold for CDS will be $8 billion and during which Commission staff will study the security-based swap market as it evolves under the new regulatory framework, resulting in a report that will consider the operation of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions. In that release we explained that, at the end of the phase-in period, we will take into account the report, as well as public comment on the report, in determining whether to terminate the phase-in period or propose any changes to the rule implementing the *de minimis* exception, including any increases or decreases to the $3 billion threshold. *See id.* at 30640.

[125] *See* Cross-Border Proposing Release, 78 FR 30999; U.S. Activity Proposing Release, 80 FR 27444.

[126] *See* Cross-Border Proposing Release, 78 FR 31000–01.

[127] *See* initially proposed Exchange Act rule 3a71–3(b)(1)(ii).

[128] *See* initially proposed Exchange Act rule 3a71–3(a)(5). *See also* Cross-Border Proposing Release, 78 FR 30999–31000.

[129] The initially proposed definition of ''transaction conducted within the United States'' did not include submitting a transaction for clearing in the United States, reporting a transaction to a security-based swap data repository in the United States, or performing collateral management activities (such as exchanging margin) within the United States. *See* Cross-Border Proposing Release, 78 FR 31000.

[130] *See, e.g.,* Cross-Border Adopting Release, 79 FR 47280.

not include the initially proposed defined term ''transaction conducted in the United States'' and would not require a non-U.S. person engaging in dealing activity to consider the location of its non-U.S.-person counterparty or that counterparty's agent in determining whether the transaction needs to be included in its own *de minimis* calculation. Instead, we proposed to require a non-U.S. person to include in its *de minimis* calculation any transaction connected with its security-based swap dealing activity that it enters into with a non-U.S.-person counterparty only when the transaction is arranged, negotiated, or executed by personnel of the non-U.S. person located in a U.S. branch or office, or by personnel of such person's agent located in a U.S. branch or office.[131]

Various statutory and policy concerns underpinned our proposed revisions to the initial approach. We noted in the U.S. Activity Proposing Release that requiring non-U.S. persons to include such transactions in their *de minimis* threshold calculations would help to ensure that all persons that engage in significant relevant dealing activity, including activity engaged in by personnel located in a U.S. branch or office, are required to register as security-based swap dealers and to comply with relevant Title VII requirements applicable to security-based swap dealers.[132] We also explained that subjecting security-based swap activity involving activity in the United States to Title VII, even when a transaction is between two non-U.S. persons, is consistent with Section 30(c) of the Exchange Act and is appropriate under a territorial approach.[133] We also noted that the modified approach would prevent market participants from engaging in significant dealing activity in the United States while avoiding Title VII by booking such transactions in non-U.S. person dealers who are not conduit affiliates and whose obligations under such transactions are not guaranteed by a U.S. person.[134]

IV. Final Rules

A. Overview

Having carefully considered comments received in response to our proposal as well as the objectives of Title VII dealer regulation and recent regulatory and market developments (including market participants' responses to the implementation of regulatory reforms of the OTC derivatives markets),[135] we are amending Exchange Act rules 3a71–3 and 3a71–5 in a manner generally consistent with the amendments proposed in our U.S. Activity Proposing Release.[136] As discussed in the proposal, Exchange Act rule 3a71–3, as amended, focuses on certain activity carried out, at least in part, by personnel located in the United States in connection with a non-U.S. person's dealing activity, but it does not require a non-U.S. person engaging in dealing activity to consider the location of its non-U.S.-person counterparty or that counterparty's agent in determining whether the transaction needs to be included in its own *de minimis* calculation. Specifically, the amendment to final rule 3a71–3(b) requires a non-U.S. person to include in its *de minimis* calculation any transaction connected with its security-based swap dealing activity that it enters into with a non-U.S.-person counterparty only when the transaction is arranged, negotiated, or executed by that person's personnel who are located in a U.S. branch or office, or by its agent's personnel who are located in a U.S. branch or office.[137] Final Exchange Act rule 3a71–5(c) makes the exception for cleared anonymous transactions unavailable for trades that non-U.S. persons are required to count under proposed Exchange Act rule 3a71–3(b)(1)(iii)(C).[138] The following sections discuss these rules, as well as guidance regarding the application of Exchange Act rule 3a71–3(b)(1)(iii)(C) to specific categories of transactions raised by commenters.

B. Statutory Scope and Policy Concerns Arising from Security-Based Swap Dealing Activity in the United States

1. Territorial Application of ''Security-Based Swap Dealer'' Definition

Some commenters have suggested that the modified approach to the *de minimis* exception set forth in our U.S. Activity Proposing Release would impose U.S. regulation on transactions and market participants lacking a sufficient ''nexus'' to the United States or to the U.S. financial system and, consequently, would produce few or no benefits.[139] Several commenters argued that the primary focus of the security-based swap dealer registration regime is on protecting U.S. market participants, and the market as a whole, against risk and that these transactions lack a sufficient ''nexus'' to the United States and to the U.S. financial system because they do not give rise to risk in the United States.[140] One commenter further argued that the proposed rule was inconsistent with the concept of a *de minimis* threshold, stating that, under the Commission's rules, the

[131] *See* proposed Exchange Act rule 3a71–3(b)(1)(iii)(C).

[132] *See* U.S. Activity Proposing Release, 80 FR 27467.

[133] *See id.* at 27464.

[134] *See id.* at 27465. As we have stated elsewhere, the transactions of a guaranteed non-U.S. person exist, at least in part, within the United States, and the economic reality of these transactions is substantially identical to transactions entered into directly by a U.S. person (including through a foreign branch). *See* Regulation SBSR Adopting Release, 80 FR 14651. *See also* Cross-Border Adopting Release, 79 FR 47289–90.

[135] *See* note 164, *infra* (noting our understanding that some U.S.-based financial groups have restructured their swap business to book their transactions in non-U.S. person affiliates).

[136] *See* Exchange Act rule 3a71–3(b)(1)(iii)(C); Exchange Act rule 3a71–5(c).

[137] *See* Exchange Act rule 3a71–3(b)(1)(iii)(C). The final rule does not incorporate a broker-dealer exception as requested by some commenters, but it does except transactions connected with the dealing activity of those international organizations excluded from the definition of U.S. person in Exchange Act rule 3a71–3(a)(4)(iii). *See* Section IV.C.4, *infra*.

[138] *See* Exchange Act rule 3a71–5(c).

[139] *See* ISDA Letter at 4–5 (arguing that the proposed rule would capture firms that ''have no material connection with the United States''); SIFMA/FSR Letter at 5 (arguing that ''[a] non-U.S. entity should not be required to count a security-based swap toward its security-based swap dealer *de minimis* threshold solely on the basis of the conduct of its or its agent's U.S.-located personnel,'' as ''such transactions between non-U.S. persons, where none of the risks of the transactions reside in the United States, do not have a sufficient nexus to the United States to be included in a determination of whether a non-U.S. entity should need to register with the Commission''). We discuss the benefits of the final rule below. *See* Sections IV.B.2 and V.B, *infra*.

[140] *See* SIFMA/FSR Letter at 5; IIB Letter at 5–6 (arguing that the ''Commission's policy interests in regulating the [security-based swap] and its counterparties are much more limited than if one of the parties was a U.S. person, guaranteed affiliate or conduit affiliate,'' as only the sales and trading activity at the inception of the transaction is occurring in the United States and the risks of such transactions ''do not flow back to the U.S. financial system''); HSBC Letter at 3 (arguing that subjecting foreign subsidiaries to entity-level dealer requirements would not provide additional benefits ''since no risk-based nexus would exist between those subsidiaries and the U.S. financial system,'' particularly given that the Commission could use existing recordkeeping requirements to access the books and records relating to transactions involving U.S. activity); ISDA Letter at 5–6 (arguing that the Commission's principal concern in regulating these entities is risk mitigation and that such transactions do not transmit risk into the U.S. financial system). Other commenters, in the context of discussing the Commission's proposed approach to the clearing and trade execution requirements, argued that these types of transactions do pose counterparty credit risk to the U.S. financial system. *See* MFA Letter at 6 (disagreeing with our preliminary view that counterparty credit risk and operational risk of such transactions reside primarily outside the United States); Citadel Letter at 6–7 (discussing the significant risks to the U.S. financial system posed by ''offshore'' transactions).

threshold is ''based on the aggregate notional size of security-based swaps, not the extent of U.S. involvement,'' suggesting, in the commenter's view, that ''the threshold is concerned with risk posed to the entity, not the extent of involvement by the entity.''[141] Accordingly, these commenters argued that imposing security-based swap dealer regulation on non-U.S. persons on the basis of transactions with other non-U.S. persons—even if arranged, negotiated, or executed by personnel located in the United States—is inappropriate.[142]

To the extent that these comments are directed at whether transactions arising from this activity or persons engaged in this activity fall within the scope of Title VII,[143] we reiterate our view that it is consistent with a territorial approach to the application of the Exchange Act to require non-U.S. persons that use personnel located in the United States to arrange, negotiate, or execute a security-based swap to include those transactions in their *de minimis* calculations. In the Cross-Border Adopting Release, we rejected the suggestion that ''the location of risk alone should . . . determine the scope of an appropriate territorial application of every Title VII requirement,'' including the application of the ''security-based swap dealer'' definition.[144] In doing so, we stated that ''neither the statutory definition of 'security-based swap dealer,' our subsequent further definition of the term pursuant to section 712(d) of the Dodd-Frank Act, nor the regulatory requirements applicable to security-based swap dealers focus solely on risk to the U.S. financial system.'' [145] And we have noted that the definition of ''security-based swap dealer'' focuses on a person's activity, not solely on the amount of risk created by that activity.[146] Accordingly, we do not believe that security-based swap dealing activity must create counterparty credit risk in the United States for there to be a ''nexus'' sufficient to warrant security-based swap dealer registration.[147]

As we have previously noted, Exchange Act section 3(a)(71)(A) identifies specific activities that bring a person within the definition of ''security-based swap dealer'': (1) Holding oneself out as a dealer in security-based swaps, (2) making a market in security-based swaps; (3) regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account; or (4) engaging in any activity causing oneself to be commonly known in the trade as a dealer in security-based swaps.[148] We have further interpreted this definition to apply to persons engaged in indicia of dealing activity, including, among other things, providing liquidity to market professionals, providing advice in connection with security-based swaps, having regular clientele and actively soliciting clients, and using interdealer brokers.[149] Neither the statutory definition of ''security-based swap dealer'' nor our further definition of that term turns primarily on the presence of risk or on the purchase or sale of any security, including a security-based swap.[150] Accordingly, we disagree with the view that the ''*de minimis* threshold is based on the aggregate notional size of security-based swaps'' and that this suggests that ''the *de minimis* threshold is concerned with the risk posed to the entity, not the extent of involvement by the entity.'' [151] The *de minimis* exception relates to the volume of dealing activity and not to specifically risk-related factors, such as the notional volume of positions held by the dealer.[152]

Accordingly, the fact that the counterparty credit risk from a transaction between two non-U.S. persons, which are not conduit affiliates and where neither counterparty has a right of recourse against a U.S. person under the security-based swap, exists largely outside the United States is not determinative under our territorial analysis as to whether a sufficient ''nexus'' exists to require a non-U.S. person to count the transaction toward its *de minimis* threshold. The appropriate analysis, in our view, also considers whether a non-U.S. person in such a transaction is engaged, in the United States, in any of the activities set forth in the statutory definition or in our further definition of ''security-based swap dealer.'' [153] If it is so engaged, it is appropriate under a territorial approach to require the non-U.S. person to include such transactions in its security-based swap dealer *de minimis* threshold calculations and, if those security-based swaps (together with any other security-based swaps it is required to include in its threshold calculations) exceed the *de minimis* threshold, to register as a security-based swap dealer.[154]

As we stated in the U.S. Activity Proposing Release, this analysis applies regardless of whether the non-U.S. person engages in dealing activity (as described in the statutory definition and in our further definition of ''security-

[141] *See* SIFMA/FSR Letter at 6.

[142] *See, e.g., id.* at 5.

[143] *Cf.* ISDA Letter at 6, note 11.

[144] Cross-Border Adopting Release, 79 FR 47287–88.

[145] *Id.* at 47288. We have also stated that security-based swap dealer regulation may be warranted either to promote market stability and transparency in light of the role that these dealers occupy in the security-based swap market or to address concerns raised by the nature of the interactions between such dealers and their counterparties. *See* Intermediary Definitions Adopting Release, 77 FR 30617.

[146] *See* Cross-Border Proposing Release, 78 FR 30988 (noting our view that the statutory provisions suggest that our focus should be not ''solely on the risk these entities pose to the financial markets'' but also on whether regulation is warranted due to the nature of their interactions with counterparties or in order to promote market stability and transparency, given the role these persons play in the security-based swap market). *See* Intermediary Definitions Adopting Release, 77 FR 30612. Indeed, we expressly contrasted this focus of the ''security-based swap dealer'' definition with the focus of the ''major security-based swap participant'' definition, which is focused on ''the market impacts and risks associated with a person's . . . security-based swap positions.'' *Id.* at 30661.

[147] *See* note 140, *supra.*

[148] *See* Exchange Act section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A).

[149] *See* Intermediary Definitions Adopting Release, 77 FR 30617–18. As we stated in the Cross-Border Adopting Release, when the statutory text does not describe the relevant activity with specificity or provides for further Commission interpretation of statutory terms or requirements, our territorial analysis may require us to identify through interpretation of the statutory text the specific activity that is relevant under the statute or to incorporate prior interpretations of the relevant statutory text. *See* Cross-Border Adopting Release, 79 FR 47287.

[150] *See* Exchange Act section 3(a)(71)(A), 15 U.S.C. 78c(a)(71)(A); Intermediary Definitions Adopting Release, 77 FR 30617–18.

[151] *See* note 141, *supra* (citing SIFMA/FSR Letter). *Cf.* Intermediary Definitions Adopting Release, 77 FR 30620 (noting the focus of the ''security-based swap dealer'' definition on dealing *activity*).

[152] *See* Exchange Act section 3(a)(71)(D), 15 U.S.C. 78c(a)(71)(D) (providing that the Commission ''shall exempt from designation as a security-based swap dealer an entity that engages in a *de minimis* quantity of security-based swap dealing''); Exchange Act rule 3a71–2 (establishing transaction-based notional thresholds for the security-based swap dealer *de minimis* exception).

[153] *See, e.g.,* Intermediary Definitions Adopting Release, 77 FR 30612 (noting the focus of the ''security-based swap dealer'' definition on dealing *activity*).

[154] *See* Cross-Border Adopting Release, 79 FR 47286–92 (describing the Commission's territorial approach). In light of the foregoing analysis, we believe that the statutory prohibition on application of Title VII requirements to persons that ''transact[] a business in security-based swaps without the jurisdiction of the United States'' has no bearing on the final rule. *See* Exchange Act section 30(c). Under this rule, a non-U.S. person must include a transaction with another non-U.S. person in its dealer *de minimis* threshold calculations only when, in connection with its dealing activity, it arranges, negotiates, or executes a security-based swap using its personnel (or personnel of its agent) located in the United States. *See* Exchange Act rule 3a71–3(b)(1)(iii)(C). The final rule, accordingly, would not impose requirements on non-U.S. persons that are ''transacting a business in security-based swaps without the jurisdiction of the United States'' for purposes of section 30(c).

based swap dealer'') in the United States using its own personnel or using the personnel of an agent acting on its behalf.[155] As described above, persons engaged in security-based swap dealing activity routinely do so both directly and through their agents, including as part of an integrated dealing business. Indeed, our further definition of ''security-based swap dealer'' specifically identifies the use of interdealer brokers as one of several indicia of security-based swap dealing activity, and engaging an interdealer broker as agent or sending a trade to such a broker generally would be dealing activity.[156] To the extent that this activity is directed to a broker in the United States, the non-U.S. person is engaged in dealing activity in the United States.[157] Accordingly, a non-U.S. person that reaches into the United States by engaging an agent (including an interdealer broker) to perform dealing activity on its behalf is itself engaged, at least in part, in dealing activity in the United States. It is therefore consistent with our territorial approach to require the non-U.S. person to include transactions arising out of those activities in its own *de minimis* threshold calculations.[158]

2. Policy Concerns Associated With Security-Based Swap Dealing Activity in the United States

Requiring transactions that, in connection with a non-U.S. person's dealing activity, are arranged, negotiated, or executed by personnel located in the United States to be counted toward the non-U.S. person's security-based swap dealer *de minimis* threshold is also consistent with the policy objectives of Title VII dealer regulation. Some commenters interpreted the primary, or even the sole, goal of Title VII dealer regulation as risk mitigation, generally arguing that no policy rationale warranted requiring non-U.S. persons to count transactions with other non-U.S. persons based on their activity in the United States.[159] One commenter specifically urged us not to adopt the proposed rule, arguing that application of U.S. requirements to these transactions should ''be tailored to address only the specific policy considerations raised by use of U.S. personnel,'' such as certain concerns related to counterparty protection.[160]

We believe that these characterizations of the policy objectives of Title VII are incomplete. Although it is true that mitigating counterparty and operational risks—which we have acknowledged lie primarily outside the United States in these transactions [161]—is an important objective of the Title VII dealer requirements, these requirements also advance other important policy objectives of security-based swap dealer regulation under Title VII, including enhancing counterparty protections and market integrity, increasing transparency, and mitigating risk to participants in the financial markets and the U.S. financial system more broadly.[162]

We believe that not requiring non-U.S. persons to count these trades toward their *de minimis* thresholds would significantly impair the effectiveness of the Title VII dealer framework in advancing these objectives. As noted above, financial groups engaged in security-based swap dealing activity may structure their business in many different ways.[163] Many non-U.S. persons engaged in dealing activity in the United States do so through an affiliated or unaffiliated agent in the United States and, under currently existing rules, are not required, absent a guarantee, to include transactions arising from such activity in their dealer *de minimis* calculations if the counterparty is also a non-U.S. person. Some financial groups also use U.S. persons to book such transactions, but even U.S.-based financial groups may opt to book their security-based swap transactions in non-U.S. persons in response to regulation or to competitive disparities between U.S. persons and non-U.S. persons.

Given these dynamics, failure to require non-U.S. persons to count the transactions encompassed by the final rule toward the dealer *de minimis* thresholds, even though doing so is entirely consistent with our territorial approach, would permit financial groups that have a security-based swap dealing business to avoid registering non-U.S. persons that engage in security-based swap dealing activity in the United States. As long as a non-U.S. person limited its dealing activity with U.S. persons to levels below the dealer *de minimis* thresholds, it could enter into an unlimited number of transactions connected with its dealing activity in the United States without being required to register as a security-based swap dealer.

Subjecting the transactions of certain dealers engaged in dealing activity in the United States, but not others, to the Title VII dealer requirements would undermine each of the policy objectives

[155] *See* U.S. Activity Proposing Release, 80 FR 27465.

[156] *See* Exchange Act rule 3a71–1(a) (defining ''security-based swap dealer''); Intermediary Definitions Adopting Release, 77 FR 30617–18 (providing guidance to ''further clarify the scope of the security-based swap dealer definition'').

[157] More generally, we believe that the routine use by dealers of the structures described in this discussion suggests that a person may engage in dealing activity through an agent in a manner very similar to engaging in such activity through its own branch or office. *Cf.* Exchange Act section 3(a)(71)(A) (defining ''security-based swap dealer''); Intermediary Definitions Adopting Release, 77 FR 30617–18 (further defining ''security-based swap dealer'').

