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Federal Register

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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2015–0079]

Black Stem Rust; Additions of Rust-Resistant Species and Varieties

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On January 22, 2016, the Animal and Plant Health Inspection Service published a direct final rule. The direct final rule notified the public of our intention to amend the black stem rust quarantine and regulations by adding nine varieties to the list of rust-resistant *Berberis* species and varieties. We received two comments, which are addressed in this document.

DATES: The effective date of the direct final rule published January 22, 2016, at 81 FR 3701, is confirmed as March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Richard N. Johnson, National Policy Manager, Black Stem Rust, Pest Management, PHP, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1231; (301) 851–2109.

SUPPLEMENTARY INFORMATION: Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus (*Puccinia graminis*) that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia.* The fungus is spread from host to host by windborne spores.

The black stem rust quarantine and regulations, which are contained in 7 CFR 301.38 through 301.38–8 (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust or of contributing to the development of new races of the rust; rust-susceptible plants do pose such risks.

On January 22, 2016, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (81 FR 3701–3702) [1] a direct final rule to add the following *B. thunbergii* varieties to the list of rust-resistant *Berberis* species in § 301.38–2(a)(1):

- *B. thunbergii* 'BailAnna' Moscato;
- *B. thunbergii* 'BailElla' Lambrusco;
- *B. thunbergii* 'Daybreak';
- *B. thunbergii* 'BailErin' Limoncello;
- *B. thunbergii* 'BailJulia' Toscana;
- *B. thunbergii* 'NCBT1';
- *B. thunbergii x calliantha* 'NCBX3';
- *B. thunbergii x media* 'NCBX1'; and
- *B. thunbergii x media* 'NCBX2'.

We solicited comments on the rule for 30 days ending February 22, 2016, and indicated that, if we received written adverse comments or written notice of intent to submit adverse comments, we would publish a document in the **Federal Register** withdrawing the direct final rule before the effective date.

We received two comments by that date. One commenter fully supported the rule. The other commenter stated that the rule should not be promulgated because it promoted interstate commerce of *Berberis* plants, which are considered an invasive species in the Midwest and Eastern United States. However, the only supporting information that the commenter provided was a Web site link to a page related to varieties of *Berberis* in the natural environment, and not the commercially produced and marketed cultivars that were the subject of the rule. Moreover, APHIS' restrictions on the interstate movement of *Berberis* spp. plants are imposed to ensure that those plants do not pose a risk of spreading black stem rust or contributing to the development of new races of the rust. Thus, considerations regarding the potential invasiveness of the *Berberis* spp. plants themselves are outside the scope of this rulemaking. Therefore, for the reasons given in the direct final rule, we are confirming the effective date as March 22, 2016.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 16th day of March 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–06476 Filed 3–21–16; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the direct final rule and the comments received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0079.*

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2015–0156]

RIN 3150–AJ63

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM 100 Cask System; Amendment No. 9, Revision 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of March 21, 2016, for the direct final rule that was published in the **Federal Register** on January 6, 2016. This direct final rule amended spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 9, Revision 1, to Certificate of Compliance No. 1014. Amendment No. 9, Revision 1, changes cooling time limits for thimble plug devices, removes certain testing requirements for the fabrication of Metamic HT neutron-absorbing structural material, and reduces certain minimum guaranteed values used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify

certain boiling water reactor fuel within specified guidelines as undamaged fuel.

DATES: *Effective date:* The effective date of March 21, 2016, for the direct final rule published January 6, 2016 (81 FR 371), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2015–0156 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0156. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert D. MacDougall, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5175; email: *Robert.MacDougall@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 6, 2016 (81 FR 371), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to include Amendment No. 9, Revision 1, of Certificate of Compliance No. 1014 for the HI–STORM 100 Cask System. Amendment No. 9, Revision 1, changes cooling time limits for thimble plug devices, removes certain testing requirements for the fabrication of Metamic HT neutron-absorbing structural material, and reduces certain minimum guaranteed values used in bounding calculations for this material. Amendment No. 9, Revision 1, also changes fuel definitions to classify certain boiling water reactor fuel within specified guidelines as undamaged fuel. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on March 21, 2016. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 17th day of March, 2016.

For the Nuclear Regulatory Commission.

Leslie Terry,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2016–06392 Filed 3–21–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–2701; Directorate Identifier 2016–NE–03–AD; Amendment 39–18440; AD 2016–06–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Turbomeca S.A. Makila 2A and 2A1 turboshaft engines. This AD requires tightening the nut attaching the swivel union to the engine power turbine module M04. This AD was prompted by two occurrences of commanded in-flight shutdown following low oil pressure warning. We are issuing this AD to prevent loosening of the nut and oil leakage from the low-pressure oil system, which could lead to in-flight shutdown of the engine and forced landing.

DATES: This AD becomes effective April 6, 2016.

We must receive comments on this AD by May 6, 2016.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 0 5 59 74 40 00; telex: 570 042; fax: 33 0 5 59 74 45 16. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2701.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2701; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Besian Luga, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7750; fax: 781–238–7199; email: *besian.luga@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–2701; Directorate Identifier 2016–NE–03–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0016, dated January 15, 2016 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Two occurrences of commanded in-flight shut down following low oil pressure warning were reported. In both cases the nut attaching the swivel union to the power turbine module 04 was found completely loose. After further investigation, it was determined that the application of Turbomeca Service Bulletin (SB) No. 298 79 2831 may have led to incorrect torque application or loosening of the nut.

Turbomeca S.A. has issued Alert Mandatory Service Bulletin No. A298 79 2835, Version A, dated January 14, 2016, to provide guidance to assist operators in resolving this unsafe condition. You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–2701.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires tightening the nut attaching the swivel union to the engine power turbine module M04.

Related Service Information

Turbomeca S.A. has issued Alert Mandatory Service Bulletin No. A298 79 2835, Version A, dated January 14, 2016. The service information describes procedures for tightening the nut attaching the swivel union to the engine power turbine module (M04). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this document.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because operators are required to take action with 7 days or 30 engine hours after the effective date of this AD. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD affects 10 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per engine to comply with this AD. The average labor rate is $85 per hour. No additional parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $850.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–06–09 Turbomeca S.A.: Amendment 39–18440; Docket No. FAA–2016–2701; Directorate Identifier 2016–NE–03–AD.

(a) Effective Date

This AD is effective April 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Turbomeca S.A. Makila 2A and 2A1 turboshaft engines that have incorporated Turbomeca S.A. Service Bulletin No. 298 79 2831, Version B, dated November 13, 2015, or earlier.

(d) Reason

This AD was prompted by two occurrences of in-flight shutdowns as a result of the nut, attaching the swivel union to the power turbine module M04, coming loose. We are issuing this AD to prevent loosening of the nut, and oil leakage from the low pressure oil system, which could lead to in-flight shutdown of the engine and forced landing.

(e) Actions and Compliance

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

(1) Within 30 engine hours or 7 days after the effective date of this AD, whichever occurs first, apply 15 Newton-meters torque to the nut, part number 9560130990, attaching the swivel union to the engine power turbine module M04. Use a backup wrench to prevent the swivel union from rotating.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Besian Luga, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7750; fax: 781–238–7199; email: *besian.luga@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0016, dated January 15, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–2701.

(3) Turbomeca S.A. Alert Mandatory Service Bulletin No. A298 79 2835, Version A, dated January 14, 2016, which is not incorporated by reference in this AD, can be obtained from Turbomeca S.A., using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 0 5 59 74 40 00; telex: 570 042; fax: 33 0 5 59 74 45 16.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 14, 2016.

Ann C. Mollica,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–06372 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM96–1–038]

Standards for Business Practices of Interstate Natural Gas Pipelines; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule that was published in the **Federal Register** on Monday, November 2, 2015 (Order No. 587–W). These revisions correct an instruction error and reinstate the regulations describing the exhibits required to be attached to each certificate application by interstate natural gas pipelines. This document corrects that omission.

DATES: Effective March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8321, Email: *gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** on Monday, November 2, 2015 (80 FR 67302), that omitted a portion of 18 CFR 157.14(a) describing the exhibits required to be submitted in certificate applications by interstate natural gas pipelines. This correction restores that text to the regulation. In addition, due to style requirements, 18 CFR 157.14(a)(6–a) has been redesignated as 157.14(a)(7) and subsequent provisions have been redesignated accordingly.

List of Subjects in 18 CFR Part 157

Natural gas, Reporting and recordkeeping requirements.

Dated: March 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 157, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717z.

■ 2. Section 157.14 is amended by adding paragraphs (a)(1) through (19) to read as follows:

§ 157.14 Exhibits.

(a) * * *

(1) *Exhibit A—Articles of incorporation and bylaws.* If applicant is not an individual, a conformed copy of its articles of incorporation and bylaws, or other similar documents.

(2) *Exhibit B—State authorization.* For each State where applicant is authorized to do business, a statement showing the date of authorization, the scope of the business applicant is authorized to carry on and all limitations, if any, including expiration dates and renewal obligations. A conformed copy of applicant's authorization to do business in each State affected shall be supplied upon request.

(3) *Exhibit C—Company officials.* A list of the names and business addresses of applicant's officers and directors, or similar officials if applicant is not a corporation.

(4) *Exhibit D—Subsidiaries and affiliation.* If applicant or any of its officers or directors, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of any other person or organized group of persons engaged in production, transportation, distribution, or sale of natural gas, or of any person or organized group of persons engaged in the construction or financing of such enterprises or operations, a detailed explanation of each such relationship, including the percentage of voting strength represented by such ownership of securities. If any person or organized group of persons, directly or indirectly, owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of applicant—a detailed explanation of each such relationship.

(5) *Exhibit E—Other pending applications and filings.* A list of other applications and filings under sections 1, 3, 4 and 7 of the Natural Gas Act filed by the applicant which are pending before the Commission at the time of the filing of an application and which directly and significantly affect the application filed, including an explanation of any material effect the grant or denial of those other applications and filings will have on the application and of any material effect the grant or denial of the application will have on those other applications and filings.

(6) *Exhibit F—Location of facilities.* Unless shown on Exhibit G or elsewhere, a geographical map of suitable scale and detail showing, and appropriately differentiating between all of the facilities proposed to be constructed, acquired or abandoned and existing facilities of applicant, the operation or capacity of which will be directly affected by the proposed facilities or the facilities proposed to be abandoned. This map, or an additional map, shall clearly show the relationship of the new facilities to the applicant's overall system and shall include:

(i) Location, length, and size of pipelines.

(ii) Location and size (rated horsepower) of compressor stations.

(iii) Location and designation of each point of connection of existing and proposed facilities with:

(A) Main-line industrial customers, gas pipeline or distribution systems, showing towns and communities served and to be served at wholesale and retail, and

(B) Gas-producing and storage fields, or other sources of gas supply.

(7) *Exhibit F–I—Environmental report.* An environmental report as specified in §§ 380.3 and 380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F–I whenever route or site changes are filed. These revisions should identify the locations by mile post and describe all other specific differences resulting from the route or site changes, and should not simply provide revised totals for the resources affected.

(8) *Exhibit G—Flow diagrams showing daily design capacity and reflecting operation with and without proposed facilities added.* A flow diagram showing daily design capacity and reflecting operating conditions with only existing facilities in operation. A second flow diagram showing daily design capacity and reflecting operating conditions with both proposed and existing facilities in operation. Both flow diagrams shall include the following for the portion of the system affected:

(i) Diameter, wall thickness, and length of pipe installed and proposed to be installed and the diameter and wall thickness of the installed pipe to which connection is proposed.

(ii) For each proposed new compressor station and existing station, the size, type and number of compressor units, horsepower required, horsepower installed and proposed to be installed, volume of gas to be used as fuel, suction and discharge pressures, and compression ratio.

(iii) Pressures and volumes of gas at the main line inlet and outlet connections at each compressor station.

(iv) Pressures and volumes of gas at each intake and take-off point and at the beginning and terminus of the existing and proposed facilities and at the intake or take-off point of the existing facilities to which the proposed facilities are to be connected.

(9) *Exhibit G–I—Flow diagrams reflecting maximum capabilities.* If Exhibit G does not reflect the maximum deliveries which applicant's existing and proposed facilities would be capable of achieving under most favorable operating conditions with utilization of all facilities, include an additional diagram or diagrams to depict such maximum capabilities. If the horsepower, pipelines, or other facilities on the segment of applicant's system under consideration are not being fully utilized due, *e.g.,* to capacity limitation of connecting facilities or because of the need for standby or spare equipment, the reason for such nonutilization shall be stated.

(10) *Exhibit G–II—Flow diagram data.* Exhibits G and G–I shall be accompanied by a statement of engineering design data in explanation and support of the diagrams and the proposed project, setting forth:

(i) Assumptions, bases, formulae, and methods used in the development and preparation of such diagrams and accompanying data.

(ii) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication, and methods of testing proposed.

(iii) When lines are looped, the length and size of the pipe in each loop.

(iv) Type, capacity, and location of each natural gas storage field or facility, and of each dehydration, desulphurization, natural gas liquefaction, hydrocarbon extraction, or other similar plant or facility directly attached to the applicant's system, indicating which of such plants are owned or operated by applicant, and which by others, giving their names and addresses.

(v) If the daily design capacity shown in *Exhibit G* is predicated upon an ability to meet each customer's maximum contract quantity on the same day, explain the reason for such coincidental peak-day design. If the design day capacity shown in Exhibit G is predicated upon an assumed diversity factor, state that factor and explain its derivation.