[158] Our treatment of activity performed by an agent on behalf of a non-U.S. person in connection with its dealing activity does not apply Title VII to persons that are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c) of the Exchange Act. *See* note 154, *supra.* An approach that treated a non-U.S. person dealer that used an agent, whether affiliated or unaffiliated, in the United States to carry out some or all of its dealing business with non-U.S. persons as transacting a business in security-based swaps without jurisdiction of the United States, would, in our view, reflect an understanding of what it means to conduct a security-based swap business within the jurisdiction of the United States that is divorced from the definition of ''security-based swap dealer,'' from Title VII's statutory objectives, and from the various structures that non-U.S. persons use to engage in security-based swap dealing activity. But in any event we also believe that this final rule is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provision of the Exchange Act that were added to the Dodd-Frank Act, and thus would help prevent the relevant purposes of the Dodd-Frank Act from being undermined. *See* Cross-Border Adopting Release, 79 FR 47291–92 (interpreting anti-evasion provisions of Exchange Act section 30(c)). Without this rule, non-U.S. persons could simply carry on a dealing business within the United States with other non-U.S. persons through agents and remain outside of the application of the dealer requirements of Title VII, as described more fully in the following sections.

[159] *See* SIFMA/FSR Letter at 5 (''[S]uch transactions between non-U.S. persons . . . do not have a sufficient nexus to the United States to be included in a determination of whether a non-U.S. entity should need to register with the Commission.''); IIB Letter at 5 (arguing that the Commission's policy interests in such transactions are more limited than in transactions involving a U.S. person and that ''[i]t is not necessary for one of the parties to register with the Commission as an SBSD for the Commission to address these more limited policy objectives.''); ISDA Letter at 5 (''In the absence of risks to the U.S. financial system and U.S. counterparties, the Commission has not identified *any benefit* associated with regulating SBS transactions between non-U.S. persons.'') (emphasis added). Several commenters argued that the location of personnel involved in a transaction on behalf of a non-U.S.-person dealer is not particularly relevant to the policy considerations addressed by security-based swap dealer registration and accordingly should not ''form the sole basis for requiring'' firms to register as security-based swap dealers and to comply with the Title VII rules. *See, e.g.,* ISDA Letter at 4.

[160] *See* IIB Letter at 3.

[161] *See* U.S. Activity Proposing Release, 80 FR 27481.

[162] *See* note 145, *supra.* These policy objectives reflect the goals of Title VII of the Dodd-Frank Act, which established a statutory framework to reduce risk, increase transparency, and promote market integrity within the financial system. *See* Intermediary Definitions Adopting Release, 77 FR 30596.

[163] *See* Sections II.A.2.d and II.B, *supra.*

described above. Under currently existing rules, a significant proportion of activity in the security-based swap market that is carried out within the United States—particularly as financial groups respond to the competitive pressures discussed in more detail below—likely would involve counterparties that are not subject to our regulations or oversight. Dealers accounting for significant volumes of security-based swap dealing activity in the United States—and together potentially accounting for a significant majority of all security-based swap activity in the United States—would not be subject to Title VII recordkeeping and reporting requirements, which would significantly impede our ability to monitor the market for manipulative and abusive conduct on the part of dealers or other market participants. Similarly, these dealers would not be subject to the Title VII business conduct requirements with respect to any of their transactions, which could significantly impair market integrity or raise other concerns, as counterparties seeking to enter into transactions with dealers through those dealers' personnel located in the United States would not receive the full range of disclosures and other protections provided by Title VII. And these firms would not be subject to Title VII capital, margin, or segregation requirements. These requirements are intended to play a key role in mitigating the potential for financial contagion to spread to participants in the U.S. security-based swap market and to the U.S. financial system more generally by mitigating the risk of firm failure.

Subjecting only a limited subset of transactions involving activity in the United States to Title VII dealer requirements would also likely produce competitive disparities and exacerbate market fragmentation, which would not only further undermine the policy objectives just described but also create potentially significant market distortions. Competitive disparities would arise as financial groups that use non-U.S.-person dealers to carry out their dealing business in the United States find themselves able to exit the Title VII regulatory regime without exiting the U.S. market with respect to their security-based swap dealing business with non-U.S.-person counterparties (including non-U.S.-person dealers). These dealers likely would incur fewer costs related to their dealing activity in the United States than U.S.-person dealers transacting with the same counterparties, and non-U.S. person counterparties likely would also find that they incur lower costs and obtain better pricing by entering into security-based swaps with non-U.S. dealers that are not required to register as security-based swap dealers. U.S.-person dealers would be at a further disadvantage as financial groups that carry out a significant proportion of their security-based swap dealing activity in the United States through non-registered dealers cross-subsidize the dealing activity of their affiliated registered security-based swap dealers that engage in dealing activity with U.S.-person counterparties, permitting financial groups that have shifted a significant proportion of their dealing activity to non-U.S.-person dealers to offer even U.S.-person counterparties better pricing than financial groups that have not made this shift are able to provide.

These competitive pressures would provide a strong incentive for financial groups to book transactions with non-U.S. person counterparties (including with other dealers) in non-U.S.-person affiliates of those financial groups.[164] Eventually, both U.S. and foreign financial groups may restructure their business in a way that would permit them to do the vast majority of their security-based swap dealing activity—including a significant majority of that activity that they continue to carry out using personnel located in the United States—outside the Title VII framework.

This potential response to competitive disparities demonstrates the ''nexus'' between the regulatory concerns addressed by the Title VII security-based swap dealer regulatory framework and our final rule. As already noted, the security-based swap market is a highly concentrated market in which dealers play a central role.[165] Absent the amendment to rule 3a71–3(b), restructuring could lead to a market where the largest dealers representing a significant majority of security-based swap activity in the United States would not be required to register as security-based swap dealers or comply with Title VII dealer requirements because they would limit their transactions to other non-U.S.-person dealers (some affiliated with U.S.-based financial groups) and non-U.S. persons that are not dealers. In other words, the commenters' suggested approach potentially would permit hundreds of billions of dollars in annual notional transaction activity (including most or all of the interdealer business in security-based swaps with U.S. underliers), representing two-thirds or more of all security-based swap transactions that currently involve U.S. counterparties or U.S. activity, to be carried out, at least in part, within the United States without being subject to Title VII dealer regulation, much as if Title VII had never been enacted.[166] Thus, while we acknowledge the potential for this rule to increase the number of security-based swap dealers from the number that would be required to register under currently existing rules,[167] we believe that it will mitigate these competitive disparities and help ensure the ability of the Title VII dealer requirements to advance the regulatory objectives described above.

We further expect that the rule will be essential to reducing the likelihood of significant market fragmentation that would impair the liquidity available to, and increase costs for, U.S. market participants. As we have noted above, if a majority of security-based swap dealing activity in the United States, including most or all interdealer activity in the United States, is carried out by non-U.S. persons that are not subject to Title VII dealer regulation, the market is likely to fragment into two pools. The larger pool likely would consist of transactions that are carried out by unregistered non-U.S.-person dealers with non-U.S.-person counterparties, including the largest dealers in the security-based swap market, while the smaller pool likely would be limited to U.S.-person counterparties and registered dealers that do business exclusively with those U.S.-person counterparties (and that may or may not themselves be U.S. persons). In other words, absent these rules, U.S. market participants likely would find

[164] *See* Section II.B, *supra* (discussing relationship between the scope of Title VII regulations and likely competitive disparities between different types of dealers). *See also* Charles Levinson, ''U.S. banks moved billions in trades beyond CFTC's reach,'' Reuters (August 21, 2015), available at: *http://www.reuters.com/article/2015/08/21/usa-banks-swaps-idUSL3N10S57R20150821.*

[165] *See* Section II.B, *supra.*

[166] *See* Section II.A.3, *supra.* For this reason, we do not agree with the commenters that suggested that we should not require a firm to register as a security-based swap dealer solely on the basis that it has transactions with non-U.S. persons arising out of dealing activity in the United States that exceed the dealer *de minimis* threshold. *See* ISDA Letter at 4; SIFMA/FSR Letter at 5; IIB Letter at 4–5. The overwhelming majority of transactions captured by this rule are likely to be transactions carried out by non-U.S. persons whose dealing activity likely exceeds the *de minimis* threshold by at least an order of magnitude.

[167] The available data and analysis suggest that all entities that will exceed the *de minimis* threshold for credit default swaps under Exchange Act rule 3a71–3(b), as amended by this release, will already exceed the threshold by virtue of the transactions they are required to count under Exchange Act rule 3a71–3(b) as adopted in June 2014. However, as we describe more fully below, we acknowledge the potential for a change in the number of registrants based on a number of factors. *See* Section V.B, *infra.*

themselves confined to a shallower liquidity pool with worse pricing than would be available to non-U.S. persons, even though those non-U.S. persons likely would themselves be using personnel, or facing dealers using personnel, located in the United States to arrange, negotiate, or execute similar transactions.

Finally, as we have noted, a significant proportion of the dealing activity that is likely to be captured by this rule is actually carried out by foreign affiliates of U.S. financial groups.[168] Given the significant volumes arising from the U.S. dealing activity of such foreign affiliates and the potential reputational effect that an affiliate's failure can have on other affiliates in the same corporate group, this activity may pose a risk of contagion to the U.S. financial markets, as we have already discussed above.[169] We previously acknowledged these concerns in explaining why we were not proposing to impose the clearing requirement on these transactions in the U.S. Activity Proposing Release, noting our view that other regulatory provisions, including Title VII margin requirements, were better suited to address the risk of spillovers and contagion arising from these affiliate relationships.[170] But it is important to note that, as the market develops, many of those foreign affiliates may be required to register as security-based swap dealers and to comply with the Title VII margin requirements only because they arrange, negotiate, or execute transactions in connection with their dealing activity using personnel located in the United States.[171] The final rule ensures that these affiliates, to the extent that they are engaged in such activity at levels above the relevant dealer *de minimis* threshold, are in fact required to register and comply with these requirements, which should mitigate the risks described above.[172]

Subjecting non-U.S. persons that engage in security-based swap dealing activity in the United States[173] at levels above the dealer *de minimis* threshold to capital and margin requirements also should help reduce the likelihood of firm failure and the likelihood that that the failure of a firm engaged in dealing activity in the United States might adversely affect not only its counterparties (which may include other firms engaged in security-based swap dealing activity in the United States) but also other participants in that market.[174] The amendments being adopted today should also, in a manner consistent with our territorial approach, reduce gaps in the application of these types of requirements to global firms that are engaged in security-based swap dealing activity.[175]

We note that one commenter suggested that our amendments should exclude dealing activity by a non-U.S. person that ''is part of or supports a business that is primarily based outside the United States.''[176] However, we do not believe that the fact that dealing activity is part of or supports a business primarily based outside the United States is relevant to the concerns described above regarding regulatory effectiveness, competitive disparities, market fragmentation, or contagion. Non-U.S.-person dealers, whose business may be characterized as ''primarily based outside the United States,'' account for a significant volume of transactions in North American single-name CDS and may be expected to raise these concerns, even when ''the bilateral, executory credit risk'' in the transaction is borne by two non-U.S. persons.[177]

3. Existing Regulatory Frameworks and Security-Based Swap Dealer Regulation

Several commenters suggested that we need not rely on Title VII dealer regulation at all to address regulatory concerns arising from dealing activity carried out by non-U.S. persons using personnel located in the United States.[178] According to these commenters, the existing U.S. and foreign requirements (including broker-dealer regulation, and anti-fraud and anti-manipulation provisions) provide us with the tools needed to address what, in their view, are the primary regulatory concerns raised by this dealing activity, and using these tools would ''essentially sever[ ] the nexus between the dealer counterparty and the U.S. market,''[179] eliminating the need to include the transaction in a firm's dealer *de minimis* threshold calculations.[180]

Because they view the concerns potentially raised by this activity as relating primarily to counterparty protection concerns and because registered broker-dealers are already

[168] *See* Section II.A.3, *supra.*

[169] *See* Section II.B, *supra.*

[170] *See* U.S. Activity Proposing Release, 80 FR 27482. *See also* note 115, *supra* (noting the importance of these issues in our consideration of rules for the security-based swap market).

[171] *See* U.S. Activity Proposing Release, 80 FR 27482. This is particularly likely if most or all of the interdealer activity is carried out by non-U.S. persons using personnel located in the United States.

[172] For these reasons, we do not agree with those commenters that suggested that our proposed approach was inconsistent with our determination not to propose to subject transactions to the mandatory clearing requirement solely on the basis of U.S. activity. *See* SIFMA/FSR Letter at 5–6; IIB Letter at 13–14. *See also* Citadel Letter at 6–7 (arguing that the Commission's assertion that the risks of transactions involving U.S. activity reside primarily offshore is inconsistent with other Commission rulemakings, namely the Volcker Rule, and the statutory interpretation adopted by the CFTC).

[173] *See* Section IV.B.1, *supra* (describing territorial application of the dealer definition); Cross-Border Adopting Release, 79 FR 47287–88 (same).

[174] *See* Section II.B, *supra* (discussing the potential that a liquidity shock resulting from the failure of a non-U.S.-person dealer engaged in dealing activity in the United States might propagate risks to, and adversely affect the stability of, U.S. persons also active in those market centers and to the U.S. financial system more broadly). *See also* Capital, Margin, and Segregation Proposing Release, 77 FR 70222 (noting that the ''failure of a stand-alone SBSD could have a broader adverse impact on a larger number of market participants, including customers and counterparties'' and that the proposed capital requirements ''are meant to account for this potential broader impact on market participants''); *id.* at 70304 (describing the primary benefit of the proposed capital and margin requirements as reducing the probability of the failure of a security-based swap dealer, noting that such a default ''could have adverse spillover or contagion effects that could create instability for the financial markets more generally'').

[175] Certain other Title VII dealer requirements may similarly help to mitigate these types of risks. For example, the risk management provision requires a security-based swap dealer to have systems in place to manage its exposure to risks arising from its security-based swap dealing activity. *See* Exchange Act section 15F(j)(2). *See also* Capital, Margin, and Segregation Proposing Release, 77 FR 70213. In that release, the Commission proposed to (1) amend Rule 15c3–1 by adding a new paragraph (a)(10)(ii); (2) add new Rule 18a–1(g) and; (3) add new Rule 18a–2(c) which, taken together, generally would require each nonbank security-based swap dealer and major security-based swap participant to comply with existing Rule 15c3–4 (except for certain specified provisions of that rule), as if it were an OTC derivatives dealer. Rule 15c3–4 currently requires each person subject to the rule to ''establish, document, and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities, including market, credit, leverage, liquidity, legal, and operational risks.'' 17 CFR 240.15c3–4.

[176] ISDA Letter at 3.

[177] *See* Section II.B, *supra. Cf.* IIB Letter at 8 (stating that the Commission's rationale for taking an approach different from broker-dealer regulation to regulate persons engaged in security-based swap activity does not hold where, among other things, ''the bilateral, executory credit risk inherent in [security-based swaps]'' is not borne by a U.S. counterparty).

[178] *See, e.g.,* IIB Letter at 5, 8; ISDA Letter at 8; SIFMA/FSR Letter at 6; HSBC Letter at 2–3.

[179] SIFMA/FSR Letter at 7–8.

[180] *See, e.g.,* IIB Letter at 4, 5, 6, 8; ISDA Letter at 8–9 (arguing that the Commission could reasonably limit the impact of the proposal on market participants by ''leveraging the existing components of the SEC's regulatory program,'' specifically identifying the Commission's existing regime that applies to broker-dealers and pointing out that cleared transactions are subject to regulations in other jurisdictions). One commenter argued that ''[t]o the extent the Commission is concerned about conduct of non-registered dealers, it has more targeted tools at its disposal, including existing antifraud and anti-manipulation provisions and broker-dealer regulatory obligations applicable to registered agents.'' SIFMA/FSR Letter at 6.

subject to customer protection requirements, these commenters argued that adding security-based swap dealer requirements would simply duplicate protections already available under existing law or impose requirements that address concerns (such as counterparty credit risk) that arise only outside the United States.[181] Because the Exchange Act defines security-based swaps as securities,[182] they asserted that an agent acting on behalf of a non-U.S. person that is engaged in security-based swap dealing activity generally would be required to register as a broker [183] and could be required to comply with relevant Exchange Act and FINRA requirements with respect to the security-based swap transactions that it intermediates.[184] Some commenters argued that sales practice and recordkeeping rules applicable to registered U.S. security-based swap dealers and broker-dealers that intermediate these transactions would adequately address the key policy interests that underlie the requirement to count U.S. activity towards the *de minimis* thresholds.[185] Another commenter suggested that this approach would be consistent with our historical approach to cross-border issues in cash markets, which provides an exemption from registration for foreign broker-dealers that use a registered broker-dealer to intermediate transactions on their behalf.[186] One commenter argued that such an approach would help ensure consistency in rules applicable to cash and derivatives markets, ''reduce the incentives for regulatory arbitrage,'' and help mitigate compliance costs that would arise from ''applying different registration standards to activity in economically comparable instruments.'' [187]

We recognize that some parallels exist between the Title VII dealer framework and the broker-dealer regime; we also recognize that there is at least a possibility of duplication between some of the requirements that would apply to the non-U.S.-person dealer's security-based swap transactions if it is required to register as a security-based swap dealer, the requirements that likely would apply to the registered broker-dealer whose personnel arrange, negotiate, or execute the relevant security-based swap transactions, and some requirements that may apply to the foreign security-based swap dealer under foreign law. However, as we discussed at some length in the U.S. Activity Proposing Release in response to similar comments, we do not believe it appropriate to except non-U.S.-person dealers from this requirement merely because some transactions of some non-U.S.-person dealers could be subject to broker-dealer or other requirements that could duplicate some of the security-based swap dealer requirements.[188]

As we noted in that release, this type of approach has two significant weaknesses. First, the definition of ''broker'' includes a number of exceptions for banks, including U.S. branches of foreign banks, that are engaged in certain activities, and these exceptions may be used by non-U.S.-person dealers to engage in market-facing activity in the United States in connection with their dealing activity in security-based swaps.[189] Second, broker-dealer regulation of the agent operating in the United States on behalf of the non-U.S.-person dealer would not address all of the concerns raised by non-U.S. persons engaged in this activity, as described above.[190]

[181] *See, e.g.,* IIB Letter at 6, 17. Commenters argued that permitting the personnel of non-U.S.-person dealers, or their agents, located in the United States to rely on existing regulatory requirements would be more efficient as these personnel could comply with a uniform set of requirements with respect to all of their business, whether in securities or in security-based swap transactions, on their own account or in their capacity as an intermediary for a non-U.S. person. *See* ISDA Letter at 9 (citing anti-fraud provisions of Securities Act section 17(a) and the fraud prohibitions in Rule 10b–5); IIB Letter at 6, 8, 17 (stating that broker-dealer and FINRA rules, including sales practice, books and records, and examination and inspection requirements, will apply to broker-dealers arranging, negotiating, and executing security-based swaps on behalf of non-U.S.-person dealers and arguing that applying only broker-dealer rules would avoid unnecessary duplication).

[182] *See also* U.S. Activity Proposing Release, 80 FR 27470 n.198 (noting that Title VII of the Dodd-Frank Act amended the Exchange Act definition of ''security'' to encompass security-based swaps); Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10) (defining ''security'') as revised by section 761(a)(2) of the Dodd-Frank Act.

[183] *See* Exchange Act section 3(a)(4) (defining ''broker'').

[184] *See, e.g.,* note 181, *supra* (citing IIB Letter).

We have granted temporary exemptive relief from compliance with certain provisions of the Exchange Act in connection with the Dodd-Frank Act's amendment of the definition of ''security'' in order generally to maintain the *status quo* during the implementation process for the Dodd-Frank Act. *See* Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revisions of the Definition of ''Security'' to Encompass Security-Based Swaps, Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (''Exchange Act Exemptive Order''). Among other things, this relief granted temporary exemptions specific to security-based swap activities by registered brokers and dealers. *See id.* at 39–44. In February 2014, we extended the expiration dates (1) for exemptions that are generally not directly related to specific security-based swap rulemakings until the earlier of such time that we issue an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of the Exchange Act provisions or until three years following the effective date of that order; and (2) for exemptions that are directly related to specific security-based swap rulemakings, until the compliance date for the relevant security-based swap rulemaking. *See* Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment, Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014).