(vi) The maximum allowable operating pressure of each proposed facility for which a certificate is requested, as permitted by the Department of Transportation's safety standards. The applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection or shall certify that it has been granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Pertinent details concerning the waiver shall be set forth.

(11) *Exhibit H—Total gas supply data.* A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

(12) *Exhibit I—Market data.* A system-wide estimate of the volumes of gas to be delivered during each of the first 3 full years of operation of the proposed service, sale, or facilities and during the years when the proposed facilities are under construction, and actual data of like import for each of the 3 years next preceding the filing of the application, together with:

(i) Names and locations of customer companies and municipalities, showing the number of residential, commercial, firm industrial, interruptible industrial, residential space-heating, commercial space-heating, and other types of customers for each distribution system to be served at retail or wholesale; and the names and locations of each firm and interruptible direct industrial customer whose estimated consumption totals 10,000 Mcf or more in any calendar month or 100,000 Mcf or more per year together with an explanation of the end use to which each of these industrial customers will put the gas.

(ii) Applicant's total annual and peak day gas requirements by classification of service in paragraph (a)(11)(i) of this section, divided as follows: Gas requirements for each distribution area where gas is sold by applicant at retail; for each wholesale customer; for all main line direct industrial customers; and company use and unaccounted-for gas, for both the applicant and each wholesale customer.

(iii) Total past and expected curtailments of service by the applicant and each wholesale customer proposing to receive new or additional supplies of gas from the project, all to be listed by the classifications of service in paragraph (a)(12)(i) of this section.

(iv) Explanation and derivation of basic factors used in estimating future requirements, including, for example: Peak-day and annual degree-day deficiencies, annual load factors of applicant's system and of its deliveries to its proposed customers; individual consumer peak-day and annual consumption factors for each class of consumers, with supporting historical data; forecasted saturation of space-heating as related to past experience; and full detail as to all other sources of gas supply available to applicant and to each of its customers, including manufacturing facilities and liquid petroleum gas.

(v) Conformed copy of each contract, letter of intent or other agreement for sale or transportation of natural gas proposed by the application. Indicate the rate to be charged. If no agreements have been made, indicate the basis for assuming that contracts will be consummated and that service will be rendered under the terms contemplated in the application.

(vi) A full description of all facilities, other than those covered by the application, necessary to provide service in the communities to be served, the estimated cost of such facilities, by whom they are to be constructed, and evidence of economic feasibility.

(vii) A copy of each market survey made within the past three years for such markets as are to receive new or increased service from the project applied for.

(viii) A statement showing the franchise rights of applicant or other person to distribute gas in each community in which service is proposed.

(ix) When an application requires a statement of total peak-day or annual market requirements of affiliates, whose operations are integrated with those of applicant, to demonstrate applicant's ability to provide the service proposed or to establish a gas supply, estimates and data required by this paragraph (a)(12)(ix) shall also be stated in like detail for such affiliates.

(x) When the proposed project is for service which would not decrease the life index of the total system gas supply by more than one year, the data required in paragraphs (a)(12)(i) to (ix), inclusive, of this section need be submitted only as to the particular market to receive new or additional service.

(13) *Exhibit J—Federal authorizations.* A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

(14) *Exhibit K—Cost of facilities.* A detailed estimate of total capital cost of the proposed facilities for which application is made, showing cost of construction by operating units such as compressor stations, main pipelines, laterals, measuring and regulating stations, and separately stating the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction, and contingencies. Include a brief statement indicating the source of information used as the basis for the above estimate. If not otherwise set forth, submit data on preliminary bids, if any, for the proposed facilities and recent experienced cost data for facilities of similar character.

(15) *Exhibit L—Financing.* Plans for financing the proposed facilities for which the application is filed, together with:

(i) A description of the class (*e.g.,* commercial paper, long-term debt, preferred stock) and cost rates for securities expected to be issued with construction period and post-operational sources of financing separately identified.

(ii) Statement of anticipated cash flow, including provision during the period of construction and the first 3 full years of operation of proposed facilities for interest requirements, dividends, and capital requirements.

(iii) A balance sheet and income statement (12 months) of most recent data available.

(iv) Comparative pro forma balance sheets and income statements for the period of construction and each of the first 3 full years of operation, giving effect to the proposed construction and proposed financing of the project.

(v) Any additional data and information upon which applicant proposes to rely in showing the adequacy and availability of resources for financing its proposed project.

(vi) In instances for which principal operations of the company have not commenced or where proposed rates for services are developed on an incremental basis, a brief statement explaining how the applicant will determine the actual allowance for funds used during construction (AFUDC) rate, or if a rate is not to be used, how the applicant will determine the actual amount of AFUDC to be capitalized as a component of construction cost, and why the method is appropriate under the circumstances.

(16) *Exhibit M—Construction, operation, and management.* A concise statement setting forth arrangements for supervision, management, engineering, accounting, legal, or other similar service to be rendered in connection with the construction or operation of the project, if not to be performed by employees of applicant, including reference to any existing or contemplated agreements therefor, together with:

(i) A statement showing affiliation between applicant and any parties to such agreements or arrangements. See Exhibit D, paragraph (a)(4) of this section.

(ii) Conformed copies of all construction, engineering, management, and other similar service agreements or contracts in any way operative with respect to construction, operation, or financing of facilities which are the subject of the application or will be applicable under system operations.

(17) *Exhibit N—Revenues—Expenses—Income.* When the estimated revenues and expenses related to a proposed facility will significantly affect the operating revenues or operating expenses of an applicant, there shall be submitted a system-wide statement for the last year preceding the proposed construction or service and pro forma system-wide and incremental statements for each of the first three full years of operation of the proposed facilities, showing:

(i) Gas system annual revenues and volumes of natural gas related thereto, subdivided by classes of service, and further subdivided by sales to direct industrial customers, sales to other gas utilities, and other sales, indicating billing quantities used for computing charges, *e.g.,* actual demands, billing demands, volumes, heat-content adjustment or other determinants. In addition, if enlargement or extension of facilities is involved, the revenues attributable solely to the proposed facilities shall be stated separately, and the basis and data used in such computation shall be clearly shown.

(ii) Gas system annual operating expenses classified in accordance with the Commission's Uniform System of Accounts for Natural Gas Companies; the annual depreciation, depletion, taxes, utility income, and resulting rate of return on net investment in gas plant including working capital. In addition if enlargement or extension of facilities is involved, the cost of service attributable solely to the proposed facilities shall be stated separately with supporting data.

(iii) When the data required in paragraphs (a)(17)(i) and (ii) of this section is not submitted, applicant shall provide in lieu thereof a statement in sufficient detail to show clearly the effect on the operating revenues and operating expenses of the estimated revenues and expenses related to the proposed facility.

(18) *Exhibit O—Depreciation and depletion.* Depreciation and depletion rates to be established, the method of determination and the justification therefor.

(19) *Exhibit P—Tariff.* (i) A statement of the rates to be charged for the proposed sales or service, including:

(A) Identification of the applicable presently effective rate schedules, when no additional tariff filings will be required, or

(B) When changes are required in applicant's presently effective tariff, or if applicant has no tariff, pro forma copies of appropriate changes in or additions to the effective tariff or a pro forma copy of the new gas tariff proposed, or

(C) When a new rate is proposed, a statement explaining the basis used in arriving at the proposed rate. Such statement shall clearly show whether such rate results from negotiation, cost-of-service determination, competitive factors or others, and shall give the nature of any studies which have been made in connection therewith.

(ii) When new rates or changes in present rates are proposed or when the proposed facilities will result in a material change in applicant's average cost of service, such statement shall be accompanied by supporting data showing:

(A) System cost of service for the first calendar year of operation after the proposed facilities are placed in service.

(B) An allocation of such costs to each particular service classification, with the basis for each allocation clearly stated.

(C) The proposed rate base and rate of return.

(D) Gas operating expenses, segregated functionally by accounts.

(E) Depletion and depreciation.

(F) Taxes with the basis upon which computed.

* * * * *

[FR Doc. 2016–06288 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 113

[CBP Dec. 15–15, USCBP–2006–0013]

RIN 1515–AD56 [Formerly 1505–AB54]

Customs and Border Protection's Bond Program; Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** of November 13, 2015, a final rule amending CBP's bond regulations. In that rule, CBP amended the regulation prescribing bond and rider filing requirements and stated, in the preamble, that the agency's intent was to provide additional time for the filing of these documents prior to their effective date. Due to a drafting error, one of the provisions inadvertently provides for a more restrictive time frame for filing a continuous bond, associated application, or rider prior to their effective date. This document corrects that provision to conform it to CBP's stated intent to liberalize the bond and rider filing process.

DATES: Effective on March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Kara Welty, Revenue Division, Office of Administration, Customs and Border Protection, Tel. (317) 614–4614.

SUPPLEMENTARY INFORMATION: On November 13, 2015, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (80 FR 70154), as CBP Dec. 15–15, a final rule amending title 19 of the Code of Federal Regulations (19 CFR) regarding CBP's bond regulations. In that document, CBP amended 19 CFR 113.26(a), which pertains to when bonds and riders must be filed prior to their effective date, to provide that ''A continuous bond, and any associated application required by § 113.11 or a rider, must be filed at least 60 days prior to the effective date requested for the continuous bond or rider.''

Prior to the amendments effectuated by CBP Dec. 15–15, § 113.26(a) permitted filing of a bond or rider up to 30 days before the bond's effective date. CBP's intent, as stated in the preamble to CBP Dec. 15–15 at pages 70156 and 70160 of the November 13, 2015, **Federal Register** document, was to liberalize § 113.26(a) to allow the filing of bonds and riders up to 60 days prior to the bond's effective date. This document corrects 19 CFR 113.26(a) to clarify that bonds and riders may be filed up to 60 days prior to the effective date requested for the continuous bond or rider.

List of Subjects in 19 CFR Part 113

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

Amendment to CBP Regulations

For reasons discussed in the preamble, CBP amends 19 CFR part 113 with the following correcting amendment:

PART 113—CBP BONDS

■ 1. The authority citation for part 113 continues, in part, to read as follows:

Authority: 6 U.S.C. 101, *et seq.*; 19 U.S.C. 66, 1623, 1624.

■ 2. In § 113.26, revise paragraph (a) to read as follows:

§ 113.26 Effective dates of bonds and riders.

(a) *General.* A continuous bond, and any associated application required by § 113.11, or rider, may be filed up to 60 days prior to the effective date requested for the continuous bond or rider.

* * * * *

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection.

Approved: March 15, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–06323 Filed 3–21–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9760]

RIN 1545–BJ74

Indirect Stock Transfers and the Coordination Rule Exceptions; Transfers of Stock or Securities in Outbound Asset Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under sections 367, 1248, and 6038B of the Internal Revenue Code (Code). These regulations finalize the elimination of one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. The regulations also finalize modifications to the exception to the coordination rule for section 351 exchanges so that it is consistent with the remaining asset reorganization exception. In addition, the regulations finalize modifications to the procedures for obtaining relief for failures to satisfy certain reporting requirements. Finally, the regulations finalize certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361

exchange. These regulations primarily affect domestic corporations that transfer property to foreign corporations in certain outbound nonrecognition exchanges.

DATES: *Effective Date:* These regulations are effective on March 22, 2016.

Applicability Dates: For dates of applicability, see §§ 1.367(a)–3(g)(1)(vii), 1.367(a)–3(g)(1)(ix), 1.367(a)–6(e)(4), 1.1248(f)–3(b)(1), and 1.6038B–1(g)(5).

FOR FURTHER INFORMATION CONTACT: Joshua G. Rabon at (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On August 20, 2008, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–209006–89) under sections 367, 1248, and 6038B of the Code (2008 proposed regulations) in the **Federal Register** (73 FR 49278) concerning transfers of property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b) and certain nonrecognition distributions of stock of a foreign corporation by a domestic corporation. The 2008 proposed regulations were substantially finalized on March 19, 2013, when the Treasury Department and the IRS published final regulations (TD 9614) in the **Federal Register** (78 FR 17024). However, the Treasury Department and the IRS simultaneously published the temporary regulations (TD 9615) in the **Federal Register** on March 19, 2013 (78 FR 17,053) (2013 temporary regulations) eliminating one of the two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations, as well as modifying the one exception to the coordination rule for section 351 exchanges so that it is consistent with the remaining outbound asset reorganization exception. The 2013 temporary regulations also addressed the transfer of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange, as well as modified, in various contexts, procedures for obtaining relief for failures to satisfy certain reporting requirements. A notice of proposed rulemaking (REG–132702–10) cross-referencing the 2013 temporary regulations and incorporating the text of the 2013 temporary regulations was also published in the **Federal Register** on March 19, 2013 (78 FR 17066). A portion of the 2013 temporary regulations modifying the procedures for obtaining relief for failures to satisfy certain reporting requirements was amended and removed by final regulations (TD 9704) that were published in the **Federal Register** on November 19, 2014 (79 FR 68763). No requests for a public hearing were received regarding the 2013 temporary regulations, and accordingly no hearing was held. The text of these regulations is substantially identical to to the 2013 temporary regulations.

The Treasury Department and the IRS received one comment regarding the remaining exceptions to the coordination rule. In general, the coordination rule provides that if, in connection with an indirect stock transfer, a U.S. person (U.S. transferor) transfers assets to a foreign corporation (foreign acquiring corporation) in an exchange described in section 351 or 361, section 367 applies first to the asset transfer and then to the indirect stock transfer. Pursuant to the exceptions to the coordination rule, sections 367(a) and (d) will not apply to the outbound transfer of assets by the U.S. transferor to the foreign acquiring corporation to the extent those assets (re-transferred assets) are transferred by the foreign acquiring corporation to a domestic corporation in certain nonrecognition transactions, provided certain conditions are satisfied. Both of the remaining exceptions require that the transferee domestic corporation's adjusted basis in the re-transferred assets not be greater than the U.S. transferor's adjusted basis in those assets, disregarding any basis increase attributable to gain or income recognized by the U.S. transferor on the outbound asset transfer (basis comparison test).

The commenter first inquired whether the remaining coordination rule exceptions apply on a transaction-by-transaction basis such that the conditions of an exception, including the basis comparison test, must be satisfied with respect to all the re-transferred assets, or, alternatively, whether the exceptions apply on an asset-by-asset basis such that the conditions of an exception may be satisfied with respect to a portion of the re-transferred assets. The Treasury Department and the IRS have determined that the regulations clearly provide that the coordination rule exceptions apply to a transaction in its entirety and not on an asset-by-asset basis. See, for example, paragraph (d)(3) of Example 6C of the 2013 temporary regulations, illustrating the application of the coordination rule and the relevant exception using a transaction-based analysis. Thus, the 2013 temporary regulations are not clarified in response to this comment.

Given this transaction-based treatment, the commenter then requested a modification to the aspect of the basis comparison test that disregards an increase in basis in the re-transferred assets in the hands of the transferee domestic corporation that is attributable to gain or income recognized by the U.S. transferor on the outbound transfer of the re-transferred assets to the foreign acquiring corporation. The comment requested that the rule be extended to disregard a basis increase in the re-transferred assets that is attributable to gain or income recognized by the foreign acquiring corporation on the transfer of the re-transferred assets to the transferee domestic corporation when that gain or income is subject to U.S. tax (such as gain recognized by the foreign acquiring corporation with respect to U.S. real property that is subject to U.S. tax under section 897). These regulations do not provide for such an extension.

The coordination rule exceptions were first introduced in proposed regulations (INTL–54–91) published in the **Federal Register** on August 26, 1991 (56 FR 41993). The basis comparison test was introduced later, in final regulations (TD 8770) published in the **Federal Register** on June 19, 1998 (63 FR 33550). Proposed regulations (REG–125628–01) published in the **Federal Register** on January 5, 2005 (70 FR 746) proposed further revisions to the coordination rule exceptions in response to concerns ''that asset reorganizations subject to this coordination rule may be used to facilitate corporate inversion transactions.'' Those 2005 proposed regulations were finalized on January 26, 2006, when the Treasury Department and the IRS published final regulations (TD 9243) in the **Federal Register** (71 FR 4276). Although the 2008 proposed regulations included a proposal to further refine one of the coordination rule exceptions in response to transactions utilizing that exception to inappropriately repatriate earnings and profits of foreign corporations, the proposed refinement was not included in the final regulations published on March 19, 2013. Instead, the 2013 temporary regulations eliminated this particular exception to the coordination rule and noted that the ''Treasury Department and the IRS have, over time, clarified and modified the coordination rule exceptions to address various transactions that give rise to policy concerns.''

The Treasury Department and the IRS remain concerned that the coordination

rule exceptions may be utilized to inappropriately reduce U.S. tax, and therefore decline to liberalize the basis comparison test. The basis comparison test ensures preservation of the gain realized but not recognized by a U.S. transferor in re-transferred assets in the hands of a transferee domestic corporation by ensuring that the assets re-transferred into U.S. corporate solution retain identical tax attributes to the assets transferred to the foreign acquiring corporation. To the extent such assets do not have the same basis in the hands of the transferee domestic corporation and the basis adjustment is not attributable to gain recognized by the U.S. transferor, then the basis adjustment presumably results from transactions occurring in foreign corporate solution (including gain recognized under section 897). The Treasury Department and the IRS believe the coordination rule exceptions should not permit shifting of gain or income to a foreign corporation (even when the gain or income is subject to U.S. tax) as it may permit the U.S. transferor to inappropriately utilize the foreign corporation's favorable tax attributes available to offset the gain or income.

Accordingly, the text of the 2013 temporary regulations is adopted without substantive revision. The text is updated where appropriate for ministerial purposes. For example, the appropriate title for the LB&I officer responsible for determining whether a failure to comply with the reporting requirements was due to reasonable cause and not willful neglect is ''Director of Field Operations, Cross Border Activities Practice Area of Large Business & International.'' It is expected that future guidance projects will update titles in other sections of the existing regulations as appropriate. The corresponding 2013 temporary regulations are removed.

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 assessment is not required. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in any of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The Treasury Department and the IRS estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the Treasury Department and the IRS do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joshua G. Rabon of the Office of Associate Chief Counsel (International). 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.

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 * * *

Section 1.367(a)–3 is also issued under 26 U.S.C. 367(a).

* * * * *

■ Par. 2. Section 1.367(a)–3 is amended by:

■ 1. Revising paragraph (d)(2)(vi)(B).

■ 2. Revising paragraph (d)(3), *Examples 6B, 6C,* and *9.*

■ 3. Revising paragraph (e).

■ 4. Revising paragraph (g)(1)(vii)(A).

■ 5. Adding paragraph (g)(1)(ix).

The revisions and addition read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) *Exceptions*—(*1*) If a transaction is described in paragraph (d)(2)(vi)(A) of this section, section 367(a) and (d) will not apply to the extent a domestic corporation (domestic acquired corporation) transfers assets to a foreign corporation (foreign acquiring corporation) in an asset reorganization, and those assets (re-transferred assets) are transferred to a domestic corporation (domestic controlled corporation) in a controlled asset transfer, provided that each of the following conditions is satisfied:

(*i*) The domestic controlled corporation's adjusted basis in the re-transferred assets is not greater than the domestic acquired corporation's adjusted basis in those assets. For this purpose, any increase in basis in the re-transferred assets that results because the domestic acquired corporation recognized gain or income with respect to the re-transferred assets in the transaction is not taken into account.

(*ii*) The domestic acquired corporation includes a statement described in paragraph (d)(2)(vi)(C) of this section with its timely filed U.S. income tax return for the taxable year of the transfer; and

(*iii*) The requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied with respect to the indirect transfer of stock in the domestic acquired corporation.

(*2*) Sections 367(a) and (d) shall not apply to transfers described in paragraph (d)(1)(vi) of this section if a U.S. person transfers assets to a foreign corporation in a section 351 exchange, to the extent that such assets are transferred by such foreign corporation to a domestic corporation in another section 351 exchange, but only if the domestic transferee's adjusted basis in the assets is not greater than the adjusted basis that the U.S. person had in such assets. Any increase in adjusted basis in the assets that results because the U.S. person recognized gain or income with respect to such assets in the initial section 351 exchange is not taken into account for purposes of determining whether the domestic transferee's adjusted basis in the assets is not greater than the U.S. person's adjusted basis in such assets. This paragraph (d)(2)(vi)(B)(*2*) will not, however, apply to an exchange described in section 351 that is also an exchange described in section 361(a) or (b). An exchange described in section 351 that is also an exchange described in section 361(a) or (b) is only eligible for the exception in paragraph (d)(2)(vi)(B)(*1*) of this section.

* * * * *

(3) * * *

Example 6B. Section 368(a)(1)(C) reorganization followed by a controlled asset

transfer to a domestic controlled corporation—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 6A,* of this section, except that R is a domestic corporation.

(ii) *Result.* As in paragraph (d)(3), *Example 6A,* of this section, the outbound transfer of the Business A assets to F is not affected by the rules of § 1.367–3(d) and is subject to the general rules under section 367. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). The Business B and C assets are part of an indirect stock transfer under § 1.367–3(d), but must first be tested under section 367(a) and (d). The Business B assets qualify for the active trade or business exception under section 367(a)(3); the Business C assets do not. However, pursuant to paragraph (d)(2)(vi)(B)(*1*) of this section, the Business B and C assets are not subject to section 367(a) or (d), provided that the basis of the Business B and C assets in the hands of R is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied, and Z attaches a statement described in paragraphs (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. V also is deemed to make an indirect transfer of Z stock under the rules of paragraph (d) of this section to the extent the assets are transferred to R. To preserve non-recognition treatment, and assuming the other requirements of paragraph (c) of this section are satisfied, V must enter into a gain recognition agreement in the amount of $50, which equals the aggregate gain in the Business B and C assets, because the transfer of those assets by Z was not taxable under section 367(a)(1) and constitute an indirect stock transfer.

Example 6C. Section 368(a)(1)(C) reorganization followed by a controlled asset transfer to a domestic controlled corporation—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 6B,* of this section, except that Z is owned by U.S. individuals, none of whom qualify as five-percent target shareholders with respect to Z within the meaning of paragraph (c)(5)(iii) of this section. The following additional facts are present. No U.S. persons that are either officers or directors of Z own any stock of F immediately after the transfer. F is engaged in an active trade or business outside the United States that satisfies the test set forth in paragraph (c)(3) of this section.

(ii) *Result.* The Business A assets transferred to F are not re-transferred to R and therefore Z's transfer of these assets is not subject to the rules of paragraph (d) of this section. However, gain must be recognized on the transfer of those assets under section 367(a)(1) because the section 367(a)(3) active trade or business exception is inapplicable pursuant to section 367(a)(5) and § 1.367(a)–7(b). The Business B and C assets are part of an indirect stock transfer under paragraph (d) of this section, but must first be tested with respect to Z under section 367(a) and (d), as provided in paragraph (d)(2)(vi) of this section. The transfer of the Business B assets (which otherwise would satisfy the section 367(a)(3) active trade or business exception) generally is subject to section 367(a)(1) pursuant to section 367(a)(5) and § 1.367(a)–7(b). The transfer of the Business C assets generally is subject to section 367(a)(1) because these assets do not qualify for the active trade or business exception under section 367(a)(3). However, pursuant to paragraph (d)(2)(vi)(B) of this section, the transfer of the Business B and C assets is not subject to sections 367(a)(1) and (d), provided the basis of the Business B and C assets in the hands of R is no greater than the basis in the hands of Z and certain other requirements are satisfied. Z may avoid immediate gain recognition under section 367(a) and (d) on the transfers of the Business B and Business C assets to F if, pursuant to paragraph (d)(2)(vi)(B) of this section, the indirect transfer of Z stock satisfies the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section, and Z attaches a statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. In general, the statement must contain a certification that, if F disposes of the stock of R (in a recognition or nonrecognition transaction) and a principal purpose of the transfer is the avoidance of U.S. tax that would have been imposed on Z on the disposition of the Business B and C assets transferred to R, then Z (or F on behalf of Z) will file a return (or amended return as the case may be) recognizing gain ($50), as if, immediately prior to the reorganization, Z transferred the Business B and C assets to a domestic corporation in exchange for stock in a transaction treated as a section 351 exchange and immediately sold such stock to an unrelated party for its fair market value. A transaction is deemed to have a principal purpose of U.S. tax avoidance if F disposes of R stock within two years of the transfer, unless Z (or F on behalf of Z) can rebut the presumption to the satisfaction of the Commissioner. See paragraph (d)(2)(vi)(D)(*2*) of this section. With respect to the indirect transfer of Z stock, assume the requirements of paragraphs (c)(1)(i), (ii), and (iv) of this section are satisfied. Thus, assuming Z attaches the statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return and satisfies the reporting requirements of paragraph (c)(6) of this section, the transfer of Business B and C assets is not subject to immediate gain recognition under section 367(a) or (d).

* * * * *

Example 9. Indirect stock transfer by reason of a controlled asset transfer—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 8,* of this section, except that R transfers the Business A assets to M, a wholly owned domestic subsidiary of R, in a controlled asset transfer. In addition, V's basis in its Z stock is $90.

(ii) *Result.* Pursuant to paragraph (d)(2)(vi)(B) of this section, sections 367(a) and (d) do not apply to Z's transfer of the Business A assets to R if M's basis in the Business A assets is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied, and Z includes a statement described in paragraph (d)(2)(vi)(C) of this section with its U.S. income tax return for the taxable year of the transfer. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), Z's transfer of the Business B assets to R (which are not re-transferred to M) qualifies for the active trade or business exception under section 367(a)(3). Pursuant to paragraphs (d)(1) and (d)(2)(vii)(A)(*1*) of this section, V is generally deemed to transfer the stock of a foreign corporation to F in a section 354 exchange subject to the rules of paragraphs (b) and (d) of this section, including the requirement that V enter into a gain recognition agreement and comply with the requirements of § 1.367(a)–8. However, pursuant to paragraph (d)(2)(vii)(B) of this section, paragraph (d)(2)(vii)(A) of this section does not apply to the extent of the transfer of business A assets by R to M, a domestic corporation. As a result, to the extent of the business A assets transferred by R to M, V is deemed to transfer the stock of Z (a domestic corporation) to F in a section 354 exchange subject to the rules of paragraphs (c) and (d) of this section. Thus, with respect to V's indirect transfer of stock of a domestic corporation to F, such transfer is not subject to gain recognition under section 367(a)(1) if the requirements of paragraph (c) of this section are satisfied, including the requirement that V enter into a gain recognition agreement (separate from the gain recognition agreement described above with respect to the deemed transfer of stock of a foreign corporation to F) and comply with the requirements of § 1.367(a)–8. Under paragraphs (d)(2)(i) and (ii) of this section, the transferee foreign corporation is F and the transferred corporation is R (with respect to the transfer of stock of a foreign corporation) and M (with respect to the transfer of stock of a domestic corporation). Pursuant to paragraph (d)(2)(iv) of this section, a disposition by F of the stock of R would trigger both gain recognition agreements. In addition, a disposition by R of the stock of M would trigger the gain recognition agreement filed with respect to the transfer of the stock of a domestic corporation. To determine whether there is a triggering event under § 1.367(a)–8(j)(2)(i) for the gain recognition agreement filed with respect to the transfer of stock of the domestic corporation, the Business A assets in M must be considered. To determine whether there is such a triggering event for the gain recognition agreement filed with respect to the transfer of stock of the foreign corporation, the Business B assets in R must be considered.