FINRA also adopted a rule, FINRA Rule 0180 (Application of Rules to Security-Based Swaps), which temporarily limits the application of certain FINRA rules with respect to security-based swaps. On January 4, 2016, FINRA filed a proposed rule change, which was effective upon receipt by the Commission, extending the expiration date of FINRA Rule 0180 to February 11, 2017. See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps), Exchange Act Release No.76850 (January 7, 2016).

[185] *See* HSBC Letter at 2–3 (stating that relevant U.S. personnel would already be subject to U.S. security-based swap dealer or broker-dealer regulation, ''including extensive sales practice and recordkeeping rules'' and suggesting that the Commission could require certain non-U.S. person subsidiaries to provide access to books and records in a manner similar to Rule 15a-6(a)(3) applicable to foreign broker-dealers); ISDA Letter at 3 (requesting that, if the Commission adopts the proposed U.S. activity test, it minimize the impact by relying on certain already existing requirements on registered broker-dealers, such as recordkeeping); IIB Letter at 7. *See also* ISDA Letter at 6 (stating that the proposal would regulate these transactions ''solely on the basis of some *de minimis* level of U.S. nexus during the initial stage of the transaction''); *id.* at 9 (describing how existing rules would address regulatory concerns).

[186] *See* ISDA Letter at 6, 8 (arguing that ''the Commission already possesses a range of regulatory tools (such as books and records requirements and direct regulation of U.S.-based intermediaries) that it can use to satisfy its important regulatory interests in protecting against issues such as fraud and manipulation'').

[187] IIB Letter at 7. This commenter stated that such an approach ''also would be consistent with Congress' decision to define [security-based swaps] as a type of security.'' *See id.* To the extent that a firm uses a U.S. person to intermediate a security-based swap transaction, that U.S. person may be required to register as a broker and comply with relevant broker requirements, but nothing in the statute suggests that the regulation of the broker under the Exchange Act affects the Title VII obligations of the non-U.S.-person dealer that uses the U.S. broker—perhaps as part of an integrated dealing business—to engage in dealing activity within the United States under the comprehensive Title VII regulatory framework for security-based swap dealers.

[188] *See* U.S. Activity Proposing Release, 80 FR 27470–71.

[189] *Compare* Exchange Act section 3(a)(71) (defining ''security-based swap dealer'' with no exceptions for banks or banking activities) *with* Exchange Act section 3(a)(4)(B) (creating exception from broker definition for banks engaged in certain activities) *and* Exchange Act section 3(a)(5)(C) (creating exception from dealer definition for banks engaged in certain activities).

[190] *See* U.S. Activity Proposing Release, 80 FR 27466–67; Section IV.B.2, *supra* (describing regulatory concerns raised by security-based swap dealing activity, including risk, market integrity and transparency, and counterparty protection).

Regulation of the agent, whether as a broker-dealer or as a security-based swap dealer, also does

Accordingly, while we recognized that the statutory framework provides for the regulation of brokers that intermediate security-based swap transactions,[191] we preliminarily took the position that this provision neither warrants nor compels the adoption of an exception from the Title VII regime governing security-based swap dealers.[192]

In response to our preliminary determination, several commenters suggested that, to the extent that the existing framework (including the broker-dealer regulatory regime) does not fully address our concerns, we could adopt an exception to the counting requirement subject to certain conditions that would help ensure that the non-U.S. person engaged in dealing activity is subject to requirements, whether under domestic or foreign law, that are similar to those imposed on security-based swap dealers by Title VII dealer requirements.[193] For example, one commenter suggested that the non-U.S.-person dealer not be required to count any transaction entered into in a dealing capacity if the U.S. personnel are (a) personnel of a registered broker-dealer; or (b) personnel of a U.S. bank or U.S. branch of a foreign bank that, in connection with the arranging, negotiating, or executing activity, (i) complies with external business conduct requirements, (ii) maintains related books and records, and (iii) provides the Commission with access to such books and records and testimony of the relevant U.S. personnel.[194]

Another commenter suggested that we except transactions from the requirement that they be counted toward a non-U.S.-person dealer's *de minimis* threshold if the non-U.S.-person dealer is ''(i) [ ] an affiliate of the U.S.-located registered broker-dealer, (ii) [ ] registered as a dealer in a local jurisdiction recognized by the Commission as comparable, and/or (iii) [ ] located in a Basel-compliant jurisdiction and subject to such capital requirements under its local regime.'' [195] In the commenters' view, this type of alternative approach would leverage certain additional elements of domestic and foreign law, avoiding the costs of registering foreign affiliates and complying with potentially duplicative requirements, while achieving similar regulatory objectives.[196]

In offering these alternative approaches, commenters attempted to encompass all structures that non-U.S.-person dealers use to engage in dealing activity in the United States with non-U.S. counterparties and address the full range of regulatory concerns raised by that activity. But instead of a uniform set of comprehensive requirements using the framework that Congress established in Title VII, they urged us to develop an alternative approach that would cobble together existing foreign and domestic regulations in an attempt to replicate—and, as we discuss below, effectively replace—the statutory framework established by Congress by using a combination of pre-Dodd Frank Act regulatory authority, anti-fraud and anti-manipulation authority, anti-evasion authority, and certain foreign requirements. After careful consideration of these alternatives, we believe that such an approach would undermine the policy objectives advanced by Title VII that we describe above.[197]

As an initial matter, we believe that the approach suggested by commenters is inconsistent with the comprehensive, uniform statutory framework established by Congress for the regulation of security-based swap dealers in Title VII. The statutory definition of ''security-based swap dealer'' and the consequent regulatory requirements that apply to such persons apply to any person that engages in relevant activity above the dealer *de minimis* thresholds. The comprehensive scope of this definition and of the related requirements differs from the broker-dealer framework under the Exchange Act. Most significantly, as already discussed, the broker-dealer framework does not apply to banks engaged in certain activities, which may include a significant proportion of security-based swap dealing activity. Title VII, on the other hand, provides that both banks and non-banks—whether engaged in dealing activity with other dealers or with non-dealers—are subject to the same comprehensive regulatory framework, suggesting that the Title VII security-based swap dealer framework is designed to establish a uniform regulatory regime for all persons engaged in security-based swap dealing activity at levels above the *de minimis* threshold, regardless of the business structure that they use to carry out their business.

Commenters argued that precedent for an approach that provides an exception for trades intermediated by a registered broker-dealer exists in the exemption available for foreign broker-dealers under Exchange Act rule 15a–6.[198] However, this comparison is inapposite. First, the rule 15a–6(a)(3) exemption that commenters would have us follow [199] permits a foreign broker-dealer to effect transactions in the United States without being required to register only if the intermediating broker under rule 15a–6 is itself a registered broker-dealer. In other words, rule 15a–6(a)(3) exempts the foreign dealer only if its U.S. intermediary is subject to the same regulatory regime that otherwise would apply to the foreign broker-dealer absent the exemption. The commenters, on the other hand, urged us to permit a non-U.S.-person dealer engaged in security-based swap dealing activity in the United States to substitute broker regulation (subject to certain conditions, including compliance with certain foreign requirements) of the U.S. intermediary for comprehensive Title VII security-based swap dealer regulation of the non-U.S. person engaged in security-based swap dealing activity.

Second, an exception of this type likely would effectively supplant Title VII dealer regulation for a majority of dealing activity carried out in the United States, replacing it with a less effective alternative cobbled together from other domestic and foreign requirements. As described above, much

nothing to address concerns about the potential spillover risk or contagion from the activity of non-U.S.-person dealers—including affiliates of U.S.-based financial groups—that are engaged in potentially significant volumes of security-based swap activity in the United States. *See* Section IV.B.2, *supra.*

[191] *See* U.S. Activity Proposing Release, 80 FR 27470 n.198 (noting that Title VII of the Dodd-Frank Act amended the Exchange Act definition of ''security'' to encompass security-based swaps); Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10) (defining ''security''), revised by section 761(a)(2) of the Dodd-Frank Act.

[192] *See* U.S. Activity Proposing Release, 80 FR 27470–471.

[193] *See* IIB Letter at 8–10; SIFMA/FSR Letter at 8; ISDA Letter at 9–10.

[194] *See* IIB Letter at 8–10. The commenter suggested that the Commission could use its anti-evasion authority to require access to books and records of the non-U.S.-person dealer and consent to service of process and that it could ensure adequate capital regulation of the non-U.S.-person dealer by requiring the non-U.S.-person dealer to count these transactions toward the *de minimis* exception if it is not supervised by a home country prudential supervisor that is a member of the Basel Committee or located in a G20 jurisdiction. *See id.* at 9. *See also* ISDA Letter at 8 (stating that such an approach would be consistent with Exchange Act rule 15a-6, which provides an exemption from broker-dealer registration on the condition that, among other things, the foreign broker or dealer maintains books and records and makes them available to the Commission upon request).

[195] *See* SIFMA/FSR Letter at 8. *See also* IIB Letter at 9 (suggesting that any exception could be conditioned on the non-U.S. person being supervised by a home country prudential supervisor that is either a member of the Basel Committee or located in a G–20 jurisdiction).

[196] *See* IIB Letter at 8–10; SIFMA/FSR Letter at 7–8.

[197] *See* Section IV.B.2, *supra.*

[198] *See* IIB Letter at 7–8; ISDA Letter at 8–9; HSBC Letter at 3, note 3.

[199] *See* IIB Letter at 7–8; ISDA Letter at 8–9; HSBC Letter at 3, note 3.

of the dealing activity carried out in the United States is currently booked in non-U.S. persons, and the absence of a U.S. activity trigger for *de minimis* threshold calculations would create a strong incentive to move booking for all transactions with non-U.S. persons—including, eventually, potentially all dealer-to-dealer transactions—to booking entities that are themselves non-U.S. persons.[200] Doing so would permit all of this activity—potentially a significant majority of security-based swap activity in the United States—to be regulated under an alternative to Title VII. Thus, whereas the exemption under Exchange Act rule 15a–6 permits a foreign broker-dealer to effect transactions in the United States without being required to register if the intermediating broker is subject to the same requirements that would apply to the foreign broker-dealer absent the exemption, the commenters' alternative would potentially enable most security-based swap dealing activity in the United States to be regulated under an entirely different regime from the comprehensive dealer regulatory framework established by Congress.

One commenter argued that permitting personnel located in the United States to comply with the requirements that apply to registered broker-dealers would increase efficiency because such personnel would be subject to a single set of regulatory compliance obligations with respect to both their underlying securities transactions and derivatives transactions.[201] Another commenter argued that our ''generally favorable view of substituted compliance'' suggests that we should be willing to refrain from adopting these amendments on the basis that existing Exchange Act and FINRA requirements ''already secure the regulatory aims sought to be provided by the SBS dealer regime.'' [202] However, banks engaged in certain activities, including U.S. branches of foreign banks, are, as noted above, excepted from the definition of ''broker'' and would not benefit from the efficiencies described by commenters, whether they are required to register as security-based swap dealers (because the exemption is not available to them) or required to comply with broker-dealer requirements as a condition of an exception, as suggested by one commenter.[203] In addition, while permitting reliance on broker-dealer requirements for certain non-U.S.-person dealers may provide intra-firm efficiencies, it is also likely to create unnecessary competitive disparities between non-U.S.-person dealers that are eligible for the exception, on one hand, and U.S. dealers and other non-U.S.-person dealers that are not eligible.[204] And to the extent that the commenters' concerns relate to the difficulties in persuading non-U.S.-person counterparties to make representations and accept disclosures pursuant to business conduct requirements as proposed,[205] reliance on broker-dealer regulation is unlikely to eliminate these concerns, as it is likely that similar requirements may apply under the Exchange Act or under FINRA rules, following the termination of relevant exemptions.[206] For these reasons, we do not agree with commenters that existing requirements in fact secure the same regulatory aims as those secured by the Title VII dealer regulatory framework.[207]

Finally, many of the concerns expressed by commenters could be mitigated by the availability of substituted compliance, which, as proposed, may permit non-U.S.-person dealers to comply with comparable foreign requirements as an alternative means of complying with certain Title VII requirements.[208] A person relying on substituted compliance would remain subject to the applicable Exchange Act requirements, but could comply with those requirements in an alternative fashion.[209]

In practice, however, we recognize that there will be limits to the availability of substituted compliance. For example, it is possible that substituted compliance may be permitted with regard to some requirements and not others with respect to a particular jurisdiction. For certain jurisdictions, moreover, substituted compliance may not be available with respect to any requirements depending on our assessment of the comparability of the relevant foreign requirements, as well as the availability of supervisory and enforcement arrangements among the Commission and relevant foreign financial regulatory authorities. Although comparability assessments will focus on regulatory outcomes rather than rule-by-rule comparisons, the assessments will require inquiry regarding whether foreign regulatory requirements adequately reflect the interests and protections associated with the particular Title VII requirement. In some circumstances, such a conclusion may be difficult to achieve.

In the event that we are unable to determine that an entity may satisfy certain Title VII requirements via substituted compliance, we recognize that such persons may, as a result, be subject to requirements that are duplicative of particular Title VII requirements. While we recognize the

[200] As already discussed, the security-based swap market is a global market, and firms engaged in security-based swap dealing activity can restructure their dealing business to ensure that security-based swap transactions are not booked in U.S. persons. *See* Section II.B, *supra.*

[201] *See* IIB Letter at 7.

[202] *See* ISDA Letter at 9–10.

[203] *See* IIB Letter at 8–9.

[204] Indeed, we note that any exception from the uniform application of the requirement that non-U.S.-person dealers that engage in security-based swap dealing activity in the United States include the resulting transactions in their dealer *de minimis* threshold calculations is likely to create similar competitive disparities and exacerbate market fragmentation in the manner described in the previous section. *See* Section IV.B.2, *supra.* For this reason, and the reasons given in note 190, *supra,* we do not agree that compliance by the agent with either broker-dealer or security-based swap dealer requirements would warrant an exception from counting transactions under the U.S. Activity Test. *Cf.* note 185, *supra* (citing HSBC Letter at 3).

[205] *See* IIB Letter at 11; SIFMA/FSR Letter at 9. For example, one commenter explained that a non-U.S. counterparty ''would be surprised by any need to provide representations, agree to covenants or fill out questionnaires designed to comply with U.S. requirements'' that would only apply if U.S. personnel is used in a subsequent transaction, particularly if such requirements differ from any local requirements that are already applicable. IIB Letter at 11.

[206] *See* note 184, *supra.*

[207] *See* notes 201–203, *supra.*

[208] *See* proposed Exchange Act Rule 3a71–5; Cross-Border Proposing Release, 78 FR 31088. *See also* IIB Letter at 19 (noting that significant modifications to existing compliance and risk management systems in response to adoption of the U.S. Activity Test ''may prove unnecessary'' if foreign security-based swap dealers ''are ultimately able to rely on substituted compliance'').

Although we did not directly address substituted compliance with respect to security-based swap dealer requirements in the U.S. Activity Proposing Release, we noted in that release that we had previously proposed such an approach and continued to believe that substituted compliance for such requirements would be the appropriate means of addressing potential overlap or duplication in their application, rather than forgoing regulation entirely. *See* U.S. Activity Proposing Release, 80 FR 27471 and 27473 n.223. *Cf.* ISDA Letter at 10 (expressing concern that the U.S. Activity Proposing Release had proposed substituted compliance only with respect to Regulation SBSR).

[209] *See* Cross-Border Proposing Release, 78 FR 31085. Under the proposal, the Commission would not permit dealer requirements to be satisfied by substituted compliance unless (i) the Commission determined that the foreign regime's requirements were comparable to the otherwise applicable requirements, after taking into account such factors as the Commission determines are appropriate, including the scope and objectives of the relevant foreign regulatory requirements the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised by the foreign financial regulatory authority in support of its oversight; and (ii) the Commission has entered into a supervisory and enforcement memorandum of understanding or other arrangement with the relevant foreign financial regulatory authority or authorities. *See* proposed Exchange Act Rule 3a71–5(a)(2)(i) and (ii); Cross-Border Proposing Release, 78 FR 31086–88.

significance of such a result, in our view compliance with the Title VII requirements is necessary to advance the policy objectives of Title VII. This would be undermined by permitting non-U.S.-person dealers to comply with their Title VII obligations by satisfying foreign requirements, unless the alternative route provided by substituted compliance has been made available.

C. Application of the Dealer De Minimis Exception to Non-U.S. Persons Using Personnel Located in a U.S. Branch or Office to Arrange, Negotiate, or Execute Security-Based Swap Transactions

We are amending Exchange Act rule 3a71–3(b)(1)(iii) in a manner generally consistent with our proposal. The final rule requires a non-U.S. person engaged in security-based swap dealing activity to include in its *de minimis* calculations any transactions connected with its security-based swap dealing activity that it arranges, negotiates, or executes using its personnel located in a U.S. branch or office, or using personnel of its agent located in a U.S. branch or office.[210] This approach reflects our view that it is reasonable to conclude that a non-U.S. person that, in connection with its dealing activity, engages in market-facing activity using personnel located in the United States, is performing activities that fall within the statutory definition of ''security-based swap dealer'' or our further definition of that term, as described above, at least in part in the United States.[211]

This amendment reflects our further consideration of the issues raised by non-U.S. persons engaged in this activity. We continue to believe that requiring non-U.S. persons to include such transactions in their *de minimis* threshold calculations will help to ensure that all persons that engage in a significant level of relevant dealing activity, including activity carried out through personnel located in a U.S. branch or office, are required to register as security-based swap dealers and to comply with relevant Title VII requirements applicable to security-based swap dealers when the volume of that activity exceeds the dealer *de minimis* threshold.[212]

Most commenters that expressed a view on the U.S. Activity Test set forth in the U.S. Activity Proposing Release supported the changes made from our initially proposed approach.[213] Under that initial approach, market participants would have been required to determine, in connection with several different Title VII rules, whether a transaction was a ''transaction conducted within the United States,'' and this determination would have required an analysis of the location of relevant activity performed by either counterparty or its agent in connection with that transaction.[214] These commenters supported the narrower approach set forth in our U.S. Activity Proposing Release, which focused only on the location of relevant activity of a counterparty acting in a dealing capacity in the transaction of such counterparty's agent[215] and limited relevant activity to ''market-facing'' activity of that counterparty or the counterparty's agent.[216] One commenter stated that the modified approach created ''a definable standard that will bring clarity to the application of security-based swap requirements to security-based swap dealers, and is appropriate and consistent with the expectations of the parties as to when U.S. security-based swap requirements will apply.''[217]

We have considered commenters' concerns about the potential costs associated with the final rule, including the systems and monitoring costs, as well as the likelihood of market fragmentation arising from the full or partial exit of some dealing firms from the U.S. market.[218] As discussed above, however, we believe that imposing the counting requirements on non-U.S.-person dealers engaged in such transactions will advance important regulatory objectives.[219] However, the

[210] *See* Exchange Act rule 3a71–3(b)(1)(iii)(C). Consistent with our proposal, a person would be required to include in its *de minimis* calculations only security-based swaps that, in connection with its dealing activity, are *arranged, negotiated,* or *executed* by personnel located in the United States. A non-U.S. person is not required to include in this calculation transactions connected with that person's dealing activity solely on the basis that they were submitted for clearing in the United States, reported to a security-based swap data repository in the United States, or because activities related to collateral management of the transaction, such as the exchange of margin, occurred within the United States. *See* U.S. Activity Proposing Release, 80 FR 27467 n.166; 27468 n.180; Cross-Border Proposing Release, 78 FR 31000. In our view, none of these activities, by themselves, indicate that a non-U.S. person is likely to raise the types of concerns addressed by Title VII security-based swap dealer regulation.

[211] Non-U.S. persons engaged in security-based swap dealing activity may include persons whose counterparties have legal recourse against a U.S. person arising out of the security-based swap transactions of the non-U.S. person or persons that are conduit affiliates. Our Cross-Border Adopting Release finalized rules providing that a non-U.S. person must include in its dealer *de minimis* calculation transactions arising out of its dealing activity with counterparties that are U.S. persons, or such transactions with non-U.S. person counterparties if the non-U.S. person affiliate of the non-U.S. person is a conduit affiliate or if its counterparty has a right of recourse against a U.S.-person affiliate of the non-U.S. person under the security-based swap, even if the non-U.S. person is not engaging in dealing activity using personnel located in the United States to arrange, negotiate, or execute the transaction. *See* Exchange Act rules 3a71–3(a)(1), (b)(1)(ii), and (b)(1)(iii)(B).