* * * * *

(e) *Transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange*—(1) *Overview*—(i) *Scope and definitions.* This paragraph (e) applies to a domestic corporation (U.S. transferor) that transfers stock or securities of a domestic or foreign corporation (transferred stock or securities) to a foreign corporation (foreign acquiring corporation) in a section 361 exchange. Except as otherwise provided in this

paragraph (e), paragraphs (b) and (c) of this section do not apply to the U.S. transferor's transfer of the transferred stock or securities in the section 361 exchange. For purposes of this paragraph (e), the definitions of control group, control group member, and non-control group member in § 1.367(a)–7(f)(1), ownership interest percentage in § 1.367(a)–7(f)(7), section 361 exchange in § 1.367(a)–7(f)(8), and U.S. transferor shareholder in § 1.367(a)–7(f)(13), apply.

(ii) *Ordering rules.* Except as otherwise provided, this paragraph (e) applies to the transfer of the transferred stock or securities in the section 361 exchange prior to the application of any other provision of section 367 to such transfer. Furthermore, any gain recognized (including gain treated as a deemed dividend pursuant to section 1248(a)) by the U.S. transferor under this paragraph (e) shall be taken into account for purposes of applying any other provision of section 367 (including §§ 1.367(a)–6, 1.367(a)–7, and 1.367(b)–4) to the transfer of the transferred stock or securities.

(2) *General rule.* Except as provided in paragraph (e)(3) of this section, the transfer by the U.S. transferor of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange shall be subject to section 367(a)(1), and therefore the U.S. transferor shall recognize any gain (but not loss) realized with respect to the transferred stock or securities. Realized gain is recognized pursuant to the prior sentence notwithstanding that the transfer is described in any other nonrecognition provision enumerated in section 367(a)(1) (such as section 351 or 354).

(3) *Exception.* The general rule of paragraph (e)(2) of this section shall not apply if the conditions of paragraphs (e)(3)(i), (ii), and (iii) of this section are satisfied.

(i) The conditions set forth in § 1.367(a)–7(c) are satisfied with respect to the section 361 exchange.

(ii) If the transferred stock or securities are of a domestic corporation, the U.S. target company (as defined in paragraph (c)(1) of this section) complies with the reporting requirements of paragraph (c)(6) of this section, and the conditions of paragraphs (c)(1)(i), (ii), and (iv) of this section are satisfied with respect to the transferred stock or securities.

(iii) If the U.S. transferor owns (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer of the transferred stock or securities in the section 361 exchange, then the conditions set forth in paragraphs (e)(3)(iii)(A), (B), and (C) of this section are satisfied.

(A) Except as otherwise provided in this paragraph (e)(3)(iii)(A), each U.S. transferor shareholder that is a qualified U.S. person (as defined in paragraph (e)(6)(vii) of this section) owning (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the reorganization enters into a gain recognition agreement that satisfies the conditions of paragraph (e)(6) of this section and § 1.367(a)–8. A U.S. transferor shareholder is not required to enter into a gain recognition agreement pursuant to this paragraph if the amount of gain that would be subject to the gain recognition agreement (as determined under paragraph (e)(6)(i) of this section) is zero.

(B) With respect to non-control group members that are not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the aggregate ownership interest percentage of such non-control group members multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(C) With respect to each control group member that is not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the ownership interest percentage of such control group member multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(4) *Application of certain rules at U.S. transferor-level.* For purposes of paragraphs (c)(5)(iii) and (e)(3)(ii) and (iii) of this section, ownership of the stock of the transferee foreign corporation is determined by reference to stock owned by the U.S. transferor immediately after the transfer of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange, but prior to and without taking into account the U.S. transferor's distribution under section 361(c)(1) of the stock received.

(5) *Transferee foreign corporation*—(i) *General rule.* Except as provided in paragraph (e)(5)(ii) of this section, the transferee foreign corporation for purposes of applying paragraph (e) of this section and § 1.367(a)–8 shall be the foreign corporation that issues stock or securities to the U.S. transferor in the section 361 exchange.

(ii) *Special rule for triangular asset reorganizations involving the receipt of stock or securities of a domestic corporation.* In the case of a triangular asset reorganization described in § 1.358–(6)(b)(2)(i), (ii), or (iii) or (b)(2)(v) (triangular asset reorganization) in which the U.S. transferor receives stock or securities of a domestic corporation that is in control (within the meaning of section 368(c)) of the foreign acquiring corporation, the transferee foreign corporation shall be the foreign acquiring corporation.

(6) *Special requirements for gain recognition agreements.* A gain recognition agreement filed by a U.S. transferor shareholder pursuant to paragraph (e)(3)(iii)(A) of this section is, in addition to the terms and conditions of § 1.367(a)–8, subject to the conditions of this paragraph (e)(6).

(i) The amount of gain subject to the gain recognition agreement shall equal the product of the ownership interest percentage of the U.S. transferor shareholder multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities, reduced (but not below zero) by the sum of the amounts described in paragraphs (e)(6)(i)(A),(B), (C), and (D) of this section.

(A) Gain recognized by the U.S. transferor with respect to the transferred stock or securities under section 367(a)(1) (including any portion treated as a deemed dividend under section 1248(a)) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–7(c)(2) or (e)(5).

(B) A deemed dividend included in the income of the U.S. transferor with respect to the transferred stock under § 1.367(b)–4(b)(1)(i) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–7(e)(4).

(C) If the U.S. transferor shareholder is subject to an election under § 1.1248(f)–2(c)(1), a deemed dividend included in the income of the U.S. transferor pursuant to § 1.1248(f)–2(c)(3) that is attributable to the U.S. transferor shareholder.

(D) If the U.S. transferor shareholder is not subject to an election under § 1.1248(f)–2(c)(1), the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the stock of each foreign corporation transferred in the section 361 exchange attributable to the U.S. transferor shareholder.

(ii) The gain recognition agreement shall include the election described in § 1.367(a)–8(c)(2)(vi).

(iii) The gain recognition agreement shall designate the U.S. transferor

shareholder as the U.S. transferor for purposes of § 1.367(a)–8.

(iv) If the transfer of the transferred stock or securities in the section 361 exchange is pursuant to a triangular asset reorganization, the gain recognition agreement shall include appropriate provisions that are consistent with the principles of § 1.367(a)–8 for gain recognition agreements involving multiple parties. See § 1.367(a)–8(j)(9).

(v) The gain recognition agreement shall not be eligible for termination upon a taxable disposition pursuant to § 1.367(a)–8(o)(1) unless the value of the stock or securities received by the U.S. transferor shareholder in exchange for the stock or securities of the U.S. transferor under section 354 or 356 is at least equal to the amount of gain subject to the gain recognition agreement filed by such U.S. transferor shareholder.

(vi) Except as otherwise provided in this paragraph (e)(6)(vi), if gain is subsequently recognized by the U.S. transferor shareholder under the terms of the gain recognition agreement pursuant to § 1.367(a)–8(c)(1)(i), the increase in stock basis provided under § 1.367(a)–8(c)(4)(i) with respect to the stock received by the U.S. transferor shareholder shall not exceed the amount of the stock basis adjustment made pursuant to § 1.367(a)–7(c)(3) with respect to the stock received by the U.S. transferor shareholder. This paragraph (e)(6)(vi) shall not apply if the U.S. transferor shareholder and the U.S. transferor are members of the same consolidated group at the time of the reorganization.

(vii) For purposes of this section, a qualified U.S. person means a U.S. person, as defined in § 1.367(a)–1T(d)(1), but for this purpose does not include domestic partnerships, regulated investment companies (as defined in section 851(a)), real estate investment trusts (as defined in section 856(a)), and S corporations (as defined in section 1361(a)).

(7) *Gain subject to section 1248(a).* If the U.S. transferor recognizes gain under paragraphs (e)(3)(iii)(B) or (C) of this section with respect to transferred stock that is stock in a foreign corporation to which section 1248(a) applies, then the portion of such gain treated as a deemed dividend under section 1248(a) is the product of the amount of the gain multiplied by the section 1248(a) ratio. The section 1248(a) ratio is the ratio of the amount that would be treated as a deemed dividend under section 1248(a) if all the gain in the transferred stock were recognized to the amount of gain realized in all the transferred stock.

(8) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. Except as otherwise indicated: US1, US2, and UST are domestic corporations that are not members of a consolidated group; X is a United States citizen; US1, US2, and X are unrelated parties; CFC1, CFC2, and FA are foreign corporations; each corporation described herein has a single class of stock issued and outstanding and a tax year ending on December 31; the section 1248 amount (within the meaning of § 1.367(b)–2(c)) with respect to the stock of CFC1 and CFC2 is zero; Asset A is section 367(a) property that, but for the application of section 367(a)(5), would qualify for the active foreign trade or business exception under § 1.367(a)–2T; the requirements of § 1.367(a)–7(c)(2) through (5) are satisfied with respect to a section 361 exchange; the provisions of § 1.367(a)–6T (regarding branch loss recapture) are not applicable; and none of the foreign corporations in the examples is a surrogate foreign corporation (within the meaning of section 7874) as a result of the transactions described in the examples because one or more of the conditions of section 7874(a)(2)(B) is not satisfied.

Example 1. U.S. transferor owns less than 5% of stock of transferee foreign corporation—(i) *Facts.* US1, US2, and X own 80%, 5%, and 15%, respectively, of the stock of UST with a fair market value of $160x, $10x, and $30x, respectively. UST has two assets, Asset A and 100% of the stock of CFC1. UST has no liabilities. Asset A has a $150x basis and $100x fair market value (as defined in § 1.367(a)–7(f)(3)), and the CFC1 stock has a $0x basis and $100x fair market value. UST transfers Asset A and the CFC1 stock to FA solely in exchange for $200x of FA voting stock in a reorganization described in section 368(a)(1)(C). UST's transfer of Asset A and the CFC1 stock to FA qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to the plan of reorganization, and liquidates. US1 receives $160x of FA stock, US2 receives $10x of FA stock, and X receives $30x of FA stock in exchange for the UST stock. Immediately after the transfer of Asset A and the CFC1 stock to FA in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of FA.

(ii) *Result*—(A) UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirements of paragraph (e)(3) of this section are satisfied. First, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of § 1.367(a)–7(c)(2) through (5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 85% of the stock of UST immediately before the reorganization. Second, the requirement of paragraph (e)(3)(ii) of this section is not applicable because that paragraph applies to the transfer of stock of a domestic corporation and CFC1 is a foreign corporation. Third, paragraph (e)(3)(iii) of this section is not applicable because immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or the total value of the stock of FA. See paragraph (e)(4) of this section. Accordingly, UST does not recognize the $100x of gain realized in the CFC1 stock pursuant to this section.

(B) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain (as defined in § 1.367(a)–7(f)(5)) attributable to non-control group members (X), or $7.50x. The $7.50x of gain is computed as the product of the inside gain ($50x) multiplied by X's ownership interest percentage in UST (15%). Pursuant to § 1.367(a)–7(f)(5), the $50x of inside gain is the amount by which the aggregate fair market value ($200x) of the section 367(a) property (as defined in § 1.367(a)–7(f)(10), or Asset A and the CFC1 stock) exceeds the sum of the inside basis ($150x) of such property and the product of the section 367(a) percentage (as defined in § 1.367(a)–7(f)(9), or 100%) multiplied by UST's deductible liabilities (as defined in § 1.367(a)–7(f)(2), or $0x). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($150x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $7.50x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock, as determined under section 362 is increased by the $7.50x of gain recognized by UST. See § 1.367(a)–1(b)(4)(i)(B).

(C) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable

because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(B) of this *Example 1,* the inside gain is $50x. US1's attributable inside gain of $40x (equal to the product of $50x inside gain multiplied by US1's 80% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $160x (equal to the product of the section 367(a) percentage of 100% multiplied by $160x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $2.50x (equal to the product of $50x inside gain multiplied by US2's 5% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $10x (equal to the product of the section 367(a) percentage of 100% multiplied by $10x fair market value of FA stock received by US2).

(D) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

Example 2. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation—(i) *Facts.* The facts are the same as in paragraph (e), *Example 1,* of this section except that immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST owns (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the stock of FA. Furthermore, immediately after the reorganization, US1 and X (but not US2) each own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or value of the stock of FA.

(ii) *Result*—(A) As is the case with paragraph (e), *Example 1,* of this section, UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. In addition, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. For the same reasons provided in *Example 1,* the requirement in paragraph (e)(3)(i) of this section is satisfied and the requirement of paragraph (e)(3)(ii) of this section is not applicable.

(B) Unlike paragraph (e), *Example 1,* of this section, however, UST owns 5% or more of the voting power or value of the stock of FA immediately after the transfer of the CFC1 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section US1 and X must enter into gain recognition agreements that satisfy the requirements of paragraph (e)(6) of this section and § 1.367(a)–8. See paragraph (ii)(G) of this *Example 2* for the computation of the amount of gain subject to each gain recognition agreement.