[212] Several commenters urged the Commission to work with the CFTC to harmonize the Commissions' approaches to cross-border and other issues, arguing that no administrative or economic rationale exists for different approaches. *See* Chris Barnard Letter at 2 (noting that the U.S. Activity Proposing Release differs in its application of mandatory clearing and trade execution from the CFTC and that, ideally, the SEC and CFTC should work together to create one set of rules); ICI Global Letter at 3–4 (emphasizing the need for coordination among regulators to determine the treatment of cross-border transactions); MFA Letter at 2–4 (urging that the Commission work with the CFTC and the prudential regulators to adopt a single approach, particularly with respect to the definition of ''U.S. person''); SIFMA Sequencing Letter at 5 (requesting that the Commission coordinate with the CFTC on cross-border rules generally and on any rules governing U.S. activity in particular). One commenter expressed concern about differences among cross-border approaches proposed by U.S. regulators particularly in light of the close relationship between the single-name CDS market and the index CDS market, given that many market participants are active in both markets. *See* MFA Letter at 3. We recognize the commenters' concerns and continue to consult and coordinate with the CFTC and other regulators to minimize differences in our Title VII rules, including with respect to the issues addressed in this release.

Another commenter specifically urged that the Commission's proposed interpretation of ''arrange, negotiate, and execute'' be applied consistently to the use of these terms in other contexts, including the CFTC Staff Advisory and the Volcker Rule. *See* SIFMA/FSR Letter at 2–4. The Commission adopted the Volcker Rule together with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the CFTC under a provision of the Dodd-Frank Act separate from the provisions under which the rules addressed in this release are being adopted. *See* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, Release No. BHCA–1 (December 10, 2013), 79 FR 5535 (January 31, 2014) (''Volcker Rule'').

[213] *See* ICI Letter at 1–2, 5; SIFMA/FSR Letter at 3; IIB Letter at 2.

[214] *See* Cross-Border Proposing Release, 78 FR 30999.

[215] *See* ICI Global Letter at 1–2, 5 (stating that the modified proposal would enable non-U.S. dealers to enter into transactions with non-U.S. persons that may use a U.S. fund manager without requiring the non-U.S. dealer to include the transaction in its *de minimis* calculations).

[216] *See* IIB Letter at 17; SIFMA/FSR Letter at 3 (stating that ''market-facing focus is appropriate and consistent with the expectations of the parties as to when U.S. regulations will apply'').

[217] SIFMA/FSR Letter at 2–3 (stating also that the commenters ''strongly believe that the Commission has taken the correct approach in focusing on market-facing activity of sales and trading personnel in defining the 'arrange, negotiate, or execute' nexus that subjects security-based swap activity to the Commission's regulations based on location of conduct'').

[218] *See* Sections V.A and V.B, *infra* (discussing comment letters addressing costs, competition, and market fragmentation).

[219] *See* Section IV.B.2, *supra.* We recognize, as two commenters argued, that it is possible that the final rule will result in additional registrants and

Continued

final rule is intended to avoid unnecessary costs and complexity that may make it difficult for market participants to comply with such requirements. As we stated in connection with the proposed rule, this approach reflects our recognition of commenters' concerns that our initially proposed approach to ''transactions conducted within the United States'' potentially could have imposed significant costs on, and presented compliance challenges to, market participants.[220] The final rule should reduce the likelihood that personnel who are incidentally within the United States will trigger the counting requirement, and it will eliminate any need on the part of the non-U.S.-person dealer either to monitor the location of relevant personnel acting on behalf of its counterparty or to obtain relevant representations regarding the location of the counterparty's or the counterparty's agent's personnel from their counterparty on a transaction-by-transaction basis.

In the following subsections, we describe key elements of the amendment to Exchange Act rule 3a71–3(b)(1)(iii) and address comments received in response to the U.S. Activity Proposing Release that are of particular relevance with respect to each element.

1. ''Arranging, Negotiating, or Executing'' a Security-Based Swap Transaction

Exchange Act rule 3a71–3(b)(1)(iii)(C) applies only to transactions connected with a non-U.S. person's security-based swap dealing activity that its personnel (or the personnel of an agent) located in the United States *arrange, negotiate, or execute.* The final rule, accordingly, would reach a narrower range of activity than did the initially proposed rules that would have required a non-U.S.-person dealer to count any ''transaction conducted within the United States'' [221] that it entered into in connection with its dealing activity.

Consistent with our preliminary views set forth in the U.S. Activity Proposing Release, ''arrange'' and ''negotiate'' in the final rule indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their agents.[222] ''Execute'' refers to the market-facing act that, in connection with a particular transaction, causes the person to become irrevocably bound under the security-based swap under applicable law.[223]

As noted in the proposal, this limitation to market-facing activity should enable market participants to identify the location of relevant activity in a relatively efficient manner. The final rule requires a market participant to focus on whether its sales or trading personnel (or such personnel of its agent) located in the United States engage in this market-facing activity in connection with a particular transaction, *not* on where these or other personnel perform internal functions (such as the processing of trades or other back-office activities) in connection with that transaction. Accordingly, the involvement of personnel located in a U.S. branch or office in a transaction, where such personnel do not engage in market-facing activities with respect to a specific transaction (such as a person who designs the security-based swap but does not communicate with the counterparty regarding the contract in connection with a specific transaction and does not execute trades in the contract), and does not direct these activities (as described below), does not fall within the scope of the final rule.[224] Similarly, the final rule also does not include the preparation of underlying documentation for the transaction, including negotiation of a master agreement and related documentation, or performing ministerial or clerical tasks in connection with the transaction as opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction.[225]

The final rule also does not require persons engaged in dealing activity to consider the location of personnel booking the transaction. As we have noted elsewhere, the booking entity is the counterparty to a transaction and bears the ongoing risk of performance on the transaction,[226] and the entity in which the transaction is booked is the entity that may be required to include a transaction in its *de minimis* threshold calculations.[227] However, the ministerial task of entering transactions on a non-U.S. person's books once the transaction has been executed by market-facing personnel does not appear to involve the type of market-facing activity that reflects an involvement in the U.S. financial market that would indicate that the non-U.S. person may be likely to raise the types of regulatory concerns addressed by the Title VII dealer requirements, particularly if both counterparties to the transaction are non-U.S. persons and all relevant market-facing activity occurs outside the United States.[228] On the other hand, a non-U.S. person's market-facing activity in the United States suggests the type of involvement in the U.S. security-based swap market that may raise financial contagion, customer protection, market integrity, and market transparency concerns, for the reasons described in detail above,[229] particularly when its

that this increase in the number of security-based swap dealers will impose additional responsibilities on the Commission and its staff. *See* IIB Letter at 7, 10; HSBC Letter at 2. As discussed above, the final rule is intended to subject to registration requirements only those firms whose activity in the United States suggests that they raise the types of concerns addressed by Title VII dealer regulation, and we believe that the concern regarding Commission resources is not relevant, given that the final rule appears reasonably tailored to achieve our policy interests.

[220] *See* U.S. Activity Proposing Release, 80 FR 27468.

[221] As noted above, the initially proposed rule would have required non-U.S. persons to include in their *de minimis* calculation any ''transaction conducted within the United States'' related to their dealing activity. *See* Cross-Border Proposing Release, 78 FR 30999–31000. Under that proposal, this term would have included any transaction solicited, negotiated, executed, or booked, by either party or either party's agent, within the United States. *See id.* at 30999.

[222] *See* U.S. Activity Proposing Release, 80 FR 27467–68.

Consistent with the approach taken to the final definition of ''transaction conducted through a foreign branch'' adopted in the Cross-Border Adopting Release, the amendment includes ''arrange'' instead of ''solicit'' in recognition of the fact that a dealer, by virtue of being commonly known in the trade as a dealer, may respond to requests by counterparties to enter into dealing transactions, in addition to actively seeking out such counterparties. *See id.* at 27467 n.173 (citing Cross-Border Adopting Release, 79 FR 47322 n.381; 15 U.S.C. 78c(a)(71)(A)(iv)).

[223] *See* U.S. Activity Proposing Release, 80 FR 27468.

[224] On the other hand, to the extent that personnel located in a U.S. branch or office engage in market-facing activity normally associated with sales and trading, the location of those personnel would be relevant, even if the personnel are not formally designated as sales persons or traders.

[225] Similarly, the final rule does not encompass a transaction solely on the basis that a U.S.-based attorney is involved in negotiations regarding the terms of the transaction.

[226] *See* Cross-Border Proposing Release, 78 FR 30976. *See also* Intermediary Definitions Adopting Release, 77 FR 30617 n.264. For further discussion of this issue, see note 244, *infra.*

[227] For example, if the transaction is booked in a U.S. person, that U.S. person is a counterparty to the security-based swap and is required to include the security-based swap in its own *de minimis* calculation if the transaction is in connection with its dealing activity, irrespective of whether the U.S. person used its own personnel or an agent's personnel to carry out that dealing activity. *See* Exchange Act rule 3a71–3(b)(1)(i).

[228] *See* Section IV.B.2, *supra* (describing concerns addressed by the final rule, including uniform application of Title VII dealer requirements, market integrity and fragmentation, and potential channels of financial contagion arising from dealing activity in the United States). *See also* U.S. Activity Proposing Release, 80 FR 27467 n.173 (stating our preliminary view that it is market-facing activity, rather than the booking of the transaction, that raises the types of concerns underlying our proposal of the U.S. Activity Test).

[229] *See* note 162 and accompanying text, *supra.*

relevant dealing transactions exceed a *de minimis* threshold.

Finally, we note that, consistent with our proposal, ''arranging,'' ''negotiating,'' and ''executing'' also include directing other personnel to arrange, negotiate, or execute a particular security-based swap. In other words, sales and trading personnel of a non-U.S. person who are located in the United States cannot avoid application of this rule by simply directing other personnel to carry out dealing activity, and we would view personnel located in a U.S. branch or office who direct personnel not located in the United States to arrange, negotiate, or execute a security-based swap transaction as themselves arranging, negotiating, or executing the transaction. Similarly, personnel directing the arranging, negotiation, or execution of security-based swaps include personnel located in a U.S. branch or office that specify the trading strategy or techniques carried out through algorithmic trading or automated electronic execution of security-based swaps, even if the related server is located outside the United States.[230] Some commenters requested that certain requirements not apply to transactions that involve U.S. activity if parties have no reasonable basis to expect that Title VII regulations will apply, for example, because the trade has been executed on an anonymous electronic platform or in algorithmic/program driven trading, in which a counterparty may have personnel in the U.S. but there is no human contact within the U.S. related to the transaction.[231] However, we do not believe that it is appropriate to create a blanket exclusion for these transactions from the *de minimis* counting requirement, as neither algorithmic trading nor automated electronic execution of security-based swaps eliminates the concerns addressed by Title VII dealer regulation, which exist irrespective of the expectations of the counterparty to a particular transaction.[232]

2. ''Located in a U.S. Branch or Office''

Exchange Act rule 3a71–3(b)(1)(iii)(C) applies only to transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel *located in a U.S. branch or office.*[233] Thus, on the one hand, we generally would view the rule to require a non-U.S.-person dealer to include in its *de minimis* calculations any transactions arranged, negotiated, or executed in the United States by, for example, personnel assigned to, on an ongoing or temporary basis, or regularly working in a U.S. branch or office. On the other hand, we would not view the rule to require a non-U.S.-person dealer to include in its *de minimis* calculations transactions arranged, negotiated, or executed by personnel assigned to a foreign office if such personnel are only incidentally in the United States. For example, the amendment does not require a non-U.S. person to include transactions that such personnel arrange, negotiate, or execute while traveling in the United States to attend an educational or industry conference.

As we noted in our U.S. Activity Proposing Release, this element of the final rule also should mitigate the burdens associated with determining whether a particular transaction needs to be included in a non-U.S. person's *de minimis* calculation.[234] We acknowledge that the final rule potentially would lead a market participant to perform a trade-by-trade analysis to determine the location of relevant personnel performing market-facing activity in connection with the transaction. However, because the final rule encompasses a person's dealing activity only when its personnel or personnel of its agent located in a U.S. branch or office have arranged, negotiated, or executed the transaction, a non-U.S. person performing this analysis should be able to identify for purposes of ongoing compliance the specific sales and trading personnel whose involvement in market-facing activity would require a transaction to be included in its *de minimis* calculation.[235] Alternatively, such non-U.S. person may establish policies and procedures that would facilitate compliance with this final amendment by requiring transactions connected with its dealing activity to be arranged, negotiated, and executed by personnel located outside the United States.

Consistent with our proposed approach, the final rule applies to security-based swap transactions that the non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes, using personnel located in a U.S. branch or office, even in response to inquiries from a non-U.S.-person counterparty outside business hours in the counterparty's jurisdiction. One commenter urged us not to include such transactions in the U.S. Activity Test, arguing that dealing activity carried out in the United States in response to inquiries is generally occurring pursuant to ''product, credit and market risk parameters'' set by management personnel outside the United States and that the activity is not ''regular business'' because the location of the activity is ''solely incidental to the hour of the day when the non-U.S. counterparty desires to trade.''[236]

We do not agree that these circumstances, including the fact that the dealer's counterparty made the initial contact leading to the transaction, are relevant in determining whether a transaction should be included in a non-U.S. person's *de minimis* threshold calculations. The focus of our U.S. Activity Test is on the location of the personnel used to arrange, negotiate, or execute the security-based swap transaction, as we continue to believe that a non-U.S. person that uses sales or trading personnel located in a U.S. branch or office to engage in market-facing activity in connection with its dealing activity, at least to the extent that its relevant dealing activity exceeds the *de minimis* threshold, is likely to

[230] We would not view personnel responsible solely for coding the algorithm as specifying the trading strategy or techniques carried out through such trading or execution.

[231] *See* ISDA Letter at 7–8; SIFMA/FSR Letter at 7 (stating that transactions should not be counted towards the *de minimis* calculations if executed anonymously on an exchange and cleared, or through algorithmic or program-driven trading); IIB Letter at 17–18 (same, noting that doing so could deter non-U.S. counterparties from trading on those platforms).

[232] *Cf.* ISDA Letter at 5 (acknowledging that ''the Commission's concern that electronic trading does not eliminate the possibility of abusive or manipulative conduct'' and requesting further clarification of the application of the proposed rule to electronic trading).

[233] As noted in Section IV.C.1, however, if personnel located in a U.S. branch or office are arranging, negotiating, or executing a particular security-based swap by directing personnel not located in a U.S. branch or office to arrange, negotiate, or execute a security-based swap transaction, we would view that transaction as having been arranged, negotiated, or executed by the personnel located in the United States.

[234] *See* U.S. Activity Proposing Release, 80 FR 27469.

[235] Based on our staff's discussions with market participants, we continue to believe that persons engaged in dealing activity may already identify personnel involved in market-facing activity with respect to specific transactions in connection with regulatory compliance policies and procedures and to facilitate compensation. *See id.* at 27469 n.191.

In addition, we believe that some market participants engaged in both swap dealing and security-based swap dealing activity may perform a similar analysis consistent with the CFTC Staff Advisory, which sets forth the CFTC staff's view that Title VII requirements apply to transactions arranged, negotiated, or executed in the United States by, or on behalf of, swap dealers. *See* note 20, *supra.*

[236] *See* IIB Letter at 18–19 (arguing that the dealing activity of the U.S. personnel in the trade is solely based on the hour of the day and thus incidental and that maintaining the proposed approach would be difficult as it would require non-U.S. persons to hire staff to work after-hours in the non-U.S. offices). *See also* HSBC Letter at 2 (explaining that U.S. sales and trading personnel may arrange, negotiate, or execute security-based swaps solely due to time-zone differences).

raise concerns addressed by Title VII dealer regulation.[237] As noted above, to the extent that personnel assigned to a foreign office are themselves only incidentally present in the United States, we would not view the final rule as encompassing any transactions that they arrange, negotiate, or execute. But we do not believe that either the nature of the initial contact made by the foreign counterparty or the fact that parameters for the market-facing activity in the United States are established by management personnel outside the United States mitigates the concerns arising from a non-U.S. person that, in connection with its dealing activity, uses personnel located in the United States to arrange, negotiate, or execute a security-based swap.[238] Accordingly, we would view the final rule as encompassing transactions under such circumstances to the extent that the personnel arranging, negotiating, or executing the transaction on behalf of the non-U.S. person dealer are located in a U.S. branch or office as described above.[239]

3. ''Personnel of Such Non-U.S. Person'' or ''Personnel of an Agent''

Exchange Act rule 3a71–3(b)(1)(iii)(C) would apply to transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel located in a U.S. branch or office, *whether the non-U.S. person arranges, negotiates, or executes the transaction directly using its own personnel* located in a U.S. branch or office, *or does so using personnel of an agent of such non-U.S. person,* located in a U.S. branch or office.

As noted above, a non-U.S. person engaged in security-based swap dealing activity with other non-U.S. persons, if it wishes to avail itself of the expertise of sales, trading, and other personnel located in a U.S. branch or office, may carry out that activity using its own personnel located in a U.S. branch or office, or using the personnel of its agent, located in a U.S. branch or office.[240] We continue to believe that the location of personnel carrying out market-facing activity appears particularly relevant for identifying non-U.S. persons that may raise the types of concerns described above,[241] whether that dealing activity is carried out by the non-U.S. person's personnel located in a U.S. branch or office or on its behalf by the personnel of its agent, located in a U.S. branch or office.[242] Accordingly, the final rule requires a non-U.S. person to include in its *de minimis* calculations any transactions in connection with its security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such person located in a U.S. branch or office, or by personnel of its agent located in a U.S. branch or office.[243] For the reasons discussed in Section IV.B.3, above, the final rule does not include any exception from the *de minimis* counting requirement for security-based swap transactions that a non-U.S. person, in connection with its dealing activity, arranges, negotiates, or executes using personnel located in the United States.[244]

[237] *See* Sections IV.B.2 and II.B, *supra.*

[238] *Cf.* note 222, *supra* (noting that the amendment includes ''arrange'' instead of ''solicit'' in recognition of the fact that a dealer, by virtue of being commonly known in the trade as a dealer, may respond to requests by counterparties to enter into dealing transactions, in addition to actively seeking out such counterparties).

[239] We also recognize that Exchange Act section 3(a)(71)(C) excepts from the security-based swap dealer definition a person that enters into security-based swaps for its own account, but not as a part of regular business. However, we have previously interpreted ''regular business'' to focus on activities of a person that are usual and normal in the person's course of business and identifiable as a security-based swap dealing business. *See* Intermediary Definitions Adopting Release, 77 FR 30610 (interpreting ''regular business'' for purposes of the ''swap dealer'' definition). We do not agree with the commenter that, because the non-U.S. person's use of the personnel located in a U.S. branch or office is to accommodate the non-U.S. person counterparty outside its local market hours, the use of the trading or sales personnel located in a U.S. branch or office is incidental and thus not ''regular business'' of the non-U.S. person. Under our interpretation of ''regular business,'' it is important to consider whether the non-U.S. person's usual and normal course of business is identifiable as a security-based swap dealing business, not the frequency of or reasons for using personnel located in a U.S. branch or office.

[240] For purposes of Exchange Act rule 3a71–3(b)(1)(iii)(C), we interpret the term ''personnel'' in a manner consistent with the definition of ''associated person of a security-based swap dealer'' contained in section 3(a)(70) of the Exchange Act, 15 U.S.C. 78c(a)(70), regardless of whether such non-U.S. person or such non-U.S. person's agent is itself a security-based swap dealer. This definition is, in turn, substantially similar to the definition of ''associated person of a broker or dealer'' in section 3(a)(18) of the Exchange Act, 15 U.S.C. 78c(a)(18). The definition in section 3(a)(18) is intended to encompass a broad range of relationships that can be used by firms to engage in and effect securities transactions, and is not dependent solely on whether a natural person is technically an ''employee'' of the entity in question. *See* Alexander C. Dill, *Broker-Dealer Regulation Under the Securities Exchange Act of 1934: The Case of Independent Contracting,* 1994 Colum. Bus. L. Rev. 189, 211–213 (1994) (noting that the Securities Act Amendments of 1964, which amended section 3(a)(18) of the Exchange Act, ''rationalized and refined the concept of 'control' by firms over their sales force by introducing the concept of an 'associated person' of a broker-dealer.''). Accordingly, we expect to consider whether a particular entity is able to control or supervise the actions of an individual when determining whether the individual is considered to be ''personnel'' of a U.S. branch, office, or agent of a security-based swap dealer. This is particularly relevant in the context of a financial group that engages in a security-based swap dealing business, where personnel of one affiliate may operate under the direction of, or in some cases, report to personnel of another affiliate within the group. *See also* Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds, BHCA–1 (December 10, 2013), 59 FR 5535, 5591 (January 31, 2014) (explaining, in the context of adopting certain provisions of what is commonly referred to as the Volcker Rule, that the relevant ''trading desk'' of a banking entity ''may manage a financial exposure that includes positions in different affiliated legal entities'' and similarly ''may include employees working on behalf of multiple affiliated legal entities or booking trades in multiple affiliated entities'') (internal citations omitted).

[241] *See* Section IV.B, *supra.* One commenter urged the Commission to return to its initially proposed approach, which would have looked to the location of relevant activity of both counterparties. Letter from Better Markets, dated July 13, 2015 (''Better Markets Letter''), at 3, 6. The commenter urged the Commission to ''strengthen its proposal by requiring that if either non-U.S. counterparty uses U.S.-based personnel, then the transaction must be included within U.S./Foreign Personnel Activity,'' explaining that the involvement of personnel in the United States would be consistent with the Supreme Court's decision in *Morrison* v. *National Australia Bank, Ltd.,* 130 S. Ct. 2869, 2884 (2010) (''*Morrison*''), and that a counterparty engaged in dealing activity can reasonably be required to consider the location of its counterparty's activity, as well as its own). *Id.* at 3. Given the structure of the security-based swap market and the concentration of security-based swap dealing among a small group of firms, we believe the final rule is appropriately tailored to capture the dealing activity that is likely to raise the types of concerns addressed by the Title VII dealer regime. *See* Section IV.B.2.

[242] We continue to believe that it is appropriate for the final rule to take into account where personnel of the non-U.S. person's agent are arranging, negotiating, or executing the transaction on behalf of the non-U.S. person, regardless of whether the agent is affiliated with the non-U.S. person, as security-based swap dealing activity carried out through an unaffiliated agent is likely to raise the same concerns as such activity carried out through an affiliated agent.

[243] A non-U.S. person that uses a broker as its agent to arrange, negotiate, or execute security-based swap transactions in connection with that non-U.S. person's dealing activity would be required to include those transactions in its own *de minimis* calculations. We recognize that this approach may make certain brokers less able to compete for the business of non-U.S.-person dealers that would otherwise not be arranging, negotiating, or executing transactions using personnel located in a U.S. branch or office, but given the regulatory concerns such transactions may raise, we think it is appropriate to require such transactions to be included in the non-U.S. person's *de minimis* threshold calculations. *See* Sections IV.B.2, IV.B.3, and II.B, *supra.*

[244] Consistent with our views expressed in prior releases, if a financial group used one entity to perform the sales and trading functions of its dealing business and another to book the resulting transactions, we would ''view the booking entity, and not the intermediary that acts as an agent on behalf of the booking entity to originate the transaction, as the dealing entity.'' Cross-Border Proposing Release, 78 FR 30976. *See also* Intermediary Definitions Adopting Release, 77 FR 30617 n.264 (''A sales force, however, is not a prerequisite to a person being a security-based swap dealer. For example, a person that engages in

4. Exception for Transactions Involving Certain International Organizations

In response to the Cross-Border Proposing Release, certain commenters raised concerns about the potential application of various Title VII provisions to multilateral development banks (''MDBs''), including the International Bank for Reconstruction and Development (or the World Bank) and the International Finance Corporation.[245] These commenters argued that MDBs have absolute immunity under federal law and should be excluded from regulation under Title VII entirely; in addition, they argued that MDBs should be excluded from the definition of U.S. person.[246] In the Cross-Border Adopting Release, which addressed the cross-border application of the ''security-based swap dealer'' and ''major security-based swap participant'' definitions, we took the position that such issues were outside the scope of the release, as the source of any such immunities lies outside the Dodd-Frank Act and the federal securities laws.[247] However, we concluded that their status as international organizations warranted excluding them from the definition of ''U.S. person.'' [248]

One commenter on the U.S. Activity Proposing Release objected to the view set forth in the Cross-Border Adopting Release that the scope of these entities' immunities was outside the scope of our prior release, arguing that we had left unaddressed the effect of that immunity on relevant statutory provisions and that we should have entirely excluded MDBs from any obligation to register as a security-based swap dealer or major security-based swap participant, as the CFTC had done in the jointly adopted Intermediaries Definition Adopting Release.[249]

As an initial matter, we reiterate our view that issues related to the immunities of MDBs or other international organizations are outside the scope of our Title VII rulemaking, given that the source of any such immunities lies outside the scope of the Dodd-Frank Act and the federal securities laws. We recognize that to the extent that an MDB or other international organization believes that its security-based swap activities fall within the scope of the immunities available to it under U.S. law, the organization may decide not to register as either a security-based swap dealer or a major security-based swap participant, even if the volume of its transactions in these instruments exceed the *de minimis* threshold.[250] However, we are not, in adopting rules under Title VII, expressing any views as to the immunities such entities may possess generally under international or U.S. law.

In any event, on further consideration, and consistent with the considerations underlying the exclusion of certain international organizations from the definition of U.S. person, the final rule excepts the same international organizations, as defined in Exchange Act rule 3a71–3(a)(4)(iii), from the requirement to count a security-based swap transaction with another non-U.S. person toward their *de minimis* thresholds when they use personnel located in the United States to arrange, negotiate, or execute the transaction.[251] Independent of any immunities that may be applicable to these international organizations, including MDBs, we do not believe that their dealing activity with other non-U.S. persons should be included in any *de minimis* calculations that such organizations may make.[252]

D. Availability of the Exception for Cleared Anonymous Transactions

Under Exchange Act rule 3a71–5, a non-U.S. person, other than a conduit affiliate, is not required to include in its *de minimis* calculation transactions that are entered into anonymously on an execution facility or national securities exchange and are cleared through a clearing agency.[253] This rule mitigates the likelihood that market participants will find themselves in a position where they are required to determine the treatment of the transaction under the *de minimis* exception in circumstances where the information necessary to that determination (*e.g.,* the U.S.-person status of the counterparty) is unavailable to them.[254] In addition, this exception should reduce the likelihood that execution facilities outside the United States will exclude U.S. market participants to prevent a non-U.S. market participant from potentially being required to register as a security-based swap dealer based on information unavailable to the non-U.S. market participant at the time of the transaction.[255]

As we noted in the U.S. Activity Proposing Release, neither risk arises under the revised approach to transactions that are arranged, negotiated, or executed by personnel located in the United States that was proposed in that release.[256] Accordingly, we proposed to amend rule 3a71–5 by adding new paragraph (c) to make this exception unavailable to transactions that non-U.S. persons would be required to count under proposed Exchange Act rule 3a71–3(b)(1)(iii)(C). Several commenters have urged us to exclude from this modified approach transactions that are traded on an electronic exchange or platform, whether registered or not, or that are cleared through a clearing agency located outside the United States, as such transactions do not create risk in the United States and such a rule would interfere with access to such platforms.[257]

However, as we have noted already, to the extent that personnel located in the

dealing activity can fall within the dealer definition even if it uses an affiliated entity to market and/or negotiate those security-based swaps connected with its dealing activity (*e.g.,* the person is a booking entity).'').

To the extent that the activities performed by the entity performing the sales and trading functions involve arranging, negotiating, or executing security-based swaps as agent for the booking entity in connection with the booking entity's dealing activity, this amendment treats the booking entity's transmission of an order and instructions to the agent as part of the dealing activity of the booking entity itself. As already noted, a person engaged in these activities on behalf of the booking entity may itself be subject to regulation as a broker under the Exchange Act. *See* note 187, and accompanying discussion, *supra.*

[245] *See* Cross-Border Adopting Release, 79 FR 47305–06, nn. 224, 225 (citing commenters expressing concern about application of Title VII to certain MDBs).

[246] *See id.* at 47305–06.

[247] *See id.* at 47349.

[248] *See id.* at 47312–313; Exchange Act rule 3a71–3(a)(4)(iii) (excluding certain international organizations from the definition of U.S. person).

[249] *See* Letter from Sullivan and Cromwell, dated July 13, 2015 (''Sullivan and Cromwell Letter''), at 1–2.

[250] The commenter noted that MDBs currently do not engage in security-based swap transactions in volumes that would require them to register either as security-based swap dealers or as major security-based swap participants. *See* Sullivan and Cromwell Letter at 2, note 5.

[251] *See* Exchange Act rule 3a71–3(b)(1)(iii)(C).

[252] *Cf.* Cross-Border Adopting Release, 79 FR 47313 (determining that the MDBs' status as international organizations warranted excluding them from the definition of ''U.S. person'').

[253] *See* Exchange Act rule 3a71–5.

[254] *See* Cross-Border Adopting Release, 79 FR 47325 n.412.

[255] *See id.* at 47325.

[256] *See* U.S. Activity Proposing Release, 80 FR 27472–73.

[257] *See* ISDA Letter at 3, 8 (stating that transactions cleared outside the United States should not be subject to Title VII, as they ''are subject to regulatory oversight in the clearing jurisdiction and are subject to reporting and recordkeeping requirements in that jurisdiction''); IIB Letter at 17–18 (explaining that non-U.S. counterparties trading on a platform may not know that their non-U.S. dealer counterparty is using U.S. personnel and therefore would not expect or want such trades to be subject to sales practice and reporting requirements, so they may be deterred from trading on the platforms or the platform may prohibit access by U.S. personnel). *See also* SIFMA/FSR Letter at 7 (stating that transactions should not be counted towards the *de minimis* calculations if executed anonymously on an exchange and cleared).

United States are arranging, negotiating, or executing a security-based swap transaction, the fact that a transaction is traded on a platform or exchange does not eliminate the regulatory concerns that would warrant applying Title VII dealer regulation to the extent the non-U.S. person's dealing activity exceeds the *de minimis* thresholds: Dealing activity carried out by personnel located in the United States on behalf of a non-U.S. person, whether in over-the-counter markets or on a platform, may raise the risk of financial contagion and may present counterparty protection, market integrity, and transparency concerns.[258] Moreover, although we recognize that clearing a security-based swap transaction can be expected to reduce operational and counterparty credit risks, we do not believe it entirely addresses these other regulatory concerns.

Indeed, we note that a significant proportion of the interdealer market consists of cleared transactions, which suggests that the exception urged by commenters may lead to a similar result as is likely under a broker-dealer exception to the counting requirement described above, namely a shift of a significant portion of the interdealer market to foreign clearing agencies, taking that part of the market entirely outside the Title VII dealer framework even though the dealing activity continues to occur in the United States.[259] In addition, we note that nothing in Title VII suggests that clearing a transaction should except a dealer from the requirement to include it in the dealer's *de minimis* calculations.

Because excepting such transactions could leave significant volumes of dealing activity carried out by non-U.S. persons in the United States outside the scope of Title VII dealer regulation and undermine the effectiveness of that regulatory framework to address the risks created by such activity, we are adopting Exchange Act rule 3a71–5(c) as proposed, with technical edits to clarify that the rule's exclusion applies to the exceptions in both Exchange Act rules 3a71–5(a) and (b). Accordingly, under the final rule, to the extent that a non-U.S. person is required to count a transaction under Exchange Act rule 3a71–3(b)(1)(iii)(C), it must count the trade toward its *de minimis* threshold, even if the trade is executed anonymously on a platform and cleared.[260]

V. Economic Analysis

We are sensitive to the economic consequences and effects, including costs and benefits, of our rules. In the following economic analysis, we identify and consider the assessment costs and programmatic costs and benefits of the rules we are now adopting, as well as the likely effects of the rules on efficiency, competition, and capital formation. We also discuss the potential economic effects of certain alternatives to the approach taken by the final rules. Our analysis addresses several issues that are particularly relevant to the security-based swap market—including the market's global nature, the concentration of dealing activity, and the ease with which dealers can relocate their operations to different jurisdictions—and has informed the policy choices we have described throughout this release.

A. Assessment Costs

Several commenters argued that the proposed rule would impose significant costs on market participants, including costs related to identifying transactions that needed to be counted toward the *de minimis* thresholds.[261] We recognize that under the final rules non-U.S. persons will incur costs to assess whether their activities must be counted against the dealer *de minimis* thresholds and subjected to Title VII dealer requirements.[262] The analysis of assessment costs in the U.S. Activity Proposing Release accounted for these costs, and we continue to believe that the final rule represents a reasonable approach that mitigates the burden to market participants while applying the Title VII dealer framework to non-U.S. persons that are likely to raise the types of concerns that framework seeks to address.[263]

As in the U.S. Activity Proposing Release, we first estimate the likely increase in the number of entities that are likely to incur costs associated with the *de minimis* analyses because the final rule requires additional transactions to be included in these calculations.[264] We then consider the effect on assessment costs associated with building, operating, and maintaining systems to identify security-based swap activity that non-U.S. persons would be required to count toward their *de minimis* thresholds under Exchange Act rules 3a71–3(b)(1)(iii)(C) and 3a71–5(c).

1. Costs Associated With Increase in Number of Firms Performing Analysis

We have previously assumed that any non-U.S. person that annually enters into more than $2 billion, in notional value, of security-based swap transactions that would count toward its *de minimis* threshold would be likely to incur assessment costs under Exchange Act rule 3a71–3(b).[265] Under Exchange Act rules 3a71–3(b)(1)(iii)(C) and 3a71–5(c), these non-U.S. persons would likely also incur assessment costs in connection with their transactions with other non-U.S. persons if they use personnel located in a U.S. branch or office to arrange, negotiate, or execute the transactions.

As we have previously noted, the TIW transaction data do not permit us to determine whether particular transactions were arranged, negotiated, or executed by personnel located in the United States.[266] However, as discussed above, it appears that many dealers prefer to use personnel located in the United States to arrange, negotiate, or execute transactions in security-based swaps on U.S. reference entities.[267] Accordingly, we believe that we can estimate the increase in the number of firms that would incur assessment costs in connection with determining the location of relevant activity involving single-name CDS, by assuming that all

[258] *See* Section IV.B.2, *supra.*

[259] *See* Section IV.B.2, *supra.*

[260] The final rule should also help avoid competitive disparities that could arise if a non-U.S. person could avail itself of this exception even when arranging, negotiating, or executing a transaction in connection with its dealing activity using personnel located in a U.S. branch or office.

[261] One commenter stated that these costs ''would include the establishment and maintenance of compliance systems, controls, policies and procedures that track and control the interactions of U.S. personnel with non-U.S. counterparties across a wide range of communication media, including telephone, chat, instant messaging and electronic trading platforms.'' *See* IIB Letter at 3. Another commenter stated that the global nature of the security-based swap market means that participants will arrange, negotiate, and execute security-based swap transactions in multiple jurisdictions, meaning that ''elements of a single [security-based swap] transaction may take place in different parts of the world, which may often make it difficult, or even impossible to determine what, if any, activity has taken place in the United States.'' *See* ISDA Letter at 5. *See also* HSBC Letter at 2 (stating that establishing a robust control framework for tracking these transactions would present challenges).

[262] We refer to these costs as ''assessment costs.'' *See* Intermediary Definitions Adopting Release, 77 FR 30722.

[263] The amendments the Commission is adopting do not make substantive or material modifications to any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.

[264] *Cf.* HSBC Letter at 2 (noting that even firms that are not required to register as security-based swap dealers as a result of the final rule could face significant costs and challenges associated with performing the *de minimis* analysis).

[265] *See* U.S. Activity Proposing Release 80 FR 27490; Cross-Border Adopting Release, 79 FR 47331.

[266] *See* Section II.A.1, *supra.*

[267] *See, e.g.,* Section II.A.2.c, *supra.*

transactions by non-U.S. person[268] dealers with other non-U.S. persons on U.S. reference entities are arranged, negotiated, or executed by personnel located in the United States.

Under these assumptions, we can estimate that a total of approximately 10 additional non-U.S. persons,[269] beyond those already incorporated into baseline estimates, that are likely to exceed the $2 billion threshold we have previously employed under Exchange Act rule 3a71–3(b), as amended, and to incur assessment costs associated with the *de minimis* exception based on 2014 TIW transactions data. We acknowledge, however, that this estimate reflects some uncertainty: On one hand, it may be overinclusive, as it is unlikely that all such transactions are arranged, negotiated, or executed by personnel located in a U.S. branch or office; it may also be underinclusive, as our TIW data do not include single-name CDS transactions between two non-U.S. entities written on non-U.S. underliers, some of which may be arranged, negotiated, or executed by personnel located in a U.S. branch or office, or transactions on other types of security-based swaps (including equity swaps) whether on U.S. or non-U.S. underliers.[270]

In light of this uncertainty and to account for potential growth in the security-based swap market, we believe that it is reasonable to increase this estimate by a factor of two. As a result, our estimate for the purposes of analysis is that the rules being adopted today will increase the number of non-U.S. persons likely to incur any assessment costs in connection with the *de minimis* exception by 20. In addition to the assessment costs directly connected with determining where personnel who arrange, negotiate, or execute a security-based swap transaction are located, as described more fully below, these 20 persons would also be required to perform the analyses, and incur the assessment costs, associated with the dealer *de minimis* rules adopted in the Cross-Border Adopting Release.[271]

2. Costs Associated With Determining the Location of Relevant Personnel Who Arrange, Negotiate, or Execute a Transaction

In addition, these 20 non-U.S. persons, as well as the 114 persons that are likely to incur assessment costs in connection with the rules adopted in the Cross-Border Adopting Release,[272] will incur costs to identify transactions that they are required to include in their *de minimis* thresholds under Exchange Act rules 3a71–3(b)(1)(iii)(C) and 3a71–5(c). We note that our final rule should mitigate the concerns of some commenters regarding the costs associated with the use of the defined term ''transactions conducted within the United States'' as originally proposed in the Cross-Border Proposing Release.[273] In particular, by focusing on the location of relevant personnel of only the dealer (or of its agent), this approach should eliminate the need for non-U.S. persons that engage in dealing activity to assess whether their counterparties (or the counterparties' agents) engage in relevant activity in the United States.[274] Accordingly, the assessment costs arising from the final rule should be lower than under an approach that required a dealer to consider both the location of its own personnel (or the personnel of its agents) and of the personnel of its counterparties (or their agents).

The costs these persons incur under the final rule will, to a significant extent, be influenced by the business structures employed by non-U.S. persons to engage in this dealing activity, and it is reasonable to expect that non-U.S. persons will generally choose a business structure that reflects, among other things, a careful consideration of their regulatory costs for both compliance and assessment. In this section, we discuss the approaches that these market participants may use to determine which transactions must be counted towards dealer *de minimis* thresholds under our approach and, to the extent possible, estimate the per-entity assessment costs they would incur.