(C) In order to meet the requirements of paragraph (e)(3)(iii)(C) of this section, UST must recognize $5x of gain attributable to US2 (computed as the product of the $100x of gain realized with respect to the transfer of the CFC1 stock multiplied by the 5% ownership interest percentage of US2). The $5x of gain recognized is not included in the computation of inside basis (see § 1.367(a)–7(f)(4)(i)), but reduces (but not below zero) the amount of gain recognized by UST pursuant to § 1.367(a)–7(c)(2)(ii) that is attributable to US2. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $5x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B). Assuming US1 and X enter into the gain recognition agreements described in paragraph (ii)(B) of this *Example 2,* and UST recognizes the $5x of gain described in this example, the requirements of paragraph (e)(3) of this section are satisfied and, accordingly, UST does not recognize the remaining $95x of gain realized in the CFC1 stock pursuant to this section.

(D) As described in paragraph (ii)(B) of *Example 1* of this paragraph (e), UST must recognize $7.50x of gain pursuant to § 1.367(a)–7(c)(2)(i), the amount of the $50x of inside gain attributable to X. Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $7.50x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B).

(E) As described in paragraph (ii)(C) of *Example 1* of this paragraph (e), the requirement to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) is not applicable because the attributable inside gain of US1 and US2 can be preserved in the stock received by each shareholder. However, if UST were required to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) for inside gain attributable to US2 (for example, if US2 received solely cash rather than FA stock in the reorganization), the amount of such gain would be reduced (but not below zero) by the amount of gain recognized by UST pursuant to paragraph (e)(3)(iii)(C) of this section that is attributable to US2 (computed as $5x in paragraph (ii)(C) of this *Example 2*). See § 1.367(a)–7(c)(2)(ii)(A)(*1*).

(F) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

(G) The amount of gain subject to the gain recognition agreement filed by each of US1 and X is determined pursuant to paragraph (e)(6)(i) of this section. With respect to US1, the amount of gain subject to the gain recognition agreement is $80x. The $80x is computed as the product of US1's ownership interest percentage (80%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section attributable to US1 ($0x). With respect to X, the amount of gain subject to the gain recognition agreement is $7.50x. The $7.50x is computed as the product of X's ownership interest percentage (15%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section attributable to X ($7.50x, as computed in paragraph (ii)(D) of this *Example 2*).

(H) In order the meet the requirements of paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and X must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

Example 3. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation; interaction with section 1248(f)—(i) *Facts.* US1, US2, and X own 50%, 30%, and 20%, respectively, of the stock of UST. The UST stock owned by US1 has a $180x basis and $200x fair market value; the UST stock owned by US2 has a $100x basis and $120x fair market value; and the UST stock owned by X has a $80x fair market value. UST owns Asset A, and all the stock of CFC1 and CFC2. UST has no liabilities. Asset A has a $10x basis and $200x fair market value. The CFC1 stock is a single block of stock (as defined in § 1.1248(f)–1(c)(2)) with a $20x basis, $40x fair market value, and $30x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount (as defined in § 1.1248(f)–1(c)(9)) is $20x). The CFC2 stock is also a single block of stock with a $30x basis, $160x fair market value, and $150x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount is $130x). On December 31, Year 3, in a reorganization described in section 368(a)(1)(D), UST transfers the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for 60 shares of FA stock with a $400x fair market value. UST's transfer of the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for the 60 shares of FA stock qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to section 361(c)(1). US1, US2, and X exchange their UST stock for 30, 18, and 12 shares, respectively, of FA stock pursuant to section 354. Immediately after the reorganization, FA has 100 shares of stock outstanding, and US1 and US2 are each a section 1248 shareholder with respect to FA.

(ii) *Result*—(A) UST's transfer of the CFC1 stock and CFC2 stock to FA in the section 361 exchange is subject to the provisions of

this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock and CFC2 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $20x on the transfer of the CFC1 stock (the excess of $40x fair market value over $20x basis) and the gain realized of $130x on the transfer of the CFC2 stock (the excess of $160x fair market value over $30x basis), subject to the application of section 1248(a), unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of § 1.367(a)–7(c)(2) through (5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 80% of the UST stock immediately before the reorganization. The requirement of paragraph (e)(3)(ii) of this section is not applicable because paragraph (e)(3)(ii) applies to the transfer of stock of a domestic corporation, and CFC1 and CFC2 are foreign corporations. UST owns 5% or more of the total voting power or value of the stock of FA (60%, or 60 of the 100 shares of FA stock outstanding) immediately after the transfer of the CFC1 stock and CFC2 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock and CFC2 stock. US1, US2, and X each own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the FA stock immediately after the reorganization, or 30%, 18%, and 12%, respectively. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section, US1 and US2 must enter into gain recognition agreements with respect to the CFC1 stock and CFC2 stock that satisfy the requirements of paragraph (e)(6) of this section and § 1.367(a)–8. X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is zero. See paragraph (ii)(J) of this *Example 3* for the computation of the amount of gain subject to each gain recognition agreement. Assuming US1 and US2 enter into the gain recognitions agreements described above, the requirements of paragraph (e)(3) of this section are satisfied and accordingly, UST does not recognize the gain realized of $20x in the stock of CFC1 or the gain realized of $130x in the stock of CFC2 pursuant to this section.

(B) UST's transfer of the CFC1 stock and CFC2 stock to FA pursuant to the section 361 exchange is subject to § 1.367(b)–4(b)(1)(i), which applies prior to the application of § 1.367(a)–7(c). See paragraph (e)(1) of this section. UST (the exchanging shareholder) is a U.S. person and a section 1248 shareholder with respect to CFC1 and CFC2 (each a foreign acquired corporation). However, UST is not required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock ($20x) or CFC2 stock ($130x) under § 1.367(b)–4(b)(1)(i) because, immediately after UST's section 361 exchange of the CFC1 stock and CFC2 stock for FA stock (and before the distribution of the FA stock to US1, US2, and X under section 361(c)(1), FA, CFC1, and CFC2 are controlled foreign corporations as to which UST is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(ii)(A). However, if UST were required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock or CFC2 stock (for example, if FA were not a controlled foreign corporation), such deemed dividend would be taken into account prior to the application of § 1.367(a)–7(c). Furthermore, because US1, US2, and X are all persons described in paragraph (e)(3)(iii)(A) of this section, any such deemed dividend would increase inside basis. See § 1.367(a)–7(f)(4).

(C) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain attributable to non-control group members (X), or $68x. The $68x of gain is computed as the product of the inside gain ($340x) multiplied by X's ownership interest percentage in UST (20%), reduced (but not below zero) by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(i)(A) through (C). Pursuant to § 1.367(a)–7(f)(5), the $340x of inside gain is the amount by which the aggregate fair market value ($400x) of the section 367(a) property (Asset A, CFC1 stock, and CFC2 stock) exceeds the sum of the inside basis ($60x) and $0x (the product of the section 367(a) percentage (100%) multiplied by UST's deductible liabilities ($0x)). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($60x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $68x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Under § 1.367(a)–7(e)(1), the $68x gain recognized is treated as being with respect to the CFC1 stock, CFC2 stock, and Asset A in proportion to the amount of gain realized by UST on the transfer of the property. The amount treated as recognized with respect to the CFC1 stock is $4x ($68x gain multiplied by $20x/$340x). The amount treated as recognized with respect to the CFC2 stock is $26x ($68x gain multiplied by $130x/$340x). The amount treated as recognized with respect to Asset A is $38x ($68x gain multiplied by $190x/$340x). Under section 1248(a), UST must include in gross income as a dividend the $4x gain recognized with respect to the CFC1 stock and the $26x gain recognized with respect to CFC2 stock. Furthermore, FA's basis in the CFC1 stock, CFC2 stock, and Asset A, as determined under section 362, is increased by the amount of gain recognized by UST with respect to such property. See § 1.367(a)–1(b)(4)(i)(B). Thus, FA's basis in the CFC1 stock is $24x ($20x increased by $4x of gain), the CFC2 stock is $56x ($30x increased by $26x of gain), and Asset A is $48x ($10x increased by $38x of gain).

(D) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(C) of this Example 3, the inside gain is $340x. US1's attributable inside gain of $170x (equal to the product of $340x inside gain multiplied by US1's 50% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $200x (equal to the product of the section 367(a) percentage of 100% multiplied by $200x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $102x (equal to the product of $340x inside gain multiplied by US2's 30% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $120x (equal to the product of the section 367(a) percentage of 100% multiplied by $120x fair market value of FA stock received by US2).

(E) Each control group member (US1 and US2) separately computes any required adjustment to stock basis under § 1.367(a)–7(c)(3). US1's section 358 basis in the FA stock received of $180x (equal to US1's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US1, less any gain recognized with respect to US1 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US1 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $170x with respect to US1 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US1's outside gain (as defined in § 1.367(a)–7(f)(6)) in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $200x fair market value and $180x section 358 basis in the FA stock). Thus, US1's $180x section 358 basis in the FA stock must be reduced by $150x (the excess of $170x attributable inside gain, reduced by $0x, over $20x outside gain) to $30x. Similarly, US2's section 358 basis in the FA stock received of $100x (equal to US2's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US2, less any gain recognized with respect to US2 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US2 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $102x with respect to US2 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US2's outside gain in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $120x fair market value and $100x section 358 basis in FA stock). Thus, US2's $100x section 358 basis in the FA stock must be reduced by $82x (the excess of $102x attributable inside gain, reduced by $0x, over $20x outside gain) to $18x.

(F) UST's distribution of the FA stock to US1, US2, and X under section 361(c)(1)

(new stock distribution) is subject to § 1.1248(f)–1(b)(3). Except as provided in § 1.1248(f)–2(c), under § 1.1248(f)–1(b)(3) UST must include in gross income as a dividend the total section 1248(f) amount (as defined in § 1.1248(f)–1(c)(14)). The total section 1248(f) amount is $120x, the sum of the section 1248(f) amount (as defined in § 1.1248(f)–1(c)(10)) with respect to the CFC1 stock ($16x) and CFC2 stock ($104x). The $16x section 1248(f) amount with respect to the CFC1 stock is the amount that UST would have included in income as a dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) allocable to the CFC1 stock and treated as a dividend under section 1248(a) ($4x, as described in paragraph (ii)(C) of this *Example 3*). Similarly, the section 1248(f) amount with respect to the CFC2 stock is $104x ($130x reduced by $26x).

(G) If, however, UST along with US1 and US2 (each a section 1248 shareholder of FA immediately after the distribution) elect to apply the provisions of § 1.1248(f)–2(c) (as provided in § 1.1248(f)–2(c)(1)), the amount that UST is required to include in income as a dividend under § 1.1248(f)–1(b)(3) ($120x total section 1248(f) amount as computed in paragraph (ii)(F) of this *Example 3*) is reduced by the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that is attributable (under the rules of § 1.1248(f)–2(d)) to the FA stock distributed to US1 and US2. Assume that the election is made to apply § 1.1248(f)–2(c).

(*1*) Under § 1.1248(f)–2(d)(1), the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributed to the 30 shares of FA stock distributed to US1 is equal to the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the CFC1 stock that is attributable to US1's ownership interest percentage in UST. US1's hypothetical section 1248 amount with respect to the CFC1 stock is the amount that UST would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x) and that would be attributable to US1's ownership interest percentage in UST (50%), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) attributable to US1 and allocable to the CFC1 stock, but only to the extent such gain is treated as a dividend under section 1248(a) ($0x, as described in paragraphs (ii)(C) and (D) of this *Example 3*). Thus, US1's hypothetical section 1248 amount with respect to the CFC1 stock is $10x ($20x multiplied by 50%, reduced by $0x). The $10x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 30 shares of FA stock distributed to US1, and the attributable share amount (as defined in § 1.1248(f)–2(d)(1)) is $.33x ($10x/30 shares). Similarly, US1's hypothetical section 1248 amount with respect to the CFC2 stock is $65x ($130x multiplied by 50%, reduced by $0x), and the attributable share amount is $2.17x ($65x/30 shares). Similarly, US2's hypothetical section 1248 amount with respect to the CFC1 stock is $6x ($20x multiplied by 30%, reduced by $0x), and the attributable share amount is also $.33x ($6x/18 shares). Finally, US2's hypothetical section 1248 amount with respect to the CFC2 stock is $39x ($130x multiplied by 30%, reduced by $0x), and the attributable share amount is also $2.17x ($39x/18 shares). Thus, the sum of the portion of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock attributable to shares of stock of FA distributed to US1 and US2 is $120x ($10x plus $65x plus $6x plus $39x).

(*2*) If the shares of FA stock are divided into portions, § 1.1248(f)–2(d)(2) applies to attribute the attributable share amount to portions of shares of FA stock distributed to US1 and US2. Under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the single block of stock of CFC1, one attributable to the single block of stock of CFC2, and one attributable to Asset A. Thus, the attributable share amount of $.33x with respect to the CFC1 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC1 stock. Similarly, the attributable share amount of $2.17x with respect to the CFC2 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC2 stock.

(*3*) The total section 1248(f) amount ($120x) that UST is otherwise required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is reduced by $120x, the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that are attributable to the shares of FA stock distributed to US1 and US2. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is $0x ($120x reduced by $120x).