First, non-U.S. persons may perform assessments on a per-transaction basis. We continue to believe that the approach reflected in our final rule should be less costly to implement than the approach that we initially proposed in the Cross-Border Proposing Release, which looked to whether a transaction was conducted, by either counterparty, within the United States. At the same time, we recognize that performing these assessments could involve significant costs for persons engaged in dealing activity in the United States. These costs likely would include one-time costs associated with developing computer systems to capture information about the location of personnel involved with each transaction in addition to ongoing costs of analyzing these data and modifying classification of transaction activity as personnel or offices change locations over time.[275]

Based on analogous situations dealing with the development and modification of information technology (IT) systems that track the location of firm inputs, we estimate the start-up costs associated with developing and modifying these systems to track the location of persons with dealing activity will be $410,000 for the average non-U.S. entity. To the extent that non-U.S. persons already employ such systems, the costs of modifying such IT systems may be lower than our estimate. In addition to the development or modification of IT systems, we believe that entities would incur the cost of $6,500 per location per year on an ongoing basis for training, compliance, and verification costs.[276] We believe a reasonable estimate of these costs in aggregate is $8,710,000.[277]

Second, non-U.S. firms might instead restrict personnel located in a U.S. branch or office from arranging, negotiating, or executing security-based

[268] We note that TIW's definitions of U.S. and non-U.S. entities do not necessarily correspond to the definition of U.S. person under Exchange Act rule 3a71–3(a)(4). *See* note 39, *supra.*

[269] Adjustments to these statistics from the proposal reflect further analysis of the TIW data. *Cf.* U.S. Activity Proposing Release 80 FR 27491 (providing an estimate of 15 additional entities that would be non-U.S. persons).

[270] Although the total gross notional for equity swaps is significantly smaller than credit default swaps, some number of market participants may incur assessment costs as a result of their equity swap activity.

[271] *See* Cross-Border Adopting Release, 79 FR 47331–33.

[272] Although firms that would already be registered under existing Exchange Act rule 3a71–3 may not establish systems to count these transactions for purposes of the *de minimis* exception because they would already be registered, for purposes of the following analysis, we assume that they would also incur these costs. In the Cross-Border Adopting Release, we identified 71 persons that would incur systems and analysis costs, but based on 2014 data, as noted above, we have identified only 57 firms that are likely to incur these costs pursuant to current rules. *See* Section II.A.2.e, *supra.* We continue to believe it is reasonable to increase this estimate by a factor of two, to account for any potential growth in the security-based swap market and to account for the fact that we are limited to observing transaction records for activity between non-U.S. persons that reference U.S. underliers. *See* U.S. Activity Proposing Release, 80 FR 27491.

[273] *See* U.S. Activity Proposing Release, 80 FR 27467, *supra* (discussing cost concerns about initially proposed approach).

[274] *See* ICI Global Letter at 5.

[275] *See* note 261, *supra.*

[276] Calculated as Internal Cost, 90 hours × $50 per hour = $4,500 plus Consulting Costs, 10 hours × $200 per hour = $2000, for a total cost of $6,500.

[277] Calculated as 134 entities × 10 market centers as identified in TIW × $6,500 per location, for a total cost of $8,710,000. This estimate assumes that each of the 134 persons that we believe are likely to incur costs to identify transactions that they are required to include in their *de minimis* thresholds under Exchange Act rules 3a71–3(b)(1)(iii)(C) and 3a71–5(c) perform assessments on a per-transaction basis and further assumes that each person has personnel located in each market center identified in the TIW. *See supra* Section II.A.2.c.

swaps in connection with the non-U.S. firm's dealing activity with non-U.S.-person counterparties.[278] Such restrictions on communication and staffing for the purposes of avoiding certain Title VII requirements would reduce the costs of assessing the location of personnel involved in arranging, negotiating, or executing each trade, and may entirely remove the need for a system that assesses the location of personnel on a trade-by-trade basis. However, this reduction in assessment costs may be offset by the additional costs and inefficiencies of duplicating personnel in foreign and U.S. locations.[279] Accordingly, we believe that non-U.S. persons that primarily trade with non-U.S. persons on non-U.S. reference entities may be most likely to undertake this approach. However, because our access to TIW transactions data is limited to transactions in which at least one counterparty is U.S.-domiciled or the reference entity or security is a U.S. entity or security, we cannot at this time estimate the size of this set of participants.

While we do not currently have data necessary to precisely estimate these costs in total,[280] we can estimate the costs of establishing policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons (or their agents) and other personnel involved in dealing activity. Based on staff experience, we estimate that establishing policies would take a non-U.S. person approximately 100 hours and would cost approximately $28,300 for each entity that chooses this approach.[281] Further, we believe that the total costs incurred by entities that choose to restrict communication between personnel would be determined by the number of entities that choose such an approach as well as the number of additional personnel that these entities must hire as a result of restricted communication.

Third, a dealer may choose to count all transactions with other non-U.S. persons towards its *de minimis* threshold, regardless of whether counting them is required, to avoid the cost of assessing the locations of personnel involved with each transaction. This strategy may be preferred by a non-U.S. person engaged in dealing activity that expects few transactions involving other non-U.S. persons to be arranged, negotiated, and executed by personnel located outside the United States, such as a non-U.S. person that primarily transacts in security-based swaps on U.S. reference entities or securities, and generally relies on personnel located in the United States to perform market-facing activities. For these non-U.S. persons, the expected benefits of identifying a few transactions that do not involve dealing activity by personnel from a location in the United States, which would not be required to be counted toward the person's *de minimis* threshold, might be lower than the costs of implementing a system to track the locations of personnel on a trade-by-trade basis.

We believe that the same principles apply to non-U.S. persons that rely on agents to arrange, negotiate, or execute security-based swaps on their behalf. We anticipate that non-U.S. persons may employ any of the strategies above to comply with the final rules through the choice of their agents. For example, a non-U.S. person may choose agents that do not use U.S.-based personnel to avoid the assessment and programmatic costs of this rule. We also anticipate that a non-U.S. person might rely on representations from its agents about whether transactions conducted on its behalf involved relevant dealing activity by personnel from a location in the United States. This may occur on a transaction-by-transaction basis, or, if the agent uses personnel located in the United States in all or none of its transactions, it may choose to make a representation about the entirety of the agent's business.

We believe that all the methods described above are likely to involve an initial one-time review of security-based swap business lines to help each entity determine which of the business structures outlined above is optimal. This review likely will encompass both employees of potential registrants as well as employees of agents used by potential registrants and identify whether these personnel are involved in arranging, negotiating, or executing security-based swaps. The information gathered as a result of this review would allow a foreign security-based swap dealer to assess the revenues it expects to flow from transaction activity performed by personnel located in a U.S. branch or office. This information would also help these market participants form preliminary estimates about the costs associated with various alternative structures, including the trade-by-trade analysis outlined above. This initial review may be followed with reassessment at regular intervals or subsequent to major changes in the market participant's security-based swap business, such as acquisition or divestiture of business units. We estimate that the per-entity initial costs of a review of business lines would be approximately $104,000.[282] Further, we believe that periodic reassessment of business lines would cost, on average, $52,000 per year, per entity.[283]

[278] *See* SIFMA/FSR Letter at 2, 6; IIB Letter at 2–3; ISDA Letter at 5.

[279] *See* IIB Letter at 2–3.

[280] The aggregate cost of this rule will ultimately depend on how the affected non-U.S. persons adjust their security-based swap activity because of this rule. For example, if a non-U.S. person chooses to relocate its operations abroad, it will not incur any direct assessment costs as a result of this rule, but it will incur the costs to relocate its operations. The cost of relocation will depend on many factors, such as the number of positions being relocated, the location of new operations, the costs of operating at the new location, and other factors. These factors in turn will depend on the relative volumes of dealing activity that a firm carries out on different underliers and with counterparties in different jurisdictions. As a result of these dependencies, we cannot reliably quantify the costs of these alternative approaches to compliance. However, we believe that firms would rely on these approaches only if they expect them to result in higher net profits than assessments on a per-transaction basis.

[281] Calculated as Compliance Manager, 100 hours × $283 per hour = $28,300. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The costs of policies and procedures are based on burden estimates in the recent Nationally Recognized Statistical Rating Organizations; Final Rule, Exchange Act Release No. 72936 (August 27, 2014), 79 FR 55078 (September 15, 2015) (''NRSRO Adopting Release''). Specifically, we assume that the policies and procedures required to restrict communication between personnel located in a U.S. branch or office and personnel not located in a U.S. branch or office are similar to policies and procedures required to eliminate conflicts of interest under Rule 17g–5(c)(8). *See* NRSRO Adopting Release, 79 FR 55239, 55249.

[282] Calculated as (Senior Accountant, 500 hours × $198 per hour) + (Outside Counsel, 5 hours × $400 per hour) + (Compliance Attorney, 2 hours × $334 per hour) + (Compliance Manager, 8 hours × $283 per hour) = $103,932.

[283] This estimate is based on previous experience with cost estimates for financial statements for a large financial institution. An entity's assessment costs may require it to determine the amount of profits that it expected to flow from transaction activity performed by personnel located in the United States and compare it to the flow of profits from transaction activity performed by personnel not located in a U.S. branch or office. To the extent that the preparation of financial statements also involves analysis of the flow of profits from an entity's different business lines, we believe that the cost of preparing financial statements provide a reasonable estimate of assessment costs. However, we acknowledge that costs associated with assessment and compliance for a given firm will depend on the firm's size and structure. Calculated as (Senior Accountant, 250 hours × $198 per hour) + (Compliance Attorney, 4 hours × $334 per hour) + (Compliance Manager, 4 hours × $283 per hour) = $51,968. We use salary figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

B. Programmatic Costs and Benefits

Programmatic costs and benefits arise from applying substantive regulation to those transactions and entities that fall within the scope of the Title VII regulatory regime.[284] Commenters raised a wide range of concerns about costs, both the direct costs of compliance with Title VII dealer requirements on the part of persons required to register and broader costs to the market as a whole. With respect to the former, commenters generally argued that the proposed rules would impose significant additional and unwarranted costs on firms that are required to register as security-based swap dealers, given that the proposed rules are not likely to generate significant benefits.[285] Several commenters specifically urged the Commission to perform ''additional cost-benefit analysis'' that reflects the ease with which market participants can move their business out of the United States.[286] Some commenters noted that the proposed approach may impose disproportionate costs on certain market participants that carry out their dealing business using separately incorporated subsidiaries or affiliates in other jurisdictions.[287]

Several commenters expressed concerns that our approach would create a strong incentive to move dealing business out of the United States, and that this exit would have negative effects on market structure, risk management, and market efficiency.[288] Some commenters also suggested that foreign counterparties of non-U.S. persons engaged in dealing activity may be reluctant to devote the resources necessary to comply with Title VII rules, and may instead opt to exit the U.S. security-based-swap market.[289]

In the following sections, we discuss the costs and benefits of requiring a non-U.S. person to include in its *de minimis* threshold calculations any transaction that it, in connection with its dealing activity, arranges, negotiates, or executes using personnel located in a U.S. branch or office.

1. Benefits and Costs of the Final Rules

Because the set of market participants that are subject to security-based swap dealer regulation under Title VII will determine the allocation and flow of programmatic costs and benefits arising from these Title VII requirements, the inclusion of additional transactions that must be counted under Exchange Act rule 3a71–3(b), as amended, will affect the ultimate costs and benefits of our transaction-level and entity-level rules. At this time, we are unable to precisely estimate the number of potential new dealers that would be required to register because we cannot observe in the data the location of entities' dealing activity. However, even if we assume that all North American single-name CDS security-based swap dealing activity takes place in the United States, currently available data suggest that no additional entities above the baseline would be required to register.[290]

At the same time, we believe it is important to acknowledge the potential for a change in the number of registrants as a result of, among other things, security-based swap dealing activity located in the United States that is not reflected in the data, including equity swaps transactions that are not in our available data, transactions on non-U.S. underliers that non-U.S.-person dealers carry out in the United States that are not accounted for under the assumptions underlying this analysis, and the aggregation of the transactions of affiliated entities that do not themselves exceed the *de minimis* thresholds but must count transactions that involve market-facing activity by personnel located in a U.S. branch or office.[291] The notional amounts of these additional types of transactions may cause some additional non-U.S. entities to exceed the *de minimis* threshold as a result of this rule.

However, it is unclear how market participants might react to the final rules. Some non-U.S. entities, including those that might be required to register as a result of this rule because of transactions that lie beyond the scope of our available data, may instead prefer to restructure or relocate to avoid

[284] *See* Intermediary Definitions Adopting Release, 77 FR 30722.

[285] According to commenters, costs include those associated with compliance with the various requirements that apply to registered security-based swap dealers under Title VII, and costs arising from relocation of personnel and operations to avoid application of Title VII requirements and any market fragmentation that results. *See, e.g.,* ISDA Letter at 6 (arguing that the proposed approach ''will result in the unnecessary application of onerous and costly U.S. regulatory requirements to non-U.S. entities''); HSBC Letter at 3 (arguing that costs of requiring firms to register on the basis of U.S. activity would exceed the benefits and cause both non-U.S. subsidiaries and the Commission to incur significant costs); IIB Letter at 3–4, 6–7 (arguing that the proposed rules would not only result in costs to the market such as market fragmentation, decentralized risk management, and home country compliance costs, but also significant costs to the Commission in overseeing the additional registered security-based swap dealers); SIFMA Sequencing Letter at 5 (arguing that the Commission's approach should accommodate the risk management and operational structures that market participants already have in place). *See also* ISDA Letter at 9 (suggesting that by not leveraging existing broker-dealer recordkeeping requirements to include access to the books and records relating to SBS transaction between non-U.S. persons in their dealing capacity, the proposal ''only adds complexity and cost without offering any corresponding benefit'').

[286] *See* IIB Letter at 4 (stating, among other things, that non-U.S. persons can opt not to do business with U.S. security-based swap dealers or with non-U.S. security-based swap dealers that use personnel in the United States, and non-U.S. security-based swap dealers may feel compelled to move personnel out of the United States, limiting the security-based swap dealers' ability to centralize risk management and increase costs and affect pricing to non-U.S. persons); ISDA Letter at 6 (urging the Commission to complete its cost-benefit analysis, including by providing a quantitative account of the benefits that would result from adoption of the proposal and comparing the costs of regulatory approaches that may be less burdensome).

[287] *See* SIFMA/FSR Letter at 6–7; HSBC Letter at 2 (stating also that firms may be required to register multiple foreign affiliates as security-based swap dealers to the extent that they rely on personnel of affiliates located in the United States to interact with the foreign customers of these foreign subsidiaries, in part because it may not be practicable for counterparties to shift their trading relationship to an affiliate of its dealer, given that security-based swap transactions may represent only a small portion of their overall trading relationship with the dealer).

[288] *See* IIB Letter at 2–3; ISDA Letter at 5; SIFMA/FSR Letter at 6. Commenters argued that exit from U.S. market centers would potentially interfere with efficient pricing and prudent risk management, as this depends on centralization of pricing, hedging, and other risk-management functions with trading personnel, preferably ''in the region of the underlying asset.'' One commenter also argued that centralizing these functions in the United States, where the traders are located ''also helps promote U.S. market liquidity by integrating trading interest from non-U.S. counterparties into the U.S. market.'' *See* IIB Letter at 2.

[289] *See, e.g.,* IIB Letter at 4 (stating that ''[n]on-U.S. counterparties have shown great reluctance to undertake significant documentation changes due to the costs and resources necessary to obtain familiarity with a complicated body of foreign law'').

[290] In Section V.A, *supra,* we have identified, as a result of this rule, approximately 10 non-U.S. entities that would exceed the $2 billion threshold we used in 2014 to identify entities that may incur assessment costs and thus would be likely to assess their transactions to determine whether they are required to register as a dealer. Of these 10 entities, we believe that none would exceed the $3 billion dealer *de minimis* threshold and thus be required to register as a security-based swap dealer. Given that we have multiplied our estimates by two to take into account portions of the security-based swap market we are unable to observe with our data, we estimate that 20 additional entities would incur assessment costs as a result of relevant activity exceeding the $2 billion threshold, and that zero additional entities will exceed the $3 billion dealer *de minimis* threshold.

[291] Under Exchange Act rules 3a71–2(a) and 3a71–4, a person engaged in dealing activity must aggregate the notional amount of its dealing activity that must be counted toward the *de minimis* threshold with that of any person controlling, controlled by, or under common control with such person, unless that person is registered with the Commission as a security-based swap dealer or deemed not to be a security-based swap dealer pursuant to Exchange Act rule 3a71–2(b). *Cf.* IIB Letter at 3 (stating that the proposed approach to the *de minimis* counting requirement could impose prohibitive costs on non-U.S.-person dealers that intend to operate under the *de minimis* threshold).

registration as a result of this rule.[292] Other non-U.S. entities may otherwise alter their behavior in response to these amendments, given the potential change in costs of conducting dealing activity using personnel or their agents located in a U.S. branch or office. Although we are able to provide some estimates of the direct programmatic costs of these amendments, the extent to which market participants' activities are sensitive to these costs is difficult to quantify.

Notwithstanding these uncertainties, we believe the rules being considered for adoption today represent an important step towards treating substantially all dealing activity occurring in the United States similarly for purposes of determining whether a market participant is subject to the Title VII security-based swap dealer regime. We expect the final rules to yield benefits by reducing differences in the treatment of similar activity by U.S. persons and non-U.S. persons in the United States and potential gaps in the Title VII regulatory regime for security-based swap entities.

Additionally, we expect consistent treatment of dealing activity carried out within the United States to affect competition and market fragmentation. As discussed elsewhere in this release,[293] we believe these amendments may mitigate the competitive disparities that would result from application of the Title VII dealer requirements under existing rules and that would permit non-U.S. persons to carry out significant volumes of dealing activity using personnel located in the United States without being required to register as a security-based swap dealer. The competitive disparities would create an incentive for, among other things, financial groups that carry out their security-based swap dealing business in a U.S.-person dealer to restructure a potentially significant proportion of this business to be carried out in a non-U.S.-person dealer.

Even if the non-U.S.-person dealers continued using personnel located in a U.S. branch or office to arrange, negotiate, or execute security-based swap transactions, this type of restructuring could fragment the market into two pools, as the non-U.S.-person dealers that engage in dealing activity with other non-U.S. persons (whether dealers or otherwise) would have a strong incentive not to engage in dealing activity with U.S.-person counterparties. To the extent that the interdealer business and other dealing business with non-U.S.-person counterparties is moved to non-U.S.-person dealers, a significant majority of security-based swap dealing activity carried out in the United States could be inaccessible to U.S. persons. These counterparties would instead be limited to a much smaller pool of liquidity consisting of U.S. persons and dealers (whether U.S. persons or non-U.S. persons) that are willing to face U.S.-person counterparties.

However, under these amendments, non-U.S. dealers that carry out a large volume of transaction activity using personnel located in a U.S. branch or office would not be able to avoid registration obligations under Title VII unless they relocate these personnel to locations outside the United States or restructure operations to use different personnel that are located outside the United States. Because these forms of restructuring, and the resulting market fragmentation, would impose costs on non-U.S. dealers associated with moving personnel outside the United States and/or foregoing the expertise of sales, trading, and other personnel located in a U.S. branch or office, these amendments should reduce the likelihood or extent of market fragmentation and associated distortions.[294]

Given that the ultimate number of non-U.S. entities that are required to register as a result of this rule will depend on several factors that are beyond the scope of our available data or are inherently difficult to quantify, we believe that it is appropriate for purposes of this analysis to assume that it is possible that more entities will register as SBS dealers.[295] We also note that we expect a significant benefit of this rule to be its role in preventing significant volumes of dealing activity from being carried out in the United States without being subject to Title VII dealer requirements.[296]

If these final rules regarding the *de minimis* exception result in an increased number of non-U.S. persons that eventually register as security-based swap dealers or if they prevent firms from carrying on dealing activity in the United States without complying with Title VII dealer requirements, requirements applicable to registered dealers under Title VII (including, among others, capital requirements, recordkeeping requirements, and designation of a chief compliance officer) would apply to a larger number of dealers than without these rules.[297] Additionally, an increase in the number of registered dealers would also mean that business conduct requirements and Regulation SBSR would apply to a larger number of transactions, as well as to a larger notional volume of transactions.[298]

In addition, these final rules may mitigate the risk that might flow into U.S. financial markets by requiring the inclusion in dealer *de minimis* calculations of transactions that, while less likely to directly expose U.S. persons to counterparty risk, may allow financial risk to spill over into U.S. markets. As noted above,[299] reputational risk and liquidity spillovers represent two channels by which risks in foreign security-based swap markets may manifest in U.S. financial markets without the involvement of U.S. persons as counterparties. By requiring that all non-U.S. persons that use personnel located in a U.S. branch or office to

[292] *See* note 286, *supra.*

[293] *See* Section IV.B.2, *supra;* Section V.B.2, *infra.*

[294] *See* note 108, *supra.*

[295] We do not believe that the exception for certain international organizations in the final rule will have any effect on the number of security-based swap dealers, as such entities do not appear to engage in dealing activity to any significant extent. *See* Sullivan and Cromwell Letter at 2, note 5. Similarly, given our current understanding of the market, we do not believe it likely that final Exchange Act rule 3a71–5(c) will increase the number of security-based swap dealers, as any non-U.S. persons engaged in significant dealing activity in cleared, anonymous transactions are likely to already be required to register on the basis of their other dealing activity.

[296] *See* Section IV.B.2, *supra.*

[297] *See* IIB Letter at 5–7, 10 (arguing that registration with the Commission would subject certain non-U.S. market participants to various requirements despite posing no risk to the U.S. financial system; arguing that not adopting the proposed approach would permit the Commission to avoid expending resources on overseeing non-U.S. persons that may be required to register solely on the basis of aggregation with other affiliates); ISDA Letter at 6 (arguing that the proposed approach ''will result in the unnecessary application of onerous and costly U.S. regulatory requirements to non-U.S. entities''); HSBC Letter at 2–3 (arguing that costs of requiring firms to register on the basis of U.S. activity would exceed the benefits and cause both non-U.S. subsidiaries and the Commission to incur significant costs).

[298] Under rule 901(a)(2)(ii), all transactions that include a registered security-based swap dealer on a transaction side are subject to regulatory reporting requirements.

We note that our conclusion that the adopted approach will result in these requirements being applied to a larger number of transactions and notional volume of transactions requires the assumption that the demand for liquidity from security-based swap dealers is not very sensitive to price. Put another way, so long as market participants' demand for risk sharing opportunities provided by security-based swap transactions is relatively inelastic, any reduction in transaction volume due to the costs of Title VII regulation is unlikely to fully offset the increase in the scope of security-based swap transactions subject to Title VII regulation under the final rules. If, on the other hand, demand for liquidity is elastic, then the effects of higher costs may dominate any increase in the scope of external business conduct and regulatory reporting requirements, resulting in these requirements being applied to a smaller number and lower notional value of transactions.

[299] *See* Section II.B, *supra.*

arrange, negotiate, or execute security-based swaps in connection with their dealing activity include such transactions in their *de minimis* threshold calculations, the final rules should mitigate risk from both channels. The final rules should increase the likelihood that the Title VII dealer framework, including capital and margin requirements, applies both to the foreign affiliates of U.S. persons and to other foreign dealers that engage in dealing activity in U.S. security-based swap markets. Increasing the likelihood that this activity, which may represent the overwhelming majority of security-based swap dealing activity in the United States, is carried out by firms subject to Title VII capital, margin, and other security-based swap dealer requirements should mitigate the likelihood of the types of firm failures that may be likely to give rise to such risks.

We recognize that compliance with these requirements will impose direct costs on persons that are required to register as a result of these amendments, and that some firms may be required to register multiple entities because of how they have chosen to structure their business.[300] Other firms may be required to register as security-based swap dealers even though they use personnel located in a U.S. branch or office in connection with dealing activity only for certain asset classes in which they carry on a dealing business.[301] We also understand that firms may incur other costs associated with maintaining separate sales and trading operations, in part because non-U.S.-person counterparties are reluctant to trade with dealers that are required to register under Title VII,[302] or in connection with otherwise accommodating the preferences of non-U.S.-person counterparties. In some cases, these adjustments may reduce the efficiency of a non-U.S.-person's operations and increase operational risks, depending on the response of a particular firm to the final rules.[303]

At the same time, we continue to believe that, notwithstanding these costs, the final rules will produce significant benefits to the U.S. financial markets and participants in those markets, in terms of promoting uniform application of Title VII dealer requirements, reducing competitive disparities, mitigating the likelihood or extent of market fragmentation, and mitigating the risk of spillovers and contagion, as we have discussed in detail above.[304] Given these benefits, particularly in light of the magnitude of the potential competitive disparities that a more consistent application of Title VII dealer regulation may be expected to mitigate, we believe that the approach reflected in the final rules is appropriate even in light of the potential costs described by commenters.

2. Effects of Rule Amendments on Efficiency, Competition, and Capital Formation

The final rules are likely to affect efficiency, competition and capital formation in the security-based swap market through their effect on the scope of participants subject to dealer requirements under Title VII. In particular, the amendments may increase the likelihood that certain non-U.S. dealers would exceed *de minimis* levels of dealing activity and be required to register with the Commission. At the same time, they may make it more difficult to continue engaging in dealing activity in U.S. market centers while avoiding Title VII dealer requirements.

Accordingly, the final rules and amendments will affect the security-based swap market in a number of ways. A number of the potential effects that we discuss below are related to price efficiency, liquidity, and risk sharing. These effects are difficult to quantify for a number of reasons. First, in many cases the effects are contingent upon strategic responses of market participants. For instance, several commenters have noted that non-U.S. persons may choose to relocate personnel, which may make it more difficult for U.S. counterparties to access liquidity in security-based swaps.[305] The magnitude of these effects on liquidity and on risk sharing depend upon a number of factors that we cannot estimate, including the likelihood of relocation, the availability of substitute liquidity suppliers, and the availability of substitute hedging assets. Therefore, much of the discussion below is qualitative in nature, although we try to describe, where possible, the direction of these effects.

Moreover, there are many cases in which a rule could have two opposing effects, making it difficult to estimate a net impact on efficiency, competition, or capital formation. For example, while non-U.S. person dealers may have an incentive to relocate their operations outside of the United States to avoid the potential costs of dealer registration and requirements as a result of these rules, we assume that dealers would prefer to relocate their operations only if the benefits to the dealer of avoiding Title VII dealer registration and requirements exceed the cost of relocation.[306] By defining the scope of transactions that must be counted toward a non-U.S. person's *de minimis* threshold, this final approach not only affects the set of entities that would be subject to dealer registration and regulatory requirements, but also affects the extent—and cost—of relocation necessary to avoid dealer registration. The magnitude of these two opposing effects will depend on factors such as the sensitivity of traders to information about order flow, the impact of public dissemination of transaction information on the execution costs of large orders, and the ease with which non-U.S. persons can find substitutes that avoid contact with personnel located in a U.S. branch or office.[307] Each of these factors is difficult to quantify individually, which makes the net impact on efficiency difficult to quantify.

Notwithstanding this uncertainty, the amendments related to the treatment of transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office for the purposes of *de minimis* calculations likely broaden the scope of security-based swap transactions and entities to which the Title VII regulatory regime for security-

[300] *See* note 287, *supra.*

[301] *See* SIFMA/FSR Letter at 7. We note, however, that this is true of any dealer that exceeds the *de minimis* threshold with respect to only one asset class in which it carries on a dealing business: In the Intermediaries Definitions Adopting Release, the Commission and the CFTC stated that the final rules reflected the presumption that ''a person who meets one of the dealer definitions will be deemed to be a dealer with regard to all of its swaps or security-based swaps activities'' absent a limitation on this designation in response to application from the registrant. *See* Intermediaries Definition Adopting Release, 77 FR 30644–645.

[302] *See* note 289, *supra.*

[303] *See, e.g.,* IIB Letter at 2–3.

[304] *See, e.g.,* Sections II.B and IV.B.2, *supra.*

[305] *See* IIB Letter at 2–3; ISDA Letter at 5; SIFMA/FSR Letter at 6. *See also* HSBC Letter at 2. *See* Section II.B, *supra,* for a discussion of potential effects of the final rules on non-U.S. persons' incentives to use personnel located in U.S. branches or offices to arrange, negotiate, or execute security-based swap transactions in the context of our economic considerations in formulating these rules. *But see* Citadel Letter at 12 (arguing that other commenters are overstating the possibility that U.S. personnel will be relocated outside of the United States in reaction to the adopted rules).

[306] *See* Citadel Letter at 12; Section II.A.2.c, *supra. But see* IIB Letter at 2–3 (stating that non-U.S. security-based swap dealers may need to relocate front office personnel from the United States in response to a U.S. activity test); ISDA Letter at 5 (stating that to continue to transact in U.S. products dealers will have incentives to move market-facing employees outside the United States); SIFMA/FSR Letter at 6 (explaining that dealers may move experts in U.S.-listed products outside of the United States to avoid the SEC's registration and regulatory requirements).

[307] *See* notes 57–59 and accompanying text, *supra.*

based swap dealers applies. As a result, the amendments may amplify the effects on efficiency, competition, and capital formation of rules already adopted as well as of future substantive rulemakings that place responsibilities on registered security-based swap dealers to carry out entity- or transaction-level requirements applicable to security-based swap dealers under Title VII.[308]

Our amendments reflect consideration of the potentially inefficient restructuring and reduced access to the security-based swap markets by U.S. persons on the one hand [309] and, on the other, advancing the objectives of Title VII as discussed in detail above.[310] Requiring these transactions to be included in their *de minimis* calculations may cause these non-U.S. dealers to incur registration costs (or prevent them from avoiding these costs while continuing to engage in dealing activity in the United States) and costs arising from dealer requirements under the Title VII regulatory regime, such as certain business conduct requirements, as well as under other Title VII requirements, such as Regulation SBSR. These costs may represent barriers to entry for non-U.S. persons that contemplate engaging in dealing activity using their own personnel or personnel of their agents located in a U.S. branch or office or may provide incentives for non-U.S. persons that currently engage in relevant activity using personnel or personnel of their agents located in a U.S. branch or office to restructure their business and move operations abroad or use agents with personnel outside of the United States.[311] The barriers to entry and incentives to exit the market may reduce the number of security-based swap dealers willing to trade with U.S. person counterparties, which may impede the incorporation of new information into prices.

The application of this approach to agents acting on behalf of non-U.S. persons may have similar effects on efficiency, competition, and capital formation. For example, the regulatory costs stemming from dealer registration may provide direct incentives for non-U.S. persons to avoid using personnel of agents located in a U.S. branch or office (or agents with such personnel) to arrange, negotiate, or execute security-based swaps on their behalf. By reducing the ability of these agents to compete for business from non-U.S. persons, the final rules may reduce entry by potential agents because of this competitive disadvantage, or cause existing agents to relocate or restructure their business to minimize contact with the United States.[312] In addition, to the extent that using agents with personnel located in a U.S. branch or office might result in substantial regulatory costs to non-U.S.-person dealers, such non-U.S.-person dealers might prefer and primarily use agents located outside the United States, while U.S. dealers might continue to use agents located in the United States. This incentive to split dealer and agent relationships on the basis of the location of personnel, as with the potential relocation of personnel discussed above, might also adversely affect the efficiency of risk sharing by security-based swap market participants.

Reduced market entry or restructuring by non-U.S. persons and their agents, and efforts by non-U.S. persons to choose agents, solely for the purposes of avoiding Title VII regulation in response to our final rules, may be inefficient, may raise costs to market participants, and may reduce the level of participation by personnel of non-U.S. persons located in the United States, or personnel of their agents located in the United States.[313]

We also believe that the amendments will affect competition among security-based swap dealers. Several commenters noted this possibility. One commenter argued that the competitive issues arising from the Commission's proposal were very complex and did not depend solely on the scope of application of Title VII regulatory requirements.[314] For example, many, if not all, foreign security-based swap dealers are likely to be subject to regulatory requirements in their home jurisdiction and may, therefore, already be subject to a competitive disparity with respect to U.S. firms, entirely independent of whether they are also required to register as security-based swap dealers.[315] This commenter also argued that the proposal would generate competitive disparities between U.S. and non-U.S. personnel of foreign security-based swap dealers.[316] Another commenter supported the re-proposed approach over the original proposal, arguing that it would prevent foreign funds that have a U.S. asset manager from being put at a competitive disadvantage compared to foreign funds with a foreign asset manager and would therefore avoid driving business overseas (as the commenter believed that the original proposal would have done).[317]

As noted in Section II.B, in the absence of these amendments, a U.S. person engaged in dealing activity and facing a non-U.S.-person counterparty or its agent would face different regulatory treatment under Title VII from a non-U.S. person engaged in the same activity with the same counterparty or its agent, even if both are arranging, negotiating, or executing the security-based swap using personnel located in a U.S. branch or office. As a result, and as some commenters argue, current rules may introduce different costs for U.S. security-based swap dealers and foreign security-based swap dealers, as well as their respective agents, that seek to supply liquidity to non-U.S. persons as a result of Title VII regulation. Under the current rules, non-U.S. persons seeking or supplying liquidity may also be reluctant to transact with a U.S. person because of the additional expected costs of dealer regulation and of future substantive regulations under Title VII that rest on the U.S.-person status of counterparties.[318]

These differences could introduce competitive disparities between U.S. persons and non-U.S. persons or their respective agents even if both, in connection with their dealing activity, use personnel located in the United States.[319] As a result, to the extent that dealers may have the flexibility to restructure their operations in response

[308] *See* Cross-Border Adopting Release, 79 FR 47361.

[309] *See* note 102, *supra.*

[310] *See* Section IV.B.2, *supra.* In particular, these final rules potentially reduce the risk of financial contagion and fraudulent or manipulative conduct by applying security-based swap dealer regulation to the appropriate set of entities whose activities raise these concerns. *See id.*

[311] *See* Cross-Border Adopting Release, 79 FR 47362.

[312] We also note that, under the final rules, non-U.S. persons may be willing to pay higher prices for higher quality services provided by non-U.S.-person counterparties that use personnel or agents located in the United States because the ability of these counterparties to meet the standards set by Title VII may be a credible signal of high quality. *See* Cross-Border Adopting Release, 79 FR 47362 n.762.

[313] *See id.* at 47364.

[314] *See* IIB Letter at 4.

[315] *See id.*

[316] *See id.* One commenter argued that the Commission's proposed approach likely would impose a particularly significant burden on firms that carry out their business, and book their security-based swap transactions, through local affiliates. *See* HSBC Letter. This commenter argued that this would create a ''severe and disparate'' impact on such firms, even though they have organized their business using this structure ''for *bona fide* commercial reasons.'' *Id.* at 3.

[317] *See* ICI Global Letter at 2, 5. The commenter stated that ''the Commission's modified approach would no longer incentivize non-U.S. dealers to avoid engaging in swaps transactions with a non-U.S. regulated fund with a U.S. manager to stay under the [*de minimis*] threshold''. *Id.* at 2.

[318] *See* note 289, *supra.*

[319] *See* section II.B, *supra. See also* IIB Letter at 2–3; ISDA Letter at 5; SIFMA/FSR Letter at 6.

to competitive disparities in regulation, a significant portion of the security-based swap market may exit from the Title VII regime, and a significant portion of the market may be susceptible to fragmentation as a result.[320] We believe that a significant portion of the costs of such a fragmentation would be borne by U.S.-person counterparties through higher spreads and by U.S. security-based swap dealers through the loss of non-U.S. person customers. The amendments may mitigate these competitive frictions because non-U.S. persons would be required to count transactions arranged, negotiated, or executed by personnel located in a U.S. branch or office towards their *de minimis* thresholds in a way that is identical to their U.S.-person competitors.[321]

At the same time, we acknowledge that this account of competitive impacts is complicated by the fact that many non-U.S. persons are likely to be subject to foreign regulatory frameworks that may, in certain respects, be similar to the Title VII dealer requirements.[322] To the extent that these requirements achieve comparable regulatory outcomes, we note that we have proposed rules for a substituted compliance mechanism, which should mitigate this source of competitive disparity to the extent that we make substituted compliance determinations and the other prerequisites to substituted compliance have been satisfied. At the same time, we recognize that there will be limits to the availability of substituted compliance, including the possibility that substituted compliance may be permitted with regard to some requirements and not others, or that, in certain circumstances, substituted compliance may not be permitted with respect to any requirements with regard to a particular jurisdiction, depending on our assessment of the comparability of the relevant foreign requirements and the availability of supervisory and enforcement arrangements among the Commission and relevant foreign financial regulatory authorities. As we have noted above, however, we do not believe it would be appropriate to permit foreign security-based swap dealers to satisfy their obligations under Title VII by complying with foreign requirements when the prerequisites to substituted compliance have not been satisfied.[323]

The amendment to rule 3a71–5 provides that its exception for cleared, anonymous transactions does not apply to non-U.S. persons that arrange, negotiate or execute transactions using personnel located in a U.S. branch or office or using agents with personnel located in a U.S. branch or office. Although non-U.S. persons engaged in dealing activity in the United States may also, as some commenters have suggested, find it more difficult to access foreign trading platforms,[324] this amendment may also reduce the competitive frictions that would exist if the final rules retained the exception for such non-U.S. person dealers. Such an exception would provide such non-U.S.-person dealers a potential competitive advantage relative to U.S. persons through lower regulatory compliance and assessment costs, as the non-U.S. persons would be able to avoid including these transactions in their *de minimis* calculations, while U.S. persons would be required to count all such transactions towards their *de minimis* thresholds.

However, we also note that, to the extent that non-U.S. persons otherwise would have relied upon this exception to engage in cleared, anonymous transactions using personnel located in a U.S. branch or office, our final approach may impair efficiency and capital formation by reducing liquidity in anonymous markets, increasing transaction costs, and reducing opportunities for risk-sharing among security-based swap market participants as non-U.S. persons reduce their security-based swap activity or switch to alternative methods to hedge risk.[325]

As some commenters have argued,[326] the final rule may result in inefficient restructuring to move the arrangement, negotiation, and execution of cleared, anonymous transactions abroad, in order to avoid activities that would require counting towards *de minimis* thresholds. This shift in the market could reduce the expected programmatic benefits described above.[327] It also may have adverse consequences for the availability of liquidity and the amount of transaction costs for U.S. persons seeking to hedge risk using security-based swaps. If non-U.S. persons relocate their dealing activity abroad in ways that make it more difficult for U.S. persons to find liquidity in the United States, those U.S. persons that might otherwise use security-based swaps to hedge financial and commercial risks may reduce their hedging activity and assume an inefficient amount of risk, or engage in precautionary savings by accumulating capital to mitigate the effects of market risks, which would inhibit capital formation. To the extent that non-U.S. persons use personnel located in a U.S. branch or office to engage in dealing activity only in particular categories of security-based swaps, such as those involving U.S. reference entities, we believe that the potential consequences of relocation on liquidity and risk sharing would be most concentrated in those categories.

Finally, we note that relocation of dealing activity by non-U.S. persons in response to today's amendments may produce the same type of market fragmentation we seek to avoid under existing rules. However, we expect fewer non-U.S. entities may exit U.S. markets under the amendments than in their absence. As noted above, in the absence of these amendments, non-U.S. entities that wished to avoid Title VII regulation would incur potentially lower costs, as they would not have to relocate their personnel and would only need to change the booking entity for their U.S.-facing business above the *de minimis* thresholds. This type of restructuring would likely lead to market fragmentation, as described above, given that non-U.S.-person dealers would have a strong incentive not to engage in dealing activity with U.S.-person counterparties, even if they continued to use personnel located in a U.S. branch or office to arrange, negotiate, or execute their transactions. On the other hand, the amendments being adopted today likely will increase the costs of the types of restructuring that would lead to market fragmentation. As noted above, in addition to the costs of relocating personnel who arrange, negotiate, or execute security-based swap transactions, non-U.S. persons who choose to relocate dealing activity as a result of the amendments would forgo

[320] As noted in Section II.A.3, *supra,* analysis of TIW data shows that 79.5 percent of North American corporate single-name CDS transactions in 2014 involved either two ISDA-recognized dealers or an ISDA-recognized dealer and a non-U.S.-person non-dealer. We believe that restructuring as a response to competitive disparities stemming from Title VII regulation is more likely to occur within this subset of the market because these dealers currently operate from locations throughout the world and enjoy a volume of business that is more likely to make such restructuring profitable.