(H) As stated in paragraph (ii)(G)(*2*) of this *Example 3,* under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the CFC1 stock, one attributable to the CFC2 stock, and one attributable to Asset A. Under § 1.1248(f)–2(c)(4)(i), the basis of each portion is the product of US1's and US2's section 358 basis in the share of FA stock multiplied by the ratio of the section 362 basis of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) received by FA in the section 361 exchange to which the portion relates, to the aggregate section 362 basis of all property received by FA in the section 361 exchange. Under § 1.1248(f)–2(c)(4)(ii), the fair market value of each portion is the product of the fair market value of the share of FA stock multiplied by the ratio of the fair market value of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) to which the portion relates, to the aggregate fair market value of all property received by FA in the section 361 exchange. The section 362 basis of the CFC1 stock, CFC2 stock, and Asset A is $24x, $56x, and $48x, respectively, for an aggregate section 362 basis of $128x. See paragraph (ii)(C) of this *Example 3.* The fair market value of the CFC1 stock, CFC2 stock, and Asset A is $40x, $160x, and $200x, for an aggregate fair market value of $400x. Furthermore, US1's 30 shares of FA stock have an aggregate fair market value of $200x and section 358 basis of $30x (resulting in aggregate gain of $170x), and US2's 18 shares of FA stock have an aggregate fair market value of $120x and section 358 basis of $18x (resulting in aggregate gain of $102x). See paragraph (ii)(E) of this *Example 3.*

(*1*) With respect to US1's 30 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $5.63x ($30x multiplied by $24x/$128x) and fair market value of $20x ($200x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $14.38x (or $.48x gain in each such portion of the 30 shares). The portions attributable to the CFC2 stock have an aggregate basis of $13.13x ($30x multiplied by $56x/$128x) and fair market value of $80x ($200x multiplied by $160x/$400x), resulting in aggregate gain in such portions of $66.88x (or $2.23x in each such portion of the 30 shares). The portions attributable to Asset A have an aggregate basis of $11.25x ($30x multiplied by $48x/$128x) and fair market value of $100x ($200x multiplied by $200x/$400x), resulting in aggregate gain in such portions of $88.75x (or $2.96x in each such portion of the 30 shares). Thus, the aggregate gain in all the portions of the 30 shares is $170x ($14.38x plus $66.88x plus $88.75x).

(*2*) With respect to US2's 18 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $3.38x ($18x multiplied by $24x/$128x) and fair market value of $12x ($120x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $8.63x (or $.48x in each such portion of the 18 shares). The portions attributable to the CFC2 stock have an aggregate basis of $7.88x ($18x multiplied by $56x/$128x) and fair market value of $48x ($120x multiplied by $160x/$400x), resulting in aggregate gain of $40.13x (or $2.23x in each such portion of the 18 shares). The portions attributable to Asset A have an aggregate basis of $6.75x ($18x multiplied by $48x/$128x) and fair market value of $60x ($120x multiplied by $200x/$400x), resulting in aggregate gain of $53.25x (or $2.96x in each such portion of the 18 shares). Thus, the aggregate gain in all the portions of the 18 shares is $102x ($8.63x plus $40.13x plus $53.25x).

(*3*) Under § 1.1248–8(b)(2)(iv), the earnings and profits of CFC1 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC1 stock is $15x (the product of US1's 50% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US1). The earnings and profits of CFC2 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC2 stock is $75x (the product of US1's 50% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of

dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US1). Similarly, the earnings and profits of CFC1 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC1 stock is $9x (the product of US2's 30% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US2). Finally, the earnings and profits of CFC2 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC2 stock is $45x (the product of US2's 30% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US2).

(I) Under § 1.1248(f)–2(c)(3), neither US1 nor US2 is required to reduce the aggregate section 358 basis in the portions of their respective shares of FA stock, and UST is not required to include in gross income any additional deemed dividend.

(*1*) US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC1 stock because the $10x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount (as defined in § 1.1248(f)–1(c)(6), or $14.38x) in those portions. The $14.38x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($20x fair market value, $5.63x basis, and $15x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC2 stock because the $65x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount ($66.88x) in those portions. The $66.88x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($80x fair market value, $13.13x basis, and $75x earnings and profits attributable to the portions for purposes of section 1248).

(*2*) US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC1 stock because the $6x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of FA stock received by US2 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US2's postdistribution amount ($8.63x) in those portions. The $8.63x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($12x fair market value, $3.38x basis, and $9x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC2 stock because the $39x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US2 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount ($40.13x) in those portions. The $40.13x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($48x fair market value, $7.88x basis, and $45x earnings and profits attributable to the portions for purposes of section 1248).

(J) The amount of gain subject to the gain recognition agreement filed by each of US1 and US2 is determined pursuant to paragraph (e)(6)(i) of this section. The amount of gain subject to the gain recognition agreement filed by US1 with respect to the stock of CFC1 and CFC2 is $10x and $65x, respectively. The $10x and $65x are computed as the product of US1's ownership interest percentage (50%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US1 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). The amount of gain subject to the gain recognition agreement filed by US2 with respect to the stock of CFC1 and CFC2 is $6x and $39x, respectively. The $6x and $39x are computed as the product of US2's ownership interest percentage (30%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US2 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is $0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock, computed as X's ownership percentage (20%) multiplied by the gain realized in the stock of CFC1 ($20x multiplied by 20%, or $4x) and CFC2 ($130x multiplied by 20%, or $26x), reduced by the amount of gain recognized by UST with respect to the stock of CFC1 and CFC2 that is attributable to X pursuant to § 1.367(a)–7(c)(2) ($4x and $26x, respectively, as determined in paragraph (ii)(C) of this *Example 3*). Pursuant to paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and US2 must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

(9) *Illustration of rules.* For rules relating to certain distributions of stock of a foreign corporation by a domestic corporation, see section 1248(f) and §§ 1.1248(f)–1 through 1.1248(f)–3.

* * * * *

(g) * * *

(1) * * *

(vii) * * *

(A) Except as provided in this paragraph (g)(1)(vii), the rules of paragraph (e) of this section apply to transfers of stock or securities occurring on or after April 17, 2013. For matters covered in this section for periods before April 17, 2013, but on or after March 13, 2009, see § 1.367(a)–3(e) as contained in 26 CFR part 1 revised as of April 1, 2012. For matters covered in this section for periods before March 13, 2009, but on or after March 7, 2007, see § 1.367(a)–3T(e) as contained in 26 CFR part 1 revised as of April 1, 2007. For matters covered in this section for periods before March 7, 2007, but on or after July 20, 1998, see § 1.367(a)–8(f)(2)(i) as contained in 26 CFR part 1 revised as of April 1, 2006.

* * * * *

(ix) Paragraphs (d)(2)(vi)(B)(*1*)(*i*) and (*iii*), (d)(2)(vi)(B)(*2*), and (d)(3), *Examples 6B, 6C,* and *9* of this section apply to transfers that occur on or after March 18, 2013. See paragraphs (d)(2)(vi)(B)(*1*)(*i*) and (*iii*), (d)(2)(vi)(B)(*2*), and (d)(3), *Examples 6B, 6C,* and *9* of this section, as contained in 26 CFR part 1 revised as of April 1, 2012, for transfers that occur on or after January 23, 2006, and before March 18, 2013. Paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section applies to statements that are required to be filed on or after November 19, 2014. See paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section, as

contained in 26 CFR part 1 revised as of April 1, 2014, for statements required to be filed on or after March 18, 2013, and before November 19, 2014.

* * * * *

§ 1.367(a)–3T [Removed]

■ Par. 3. Section 1.367(a)–3T is removed.

■ Par. 4. Section 1.367(a)–6 is added to read as follows:

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

(a) through (e)(3) [Reserved]. For further guidance, see § 1.367(a)–6T(a) through (e)(3).

(4) *Gain recognized under section 367(a).* The previously deducted branch losses shall be reduced by any gain recognized pursuant to section 367(a)(1) (other than by reason of the provisions of this section) upon the transfer of the assets of the foreign branch to the foreign corporation. For transactions occurring on or after April 17, 2013, notwithstanding the prior sentence, this paragraph (e)(4) shall apply before the rules of § 1.367(a)–7(c).

(e)(5) through (i) [Reserved]. For further guidance, see § 1.367(a)–6T(e)(5) through (i).

§ 1.367(a)–6T [Amended]

■ Par. 5. Section 1.367(a)–6T is amended by removing and reserving paragraph (e)(4) and removing paragraph (j).

■ Par. 6. Section 1.1248(f)–3 is revised by adding paragraph (a) and adding a sentence at the end of paragraph (b)(1) to read as follows:

§ 1.1248(f)–3 Reasonable cause and effective/applicability dates.

(a) *Reasonable cause for failure to comply*—(1) *Request for relief.* If an 80-percent distributee, a distributee that is a section 1248 shareholder, or the domestic distributing corporation (reporting person) fails to timely comply with any requirement under § 1.1248(f)–2, the failure shall be deemed not to have occurred if the reporting person is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (a)(2) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (Director) based on all the facts and circumstances.

(2) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(i) *Time of submission.* A reporting person's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the reporting person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(ii) *Notice requirement.* In addition to the requirements of paragraph (a)(2)(i) of this section, the reporting person must comply with the notice requirements of this paragraph (a)(2)(ii). If any taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(b) * * *

(1) * * * The provisions of § 1.1248(f)–3(a) apply to distributions occurring on or after April 17, 2013.

* * * * *

§ 1.1248(f)–3T [Removed]

■ Par. 7. Section 1.1248(f)–3T is removed.

■ Par. 8. Section 1.6038B–1 is amended by:

■ 1. Removing ''or § 1.367(a)–3T'' from paragraph (c)(4)(ii).

■ 2. Revising paragraph (f)(3).

The revision reads as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(f) * * *

(3) *Reasonable cause for failure to comply*—(i) *Request for relief.* If the U.S. transferor fails to comply with any requirement of section 6038B and this section, the failure shall be deemed not to have occurred if the U.S. transferor is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (f)(3)(ii) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (Director) based on all the facts and circumstances.

(ii) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(A) *Time of submission.* A U.S. transferor's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(B) *Notice requirement.* In addition to the requirements of paragraph (f)(3)(ii)(A) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (f)(3)(ii)(B). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

* * * * *

§ 1.6038B–1T [Amended]

■ Par. 9. Section 1.6038B–1T is amended by removing and reserving paragraphs (c)(4)(ii)(B) and (f)(3).

§§ 1.367(a)–2T, 1.367(a)–3, 1.367(a)–4T, 1.367(a)–7, 1.367(a)-8, 1.367(b)–4, 1.367(e)–1, 1.1248(f)–1, 1.1248(f)–2, 1.6038B–1, 1.6038B–1T [Amended]

■ Par. 10. For each section listed in the table, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
§ 1.367(a)–2T(a)(2), fourth sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–3(d)(3), *Example 12*(ii), third sentence	§ 1.367(a)–3T(e)(3)	§ 1.367(a)–3(e)(3).
§ 1.367(a)–4T(d), first sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–7(c) introductory text, second sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–7(c)(2)(i)(A), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(c)(2)(ii)(A)(*1*), first sentence	§ 1.367(a)–3T(e)(3)(iii)(C)	§ 1.367(a)–3(e)(3)(iii)(C).
§ 1.367(a)–7(c)(3)(v), first sentence	§ 1.367(a)–3T(e)(8)	§ 1.367(a)–3(e)(8).
§ 1.367(a)–7(c)(4)(ii), first sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–7(e)(1), fourth sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(i), paragraph heading	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(i), last sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(ii), last sentence	§ 1.367(a)–3T(e)(7)	§ 1.367(a)–3(e)(7).
§ 1.367(a)–7(e)(4)(ii), last sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(i), paragraph heading	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(i), last sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–3T(e)(7)	§ 1.367(a)–3(e)(7).
§ 1.367(a)–7(f)(4), last sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(f)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(f)(4)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(f)(4)(iii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(g) introductory text, second sentence	§ 1.367(a)–3T(e)(8)	§ 1.367(a)–3(e)(8).
§ 1.367(a)–7(h), second sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–8(c)(6), first sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.367(a)–8(j)(9), first sentence	§ 1.367(a)–3T(e)(6)(iv)	§ 1.367(a)–3(e)(6)(iv).
§ 1.367(b)–4(b)(1)(iii) *Example 4*(i), ninth sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.367(b)–4(b)(1)(iii), *Example 4*(i), tenth sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
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John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Dated: March 11, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–06404 Filed 3–18–16; 4:15 pm]

BILLING CODE 4830–01–P

Proposed Rules

Federal Register
Vol. 81, No. 55
Tuesday, March 22, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3781; Directorate Identifier 2015–SW–048–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109A, A109A II, A109C, A109E, A109K2, A109S and AW109SP helicopters. This proposed AD would require visually inspecting the tail rotor drive shaft assembly (drive shaft) for a crack. This proposed AD is prompted by the discovery of three cracks on the drive shaft of a Model A109S helicopter. The proposed actions are intended to detect a crack on the drive shaft to prevent failure of the driveshaft, failure of the tail rotor, and subsequent loss of helicopter control.

DATES: We must receive comments on this proposed AD by May 23, 2016.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3781; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

FOR FURTHER INFORMATION CONTACT: Martin R. Crane, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *martin.r.crane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

EASA, which is the aviation authority for Italy, has issued AD No. 2015–0054, dated March 27, 2015, to correct an unsafe condition for Model A109A with retrofit kit part number 109–0820–27–101 installed, and Model A109A II, A109C, A109E, A109K2, A109LUH, A109S, and AW109SP helicopters.

EASA advises that during scheduled maintenance on a Model A109S helicopter, three cracks were found on the drive shaft. An investigation could not determine the cause of the cracking but concluded it could not have been caused by fatigue. This condition, if not detected and corrected, could lead to tail rotor failure, possibly resulting in loss of helicopter control, EASA advises. EASA AD No. 2015–0054 consequently requires a one-time inspection of the drive shaft, and replacing the drive shaft if cracks are found.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed AgustaWestland Bollettino Tecnico (BT) No. 109–147 for Model A109A helicopters with retrofit kit P/N 109–0820–27–101 installed, Model A109A II, and Model A109C helicopters; BT No. 109EP–143 for Model A109E helicopters; BT No. 109K–68 for Model A109K2 helicopters; BT No. 109S–067 for Model A109S

helicopters; and BT No. 109SP–094 for Model AW109SP helicopters. All of the BTs are dated March 25, 2015. AgustaWestland reports that during a scheduled servicing of an A109S helicopter, three cracks were found on drive shaft P/N 109–8412–02–1. The BTs prescribe a one-time drive shaft inspection for cracks.

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

Proposed AD Requirements

This proposed AD would require, within 50 hours time-in-service, visually inspecting the drive shaft for a crack and replacing the drive shaft if it is cracked.

Differences Between This Proposed AD and the EASA AD

The EASA AD applies to Agusta Model A109LUH helicopters. This proposed AD would not because that model does not have an FAA type certificate.

Interim Action

We consider this proposed AD to be an interim action. The design approval holder has not determined the cause of the unsafe condition identified in this proposed AD. If a cause is determined and actions developed to address the cause, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 142 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs:

- Inspecting the drive shaft would require 9 work-hours and no parts. The estimated cost would be $765 per helicopter and $108,630 for the U.S. fleet.
- Replacing the drive shaft would not require additional labor hours. Parts would cost $6,082 per helicopter.

According to Agusta service information, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage by Agusta. Accordingly, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Agusta S.p.A.: Docket No. FAA–2015–3781; Directorate Identifier 2015–SW–048–AD.

(a) Applicability

This AD applies to Agusta S.p.A. Model A109A, A109A II, A109C, A109E, A109K2, A109S, and AW109SP helicopters with a tail rotor drive shaft assembly (drive shaft), part number 109–8412–02–1 or 109–8412–02–3, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a drive shaft. This condition could result in failure of a drive shaft, failure of the tail rotor, and subsequent loss of helicopter control.

(c) Comments Due Date

We must receive comments by May 23, 2016.

(d) Compliance

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

(e) Required Actions

Within 50 hours time-in-service:

(1) Visually inspect each drive shaft in accordance with the Compliance Instructions, paragraph 4, of AgustaWestland Bollettino Tecnico (BT) No. 109–147, dated March 25, 2015; BT No. 109EP–143, dated March 25, 2015; BT No. 109K–68, dated March 25, 2015; BT No. 109S–067, dated March 25, 2015; or BT No. 109SP–094, dated March 25, 2015, as applicable for your model helicopter.

(2) If there is a crack, replace the drive shaft before further flight.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0054, dated March 27, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–3781.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6510, Tail Rotor Drive Shaft.

Issued in Fort Worth, Texas, on March 15, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–06373 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73 and 74

[Docket No. FDA–2016–F–0821]

Milton W. Chu, M.D.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Milton W. Chu, M.D., proposing that the color additive regulations be amended to provide for the safe use of titanium dioxide and [phthalocyaninato (2-)] copper as orientation marks for intraocular lenses.

DATES: The color additive petition was filed on February 19, 2016.

FOR FURTHER INFORMATION CONTACT: Laura Dye, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1275.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 6C0305), submitted by Milton W. Chu, M.D., 5800 Santa Rosa Rd., Suite 111, Camarillo, CA 93012. The petition proposes to amend the color additive regulations in § 73.3126 *Titanium dioxide* (21 CFR 73.3126) and § 74.3045 *[Phthalocyaninato (2-)] copper* (21 CFR 74.3045) to provide for the safe use of titanium dioxide and [phthalocyaninato (2-)] copper as orientation marks for intraocular lenses.

We have determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 17, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–06397 Filed 3–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 878, 880, and 895

[Docket No. FDA–2015–N–5017]

RIN 0910–AH02

Banned Devices; Proposal To Ban Powdered Surgeon's Gloves, Powdered Patient Examination Gloves, and Absorbable Powder for Lubricating a Surgeon's Glove

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that Powdered Surgeon's Gloves, Powdered Patient Examination Gloves, and Absorbable Powder for Lubricating a Surgeon's Glove present an unreasonable and substantial risk of illness or injury and that the risk cannot be corrected or eliminated by labeling or a change in labeling. Consequently, FDA is proposing these devices be banned.

DATES: Submit either electronic or written comments by June 20, 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–2015–N–5017 for ''Banned Devices; Proposal to Ban Powdered Surgeon's Gloves, Powdered Patient Examination Gloves, and Absorbable Powder for Lubricating a Surgeon's Glove.'' 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:

Elizabeth Claverie-Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2508, Silver Spring, MD 20993, 301–796–6298, email: *elizabeth.claverie@fda.hhs.gov.*

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I. Background

The Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments), amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321 *et seq.*), became law on May 28, 1976. Among other provisions, the amendments added section 516 to the FD&C Act (21 U.S.C. 360f), which authorizes FDA to ban by regulation any device intended for human use if FDA finds, based on all available data and information, that such device presents a ''substantial deception'' or an ''unreasonable and substantial risk of illness or injury,'' which cannot be, or has not been, corrected or eliminated by labeling or a change in labeling.

FDA is proposing to ban powdered surgeon's gloves (21 CFR 878.4460), powdered patient examination gloves (21 CFR 880.6250), and absorbable powder for lubricating a surgeon's glove (21 CFR 878.4480). Non-powdered gloves are not included in this ban. In order to clarify this distinction, we are proposing to amend the descriptions of these devices in the regulations to specify that, if the ban were to be finalized, these regulations would apply only to non-powdered gloves. FDA's conclusions, which are discussed in this document, are based on an evaluation of all available data and information known to the Agency. However, to the extent that there is additional information that we should consider regarding the risks and benefits of powdered gloves, comments should be submitted as described previously.

The proposed rule would apply to all powdered gloves except powdered radiographic protection gloves. FDA has determined that the banning standard does not apply to this type of glove. In addition, we are not aware of any powdered radiographic protection gloves that are currently on the market. The proposed ban would not apply to powder used in the manufacturing process (*e.g.,* former-release powder) of non-powdered gloves, where that powder is not intended to be part of the final finished glove. Finished non-powdered gloves are expected to include no more than trace amounts of residual powder from these processes, and the Agency encourages manufacturers to ensure finished non-powdered gloves have as little powder as possible. In our 2008 Medical Glove Guidance Manual (Ref. 1), we recommended that non-powdered gloves have no more than 2 milligrams of residual powder and debris per glove, as determined by the Association for Testing and Materials (ASTM) D6124 test method (Ref. 2). The Agency continues to believe this amount is an appropriate maximum level of residual powder, but may reevaluate this amount if more information becomes available. The proposed ban would also not apply to powder intended for use in or on other medical devices, such as condoms. FDA has not seen evidence that powder intended for use in or on other medical devices, such as condoms, presents the same public health risks as that on powdered medical gloves.

A. History of Powdered Gloves and Their Regulation

Medical gloves play a significant role in the protection of both patients and health care personnel in the United States. Health care personnel rely on medical gloves as barriers against transmission of infectious diseases and contaminants when conducting surgery, as well as when conducting more limited interactions with patients.

Various types of powder have been used to lubricate gloves so that wearers could don the gloves more easily. The first lubricant powder used to aid in surgical glove donning, introduced in the late nineteenth century, was composed of *Lycopodium* spores (club moss spores) or ground pine pollen (Refs. 3 and 4). By the 1930s, Lycopodium powder was recognized to cause wound granulomas and adhesion formation and was replaced by talcum powder (chemically hydrous magnesium silicate), a nonabsorbable lubricant powder. In the 1940s, talcum powder (talc) was also recognized to be a cause of postoperative adhesions and granuloma formation. In 1947, modified cornstarch powder was introduced as an absorbable and non-irritating glove powder, and it largely replaced talc as a donning lubricant for surgical gloves by the 1970s. Cornstarch is currently the most commonly used type of absorbable glove powder.

In the 1980s, preventing the transmission of acquired immunodeficiency syndrome (AIDS) became a major public health concern. The Centers for Disease Control and Prevention (CDC) recommended that health care workers use appropriate barrier precautions to prevent exposure to the human immunodeficiency virus (HIV) and other bloodborne pathogens. Responding to heightened concerns about cross-contamination between patients and health care workers, in the **Federal Register** of January 13, 1989 (54 FR 1602), FDA revoked the exemption for patient examination gloves from certain current good manufacturing practice requirements in order to ensure that manufacturers provide an acceptable manufacturing quality level. FDA similarly revoked the exemption from premarket notification

requirements for patient examination gloves.

On December 12, 1990, FDA published regulations describing certain circumstances under which surgeon's and patient examination gloves would be considered adulterated (55 FR 51254). The regulations established the sampling plans and test methods for glove leakage defects that we would use to determine whether gloves were adulterated (see 21 CFR 800.20). These sampling plans and test methods were further updated in 2006 (December 19, 2006, 71 FR 75865 at 75876). Subsequently, we initiated inspections of glove manufacturers to ensure conformance with the acceptable quality levels identified in the regulation.

In 1997, FDA issued its Medical Glove Powder Report (Ref. 5), which described the risks presented by glove powder and the state of the medical glove market at that time. We reviewed the clinical and experimental data on the risks and adverse events associated with the use of powder on surgical and medical gloves available at that time in the medical literature. We also reviewed the information in our MedWatch database on the adverse events associated with the use of powdered gloves. In addition, the Agency reviewed the commercial information available at that time on sources for medical gloves, relative numbers and types of gloves, and the costs of different glove types. FDA found that glove powder could cause inflammation and granulomas, and that aerosolized glove powder on natural rubber latex (NRL) gloves can carry allergenic proteins that have the potential to cause respiratory allergic reactions.

Even though the Agency was aware of certain health risks presented by glove powder, based on the totality of information available in 1997, the Agency opted not to initiate a ban. At the time, use of chlorination was the most common alternative to powder for the purpose of lubricating NRL surfaces. However, the chlorination process was recognized to cause physical damage to gloves and to alter the physical properties of treated gloves if not performed properly (Ref. 5). In 1997, FDA was concerned that widespread use of glove chlorination would compromise some of the mechanical and physical properties of gloves including shelf life, grip, and in-use durability, since these were widely recognized risks of poorly managed chlorination processes. Polymer coatings to replace glove powder for glove lubrication had been developed but, because of their increased cost, were not yet in widespread use at the time. The report concluded that banning powdered gloves in 1997 would cause a market shortage of medical gloves, which could result in inferior glove products and increased costs to the U.S. health care system due to a lack of immediate availability of suitable alternatives.

We identified two options in 1997: (1) Provide adequate information for the consumer to make an informed decision by, among other things, requiring that the amount of water-soluble NRL proteins and the amount of glove powder present in powdered gloves be stated on the product label and establishing upper limits for the amount of these substances allowed in gloves, or (2) initiate the process to ban glove powder at some predetermined time in the future and require manufacturers to convert to powder-free production or provide safety data, including foreign body and airborne allergen concerns, by a certain date.

At that time, the Agency determined that the first option was preferable and issued the draft guidance entitled ''Draft Guidance for Industry and FDA Staff: Medical Glove Guidance Manual'' on July 30, 1999 (Ref. 6). In addition to other changes, including the natural rubber latex caution statement for gloves made of NRL, this document advised industry that FDA recognized the newly issued consensus standard ASTM D6124, ''Standard Test Method for Residual Powder on Medical Gloves,'' which established an accepted method to measure residual powder or debris on medical gloves (Ref. 2). In the draft guidance, we recommended that medical gloves have no more than 2 mg of residual powder or debris per glove in order to label that glove as ''powder-free.'' Since 1999, gloves with low amounts of residual powder after manufacturing have been referred to as ''powder-free'' or ''powderless.'' Such gloves may have residual powder from the manufacturing process removed by washing and chlorination, and they may be coated with a polymer to aid donning. For comparison, powdered medical gloves contain approximately 120 to 400 mg of residual particulates, mold release, and donning powder.

In addition to the draft guidance issued in 1999, in the same issue of the **Federal Register**, FDA proposed regulations to reclassify all surgeon's and patient examination gloves as class II medical devices (July 30, 1999, 64 FR 41710). While the proposed rule was never finalized, the preamble provided FDA's rationale for choosing not to initiate a ban for powdered surgeon's and patient examination gloves at the time. We explained that: (1) A ban would not address exposure to natural latex allergens from medical gloves with high levels of natural latex proteins; (2) a ban of powdered gloves might compromise the availability of high quality medical gloves; and (3) a ban of powdered gloves might greatly increase annual costs by almost as much as $64 million over the alternative approach proposed by FDA in the ''Draft Guidance for Industry and FDA Staff: Medical Glove Guidance Manual.''

FDA did not finalize the 1999 Draft Guidance. The Draft Guidance was withdrawn when we issued our ''Guidance for Industry and FDA Staff—Medical Glove Guidance Manual,'' on January 22, 2008 (Ref. 1). Recognition and use of ASTM D6124 to reduce the powder burden on medical gloves continued in the revised guidance. Since we issued the draft guidance in 1999, the number of adverse events reported to FDA related to glove use and the number of powdered glove devices seeking premarket clearance have decreased.