[321] *See* Cross-Border Adopting Release, 79 FR 39152; Cross-Border Proposing Release, 78 FR 31127.

[322] *See* Section II.A.4, *supra.*

[323] *See* Section IV.B.3, *supra.*

[324] *See* note 231, *supra.*

[325] *See* Cross-Border Adopting Release, 79 FR 47363.

[326] *See* note 102, *supra* (citing comment letters asserting that the final rules may result in inefficient restructuring of business generally).

[327] *See* IIB Letter at 4 (arguing that avoidance of U.S. personnel by non-U.S. counterparties would likely reduce the transparency benefits of the proposed approach).

the benefits of access to local expertise in security-based swaps based on U.S. reference entities. As a result, we believe that the likelihood or extent of market fragmentation should be lower under the amendments being adopted today.

C. Alternatives Considered

In developing these amendments we considered a number of alternative approaches.[328] This section outlines these alternatives and discusses the potential economic effects of each.

1. Retention of the Definition of ''Transaction Conducted Within the United States''

In the Cross-Border Proposing Release, we originally proposed the definition ''transaction conducted within the United States'' and used it to identify (i) transactions that should be included in an entity's *de minimis* threshold calculations, and (ii) transactions that, subject to certain exceptions, would be subject to business conduct, clearing, trade execution, regulatory reporting, and public dissemination requirements under Title VII. The original objective of the initially proposed definition was identical to this rule: To capture relevant dealing activity within the United States in order to mitigate competitive frictions and prevent a non-U.S. person from shifting its security-based swap dealing activity to a non-U.S. person and continuing to carry out this dealing activity in the United States while avoiding application of the Title VII requirements. That initial approach would have looked to whether dealing activity involved a ''transaction conducted within the United States,'' which, as defined in that proposal, turned on the location of personnel on both sides of the transaction.

Most commenters supported the narrower approach set forth in our U.S. Activity Proposing Release, which focused only on the location of relevant activity of a counterparty acting in a dealing capacity in the transaction [329] and the limitation of relevant activity to ''market-facing'' activity of that counterparty.[330] One commenter stated that the modified approach created ''a definable standard that will bring clarity to the application of security-based swap requirements to security-based swap dealers, and is appropriate and consistent with the expectations of parties as to when U.S. security-based swap requirements will apply.'' [331] Although one commenter argued that a non-U.S. person should be required to include a transaction with another non-U.S. person in its dealer *de minimis* threshold calculations if either counterparty is engaged in relevant activity in the United States,[332] we have determined to adopt the approach proposed in our U.S. Activity Proposing Release in part because we agree with other commenters that the initially proposed approach likely would have increased assessment costs significantly without materially enhancing the benefits of our Title VII dealer framework.[333] Under the rule as initially proposed, gathering the information regarding the location of the personnel of the counterparty (or its agent), communicating it to relevant counterparties, and keeping records of this information on a per-transaction basis could be costly. We believe that our approach, which focuses only on the location of the personnel of the dealer or its agent, achieves similar programmatic benefits while likely resulting in lower assessment costs.

2. Limited Exception From Title VII Requirements for Transactions Arranged, Negotiated, and Executed by Personnel Subject to Existing Domestic or Foreign Regulatory Requirements

In response to suggestions from several commenters,[334] we reconsidered providing an exception from the requirement to include a transaction in a person's *de minimis* threshold calculations if it is arranged, negotiated, or executed in the United States solely using personnel of a registered broker-dealer acting in their capacity as associated persons of that broker-dealer, of a registered security-based swap dealer, or of a U.S. branch of a non-U.S. person, pursuant to certain conditions.

Such an exception could reduce programmatic and assessment costs associated with engaging in customer-facing activity in connection with dealing activity in security-based swaps in the United States, which may mitigate incentives for inefficient relocation by financial groups that use a non-U.S. dealer to carry out their dealing activity in the United States. However, financial groups that use a U.S. dealer may respond to the incentives created by this exception by restructuring their security-based swap dealing business so that it is carried out by a non-U.S. person that relies on a registered broker-dealer, a registered security-based swap dealer, or a U.S. branch, that meets the conditions of the exception.

However, as described in more detail above,[335] such an exception could significantly reduce the expected benefits of our Title VII dealer framework: It could create potentially significant compliance gaps in the Title VII framework, impeding our effective enforcement of Title VII and other federal securities laws, by permitting non-U.S. persons to continue to carry out significant dealing activity—including dealing activity accounting for most or all of the interdealer market in security-based swaps on U.S. underliers—in the United States but outside the scope of Title VII dealer requirements.[336]

3. Non-Inclusion of Security-Based Swap Transactions Involving Dealing Activity in the United States in the *De Minimis* Threshold Calculations

Another alternative to the final rules would be not to require any transactions other than those required in Exchange Act rule 3a71–3 as adopted in June 2014 to be counted toward a person's dealer *de minimis* threshold.[337]

As with the alternative just discussed, this alternative could reduce programmatic and assessment costs associated with engaging in customer-facing activity in connection with dealing activity in security-based swaps in the United States, which may mitigate any incentives for inefficient

[328] *Cf.* ISDA Letter at 6 (urging the Commission to complete a cost-benefit analysis of the proposed approach that considers the benefits and costs that would apply to non-U.S. persons, taking into account alternative approaches that would achieve the goals preventing fraud and manipulation).

[329] *See* ICI Global Letter at 1–2, 5–6 (stating that the modified proposal would enable non-U.S. dealers to enter into transactions with non-U.S. persons that may use a U.S. fund manager without requiring the non-U.S. dealer to include the transaction in its *de minimis* calculations).

[330] *See* IIB Letter at 17; SIFMA/FSR Letter at 3.

[331] SIFMA/FSR Letter at 2–3 (stating also that the commenters ''strongly believe that the Commission has taken the correct approach in focusing on market-facing activity of sales and trading personnel in defining the 'arrange, negotiate, or execute' nexus that subjects security-based swap activity to the Commission's regulations based on location of conduct'').

[332] *See* Better Markets Letter at 3, 6 (urging that the Commission ''strengthen its proposal by requiring that if *either* non-U.S. counterparty uses U.S.-based personnel, then the transaction must be included within U.S./Foreign Personnel Activity,'' explaining that the involvement of personnel in the United States would be consistent with *Morrison* and that a counterparty engaged in dealing activity can reasonably be required to consider the location of its counterparty's activity, as well as its own (emphasis in original)).

[333] *See* U.S. Activity Proposing Release, 80 FR 27461 (discussing commenters' concerns related to costs of the initially proposed approach).

[334] *See* IIB Letter at 7; HSBC Letter at 3; SIFMA/FSR Letter at 7–8.

[335] *See* Section IV.B.3, *supra.*

[336] Quantifying the programmatic and assessment costs of this alternative is challenging given that we cannot observe the propensity of non-U.S. persons to use the limited exception.

[337] *See* SIFMA/FSR Letter at 5; IIB Letter at 5.

relocation by financial groups that use a non-U.S. dealer to carry out their dealing activity in the United States. However, as with the preceding alternative, financial groups that use a U.S. dealer may respond to the incentives created under the currently existing rules by restructuring their security-based swap dealing business so that it is carried out by a non-U.S. person, in which case none of its transactions with other non-U.S. persons would be counted toward the *de minimis* thresholds.

In our view, in the absence of some form of activity-based test, the current scope of Exchange Act rule 3a71–3 raises the full range of concerns arising from the ability of non-U.S. persons to continue to engage in security-based swap dealing activity in the United States without complying with Title VII dealer requirements, as described in detail above.[338] Moreover, to the extent that there are no limitations on a non-U.S. person's ability to exclude these transactions from its *de minimis* calculations, it is possible that a significant portion of that activity, including potentially all interdealer activity, eventually would occur entirely outside the scope of Title VII security-based swap dealer regulation, to the extent that financial groups restructure their dealing business in response to the incentives created by the resulting competitive disparities and market fragmentation. As we have already noted, this alternative would not only reduce the current volume of security-based swap transactions by non-U.S. persons included in such persons' dealer *de minimis* threshold calculations, but financial groups that currently use U.S. persons to carry out their dealing business in the United States may have an incentive to migrate that business to affiliated non-U.S. persons to stay competitive with their non-U.S. competitors.[339]

The absence of an activity-based test might also be costly because of its adverse competitive effects between U.S. and non-U.S. persons. Under current rules, the disparity in regulatory treatment means U.S. and non-U.S. persons would face disparate regulatory costs even if both engage in dealing activity using personnel located in a U.S. office. Given these cost differences, non-U.S. persons or their agents transacting with other non-U.S. persons or their agents in the United States would potentially be able to provide liquidity at lower cost than U.S. persons because of differing regulatory treatment in other jurisdictions. As a result, non-U.S. persons could prefer to transact with non-U.S. persons or their agents, and a substantial portion of liquidity from non-U.S. persons might become unavailable to U.S. persons.

4. Exception for Transactions Entered Into Anonymously on an Exchange and Cleared

Another alternative to these amendments would be to not require transactions that are entered into anonymously on an exchange and are cleared to be counted towards an entity's dealer *de minimis* threshold.[340] As we noted in the U.S. Activity Proposing Release, the purpose of the exception was to avoid putting market participants in a position where they are required to determine the treatment of the transaction under the *de minimis* exception in circumstances where the information necessary to that determination is unavailable to them.[341] We do not believe that anonymous trades raise these concerns in the context of the amendment to Exchange Act rule 3a71–3(b), given that it does not require non-U.S. persons to look to the location or status of their counterparty but only at that of its own personnel. We do, however, believe that allowing such an exception would have adverse consequences for competition between U.S. and non-U.S. dealers in the United States. If non-U.S. dealers could transact in the United States with non-U.S. counterparties but not be required to apply those transactions to their *de minimis* thresholds because their transactions were entered into anonymously on an exchange and cleared, non-U.S. dealers would be able to continue to operate in the U.S. without being subject to the dealer requirements of Title VII. The disparate costs generated by the unequal application of Title VII dealer requirements may further fragment liquidity into U.S. and non-U.S. pools, reducing the liquidity available to participants in the U.S. security-based swap market.

5. Exception for Transactions Cleared Through Foreign Clearing Agencies

One commenter suggested that we should not apply Title VII requirements to any transaction between two non-U.S. persons that is cleared outside the United States.[342] As we have noted elsewhere, however, clearing of security-based swaps reduces counterparty risk and operational risk, but the benefits of Title VII dealer regulations extend beyond the concerns addressed by clearing, to concerns about contagion, market fragmentation, and counterparty protection, among others. Because clearing these transactions does not address these concerns, whether a transaction is cleared does not appear to provide a useful basis for determining whether a transaction should be excepted from the *de minimis* counting requirement.[343] It is also important to note that such an exception would allow non-U.S. security-based swap dealers to operate using personnel or personnel of agents located in the United States, without being subject to Title VII dealer requirements by clearing their transactions through a foreign clearing agency. This disparity, as already discussed, could cause security-based swap liquidity to fragment into two pools, and reduce the amount of liquidity available to U.S. security-based swap market participants.[344]

6. Exception for Transactions Arranged, Negotiated, or Executed in the United States Merely To Accommodate Foreign Clients' Needs When Foreign Markets Are Closed

Another alternative would be to provide an exception for transactions arranged, negotiated, or executed in the United States merely to accommodate foreign clients' needs when foreign markets are closed. For example, one commenter argued that the U.S. Activity Test should not include security-based swaps in which U.S. personnel are involved only to accommodate a non-U.S. counterparty outside of operating hours in the counterparty's time zone.[345] Under these amendments, a

[338] *See* Section IV.B.2, *supra.*

[339] For additional discussion of the likely effects of this alternative, see the discussion in Sections IV.B.2 and IV.B.3, *supra.*

[340] *See* ISDA Letter at 7–8; SIFMA/FSR Letter at 7 (stating that transactions should not be counted towards the *de minimis* calculations if executed anonymously on an exchange and cleared). *See also* ISDA Letter at 5 (stating that the Commission correctly noted that electronic execution ''does not eliminate the possibility of abusive or manipulative conduct,'' but expressing concern that the proposed rules did not provide sufficient guidance regarding application of this test to electronic trading).

[341] *See* U.S. Activity Proposing Release, 80 FR 27472; Cross-Border Adopting Release 79 FR 47325.

[342] *See* ISDA Letter at 3, 8 (stating that transactions cleared outside the United States should not be subject to Title VII, as they ''are subject to regulatory oversight in the clearing jurisdiction and are subject to reporting and recordkeeping requirements in that jurisdiction'').

[343] *See* text accompanying note 259, *supra.*

[344] *See* Section II.B, *supra.*

[345] *See* IIB Letter at 18–19 (arguing that the dealing activity of the U.S. personnel in the trade is solely based on the hour of the day and thus incidental and that maintaining the proposed approach would be difficult as it would require non-U.S. persons to hire staff to work after-hours in the non-U.S. offices); HSBC Letter at 2.

non-U.S. person is required to include in its dealer *de minimis* threshold calculations transactions that it arranges, negotiates, or executes using personnel located in the United States even if it does so for the sole purpose of accommodating a foreign client's needs when foreign markets are closed.[346] Commenters have argued that requiring these transactions to be included in a dealer's *de minimis* threshold calculations may discourage non-U.S.-person dealers from providing these services to their non-U.S.-person clients, which may increase the transaction costs and the time necessary to execute their clients' transactions.[347] An exception for these types of transactions might improve the liquidity available to non-U.S. security-based swap market participants by allowing non-U.S. dealers to use personnel or personnel of their agents located in the United States to arrange, negotiate, or execute certain transactions when foreign markets are closed.

However, the implementation of such an exception might have several adverse consequences. For example, such an exception might create an incentive for non-U.S. person dealers to claim such an exception for trades that, at any other time of day, they would still have arranged, negotiated, or executed using personnel located in the United States. In addition, non-U.S. person dealers may have incentives to artificially delay or advance the timing of trades to claim such an exception. By abusing such an exception, non-U.S. dealers might create a significant disparity in the way that they account for transactions that they arrange, negotiate, or execute using personnel located in the United States under the dealer *de minimis* exception. As a result, non-U.S. dealers might not exceed a *de minimis* threshold and therefore may not be required to register with the Commission, even if these non-U.S. dealers continue with substantial amounts of dealing activity located within the United States. The subsequent difference in the application of dealer requirements between U.S. and non-U.S. dealers operating in the United States may have the adverse market fragmentation and competition effects discussed earlier.[348]

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[349] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The Commission certified in the U.S. Activity Proposing Release, pursuant to Section 605(b) of the RFA,[350] that the proposed amendments to Exchange Act rule 3a71–3 and 3a71–5 would not, if adopted, have a significant impact on a substantial number of ''small entities.''[351] The Commission received no comments on this certification.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[352] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[353] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[354] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities in credit intermediation and related activities,[355] entities with $550 million or less in assets or; (ii) for non-depository credit intermediation and certain other activities,[356] entities engaged in non-depository credit intermediation and related activities, $38.5 million or less in annual receipts; (iii) for entities in financial investments and related activities,[357] entities with $38.5 million or less in annual receipts; (iv) for insurance carriers and entities in related activities,[358] entities with $38.5 million or less in annual receipts, or 1,500 employees for direct property and casualty insurance carriers; and (v) for funds, trusts, and other financial vehicles,[359] entities with $32.5 million or less in annual receipts.[360] Based on feedback from market participants and our information about the security-based swap markets, the Commission continues to believe that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be large financial institutions—would not be ''small entities'' for purposes of the RFA.[361]

For the foregoing reasons, the Commission certifies that the final amendments, as adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VII. Effective Date and Implementation

These final rules will be effective April 19, 2016.

Three commenters requested that we provide market participants adequate time to comply with any final rule that would require them to monitor the location of personnel engaged in relevant activity with respect to security-based swap transactions. One commenter stated that we should provide a 12-month transition period and clarify that the *de minimis* counting would only apply prospectively to security-based swap transactions executed after the transition period.[362]

[346] *See* Section IV.C.2, *supra.*

[347] *See* note 236, *supra.*

[348] *See* Section V.C.3, *supra.*

[349] 5 U.S.C. 601 *et seq.*

[350] 5 U.S.C. 605(b).

[351] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Statement of Management on Internal Control, Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982).

[352] *See* 17 CFR 240.0–10(a).

[353] *See* 17 CFR 240.17a–5(d).

[354] *See* 17 CFR 240.0–10(c).

[355] Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. 13 CFR 121.201 at Subsector 522.

[356] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearing house activities, and other activities related to credit intermediation. 13 CFR 121.201 at Subsector 522.

[357] Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. 13 CFR 121.201 at Subsector 523.

[358] Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities. 13 CFR 121.201 at Subsector 524.

[359] Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles. 13 CFR 121.201 at Subsector 525.

[360] *See* 13 CFR 121.201.

[361] *See* U.S. Activity Proposing Release, 80 FR 27505–08; Cross-Border Adopting Release, 79 FR 47368.

[362] *See* HSBC Letter at 3–4.

Two commenters urged the Commission to defer the compliance date until it has made comparability determinations for a number of jurisdictions so that non-U.S. dealers can rely on substituted compliance.[363]

In the SBS Entity Registration Adopting Release, we established a compliance date for the final rules adopted in that release as the later of: Six months after the date of publication in the **Federal Register** of a final rule release adopting rules establishing capital, margin and segregation requirements for security-based swap dealers and major security-based swap participants (''SBS Entities''); the compliance date of final rules establishing recordkeeping and reporting requirements for SBS Entities; the compliance date of final rules establishing business conduct requirements under Exchange Act sections 15F(h) and 15F(k); or the compliance date for final rules establishing a process for a registered SBS Entity to make an application to the Commission to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on its behalf (such date referred to as the ''Registration Compliance Date'').

In addition, we noted that, for purposes of complying with the registration and other requirements, persons engaged in dealing activity are not required to begin calculating whether their transactions meet or exceed the thresholds established in Exchange Act rule 3a71–2 until two months prior to the Registration Compliance Date (''SBS Entity Counting Date''). Accordingly, a person engaged in security-based swap dealing activity will not be required to include in its dealer *de minimis* threshold calculations any transactions entered into prior to the SBS Entity Counting Date. However, given the potential complexities of implementing the amendments being adopted today, we believe it is appropriate to establish a compliance date solely for Exchange Act rule 3a71–3(b)(1)(iii)(C) of the later of (a) February 21, 2017, or (b) the SBS Entity Counting Date.

[363] *See* IIB Letter at 19; SIFMA/FSR Letter at 15.

Statutory Basis and Text of Final Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly sections 3(a)(71), 3(b), 23(a)(1), and 30(c) thereof, and section 761(b) of the Dodd-Frank Act, the SEC is amending rules 3a71–3 and 3a71–5 under the Exchange Act.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons stated in the preamble, the SEC is amending Title 17, Chapter II of the Code of the Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, and a sectional authority is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Sections 240.3a71–3 and 240.3a71–5 are also issued under Pub. L. 111–203, sec. 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).

* * * * *

■ 2. § 240.3a71–3 is amended by adding paragraph (b)(1)(iii)(C) to read as follows:

§ 240.3a71–3 Cross-border security-based swap dealing activity.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(C) Unless such person is a person described in paragraph (a)(4)(iii) of this section, security-based swap transactions connected with such person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office; and

* * * * *

■ 3. § 240.3a71–5 is amended by adding paragraph (c) to read as follows:

§ 240.3a71–5 Exception for cleared transactions executed on a swap execution facility.

* * * * *

(c) The exceptions in paragraphs (a) and (b) of this section shall not apply to any security-based swap transactions of a non-U.S. person or of an affiliated non-U.S. person connected with the person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

By the Commission.

Dated: February 10, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–03178 Filed 2–18–16; 8:45 am]

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