B. Citizen Petitions

FDA has received several citizen petitions regarding the use of glove powder. In 1998, a citizen petition was submitted by Public Citizen requesting that FDA ban the use of cornstarch powder in the manufacture of latex surgeon's and patient examination gloves (see Docket No. FDA–2008–P–0531). While there was scientific evidence in 1998 that indicated that the use of glove powder was associated with negative health consequences (partly due to the ability of glove powder to facilitate sensitization of health care workers to NRL and partly due to adverse effects due only to contact with glove powder), as discussed previously, quality concerns, the lack of suitable alternatives, and costs weighed against FDA initiating the process to remove powdered gloves from the market. Moreover, the impact of reductions in the amount of NRL protein used in gloves and in the amount of powder added to gloves, which were being done as means to mitigate the risk of health care worker sensitization to NRL, had not yet been studied for a reasonable length of time. As a result of these considerations, we did not grant the 1998 petition to ban the use of glove powder.

Approximately a decade later, between 2008 and 2011, FDA received three petitions requesting, among other things, that the Agency ban the use of cornstarch powder on NRL and synthetic latex surgical and examination gloves (FDA–2008–P–0531–0001, FDA–2009–P–0117–0001, and FDA–2011–P–

0331–0001). These petitions prompted us to evaluate new data on the risks of using powdered gloves, to consider new information regarding the current availability and costs of alternatives to glove powder for glove lubrication, and to reassess the frequency of use of powdered medical gloves. As a result of these petitions, FDA published in 2011 in the **Federal Register** a document requesting comments related to the risks and benefits of powdered gloves (February 7, 2011, 76 FR 6684; FDA–2011–N–0027). In addition, although we believed that additional labeling would not correct or eliminate the risks associated with glove powder, we decided that it was important to inform consumers about the risks of powdered gloves while FDA assessed whether glove powder had benefits that might affect the determination of whether or not a ban on the devices was appropriate at this time. Accordingly, on February 7, 2011, FDA issued the draft guidance entitled ''Draft Guidance for Industry and FDA Staff: Recommended Warning for Surgeon's Gloves and Patient Examination Gloves that Use Powder,'' which proposed a general voluntary warning for powdered glove devices, regardless of whether the devices were surgeon's gloves or patient examination gloves (Ref. 7). As we reviewed the comments received on the benefits and risks of glove powder, we determined that a ban on powdered gloves is appropriate and determined not to finalize the draft guidance. This draft guidance was withdrawn on May 6, 2015 (80 FR 26059) as part of a mass withdrawal effort to remove draft guidance documents issued before 2014 that have not been finalized. When final, this rule will address the risks of powdered gloves that were addressed in the draft guidance.

C. Scope of the Ban

FDA is proposing to ban the following devices: (1) Powdered surgeon's gloves (21 CFR 878.4460), (2) powdered patient examination gloves (21 CFR 880.6250), and (3) absorbable powder for lubricating a surgeon's glove (21 CFR 878.4480).

Because the classification regulations for these device types do not distinguish between powdered and non-powdered versions, FDA is proposing to amend the descriptions of these devices in the regulations to specify that, if this proposed ban is finalized, these regulations will apply only to non-powdered gloves while the powdered version of each type of glove will be added to 21 CFR 895 Subpart B—Listing of Banned Devices.

D. Legal Standard

Section 516(a)(1) of the FD&C Act authorizes FDA to ban a device intended for human use by regulation if it finds, on the basis of all available data and information, that such a device ''presents substantial deception or an unreasonable and substantial risk of illness or injury.'' A banned device is adulterated under section 501(g) of the FD&C Act (21 U.S.C. 351(g)).

In determining whether a deception or risk of illness or injury is ''substantial,'' FDA will consider whether the risk posed by the continued marketing of the device, or continued marketing of the device as presently labeled, is important, material, or significant in relation to the benefit to the public health from its continued marketing (see 21 CFR 895.21(a)(1)). Although FDA's device banning regulations do not define ''unreasonable risk,'' in the preamble to the final rule promulgating 21 CFR part 895, we explained that, with respect to ''unreasonable risk,'' it ''will conduct a careful analysis of risks associated with the use of the device relative to the state of the art and the potential hazard to patients and users'' (44 FR 29214 at 29215, May 18, 1979). The state of the art with respect to this proposed rule relates to current technical and scientific knowledge and medical practice as it pertains to the various medical gloves that are used when treating patients.

Thus, in determining whether a device presents an ''unreasonable and substantial risk of illness or injury,'' FDA analyzes the risks and the benefits the device poses to patients and, in the case of powdered gloves, other individuals who come in contact with these devices, by comparing those risks and benefits to the risks and benefits posed by alternative devices and/or treatments being used in current medical practice. Actual proof of illness or injury is not required; we need only find that a device presents the requisite degree of risk on the basis of all available data and information (H. Rep. 94–853 at 19; 44 FR 29215).

Whenever FDA finds, on the basis of all available data and information, that the device presents substantial deception or an unreasonable and substantial risk of illness or injury, and that such deception or risk cannot be, or has not been, corrected or eliminated by labeling or by a change in labeling, FDA may initiate a proceeding to ban the device (see 21 CFR 895.20). If FDA determines that the risk can be corrected through labeling, FDA will notify the responsible person of the required labeling or change in labeling necessary to eliminate or correct such risk (see 21 CFR 895.25).

Section 895.21(d) requires this proposed rule to summarize: (1) The Agency's findings regarding substantial deception or the unreasonable and substantial risk of illness or injury; (2) the reasons why FDA initiated the proceeding; (3) the evaluation of the data and information FDA obtained under provisions (other than section 516) of the FD&C Act, as well as information submitted by the device manufacturer, distributer, or importer, or any other interested party; (4) the consultation with the classification panel; (5) the determination that labeling, or a change in labeling, cannot correct or eliminate the deception or risk; (6) the determination of whether, and the reasons why, the ban should apply to devices already in commercial distribution, sold to ultimate users, or both; and (7) any other data and information that FDA believes are pertinent to the proceeding.

We have grouped some of these together within broader categories and address them in the following order:

- Evaluation of data and information regarding glove powder, including data and information FDA obtained under provisions other than section 516 of the FD&C Act, information submitted by the device manufacturer and other interested parties, the consultation with the classification panel, and other data and information that FDA believes are pertinent to the proceeding, with respect to:
  - Benefits
  - Risks
  - State of the Art
- The reasons FDA initiated the proceeding, our determination that glove powder presents an unreasonable and substantial risk of illness or injury (FDA has not made a finding regarding substantial deception);
- FDA's determination that labeling, or a change in labeling, cannot correct or eliminate the risk; and
- FDA's determination that the ban applies to devices already in commercial distribution and sold to ultimate users, and the reasons for this determination.

II. Evaluation of Data and Information Regarding Glove Powder

A thorough review of the information that has become available since FDA issued the Medical Glove Powder Report in 1997 (Ref. 5) supports FDA's conclusion that powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for

lubricating a surgeon's glove should be banned. As discussed in the paragraphs that follow, FDA has concluded that the risks posed by powdered gloves, including health care worker and patient sensitization to NRL allergens, surgical complications related to peritoneal adhesions, and other adverse health events not necessarily related to surgery, such as inflammatory responses to glove powder, outweigh the benefits that these devices pose to patients. FDA's position is bolstered when the state of the art for medical gloves is considered, which includes viable non-powdered alternatives that do not carry any of the risks associated with glove powder. Further, unlike when this decision was considered previously, FDA believes that this ban would likely have minimal economic and shortage impact on the health care industry. Thus, a transition to alternatives in the marketplace should not result in any detriment to public health.

In reaching the conclusions that form the basis for this proposed rule, FDA considered evidence from multiple sources. FDA re-examined the 1997 Report on Medical Glove Powder (Ref. 5) along with its scientific and clinical literature references, its analysis of reported adverse events due to the use of gloves, and its analysis of glove market availability (Ref. 5). In addition, we performed a more contemporary analysis of relevant scientific literature and of adverse events related to medical glove use from 1992 through 2014 and obtained new market availability data on medical glove use by type. We also reviewed the information contained in related citizen petitions, as well as the comments associated with the petitions. Further, the Agency reviewed the public statements and actions of other U.S. government Agencies, U.S. health care organizations, and of foreign governments concerning powdered natural rubber latex gloves.

The sections that follow discuss the information that FDA evaluated as part of the decision to propose this ban. Sections II.A and II.B provide a concise summary of the benefits and risks that FDA believes are posed by the use of powdered gloves. Section II.C provides a discussion on the state of the art as it pertains to medical gloves. Sections II.D, II.E, and II.F provide detailed discussions of the scientific literature, actions of other regulatory and professional organizations, and adverse event reports that formed the basis of the summaries in sections II.A and II.B.

A. Summary of Benefits for Devices That FDA Is Proposing To Ban

To help determine whether powdered gloves present an unreasonable and substantial risk of illness or injury, FDA issued a notice in the **Federal Register** requesting public input on the risks and benefits of powdered gloves (February 7, 2011, 76 FR 6684; FDA–2011–N–0027). FDA received nearly 300 comments to the docket, the large majority of which addressed the continuing risks associated with the use of powdered gloves, which are discussed later in this document. Comparatively, very few comments addressed the benefits of gloves that are powdered, and the benefits that were addressed were minimal. The primary benefits described in the comments were almost entirely related to greater ease of donning and doffing gloves and decreased tackiness of gloves packaged together. These benefits apply to both powdered surgeon's gloves and powdered patient examination gloves. The benefits of absorbable powder for lubricating a surgeon's glove derive from the benefits of powdered surgeon's gloves, which include ease of donning and doffing gloves and decreased tackiness.

Some studies have reported that alternatives to powdered gloves, such as vinyl gloves, may not provide as good of dexterity and biological impermeability as NRL gloves (Ref. 8). However, this proposed ban does not include non-powdered NRL gloves, which offer the same performance characteristics of powdered NRL gloves, and several studies have found that alternatives, such as nitrile and neoprene gloves, offer the same level of protection, dexterity, and performance as NRL gloves (Ref. 9 to 14). Thus, the only benefits to using powdered gloves that FDA has been able to identify is a greater ease of donning and doffing and decreased tackiness of gloves packaged together.

B. Summary of Risks for Devices That FDA Is Proposing To Ban

Although some risks of these devices are similar for all glove types, the level and types of risks presented by powdered gloves can vary depending on the composition of the glove (synthetic versus NRL) and its indicated uses (surgeon's glove versus patient examination glove). While we acknowledge that powdered synthetic patient examination gloves present less risk than powdered NRL surgeon's gloves, we concluded that the risks posed by either of these glove types is unreasonable and substantial in relation to the minimal benefits that powdered gloves offer, especially when considering the benefits and risks posed by readily available alternative devices (discussed in section II.C). The identified risks of powdered gloves are as follows:

1. Risks of Absorbable Powder for Lubricating a Surgeon's Glove

The powder used for lubricating a surgeon's glove, which is often used to lubricate patient examination gloves as well, presents risks not only to the user and patient, but also to other individuals that might be exposed to it. This powder, often referred to as Absorbable Dusting Powder or ADP, has been shown to cause acute severe airway inflammation, granulomas, and adhesions. These risks are present before the glove is lubricated with the powder. Then, during the lubrication process, the powder particles may absorb harmful contaminants (Ref. 15). As mentioned previously, the risks presented by glove powder can vary depending on the type of glove on which it is used. When used on NRL gloves, powder has the ability to adhere to latex allergenic proteins that, when aerosolized and inhaled, present significant risks to patients, including inflammatory responses, hypersensitivity reactions, and allergic reactions (see risks on powdered NRL gloves in the paragraphs that follow). Additionally, latex sensitive individuals can experience cutaneous reactions upon skin exposure to the latex allergenic proteins adherent to the powder (Refs. 15 and 16). These consequences of powder may persist even after patients or health care workers are no longer in contact with the powder. Risks such as allergic reactions, granulomas, and adhesions can be long-lasting, and may not be mitigated by removing powder after exposure (Refs 17 to 19).

2. Risks of Powdered Natural Rubber Latex Gloves

When absorbable dusting powder is used on NRL gloves, the combination presents specific risks that apply to both surgeon's and patient examination gloves. The powder used to lubricate these gloves may bind to natural rubber latex proteins. The powder carries the latex protein, resulting in a latex aerosol whenever health care workers put on or remove the gloves. Clinical and laboratory studies indicate that glove powder facilitates impaired respiratory function due to allergic and inflammatory responses to NRL in health care personnel and in animals exposed to glove powder because

aerosolized powder particles carrying NRL antigens into the health care environment and the respiratory tracts of exposed health care personnel and patients make NRL sensitization a much more efficient process than it would be in the absence of glove powder (Ref. 8, 20 to 23). As a result, health care workers that are sensitive to latex occasionally develop allergic reactions when they inhale too much powder. Sensitization to latex and subsequent allergic reactions also may result from exposure to aerosolized powder carrying the NRL proteins (Ref. 24). Allergic reactions include asthma, allergic rhinitis, conjunctivitis, and dyspnea. As discussed in the paragraphs that follow, the majority of studies suggest that use of low NRL protein powder-free gloves significantly reduces occupational asthma and the incidence of individuals developing allergies to NRL in the health care workplace (Refs. 21, 23, 25 to 35).

3. Risks of Powdered Synthetic Surgeon's Gloves

Although powdered synthetic surgeon's gloves do not present the risk of allergic reactions due to aerosolized powder that is carrying latex, the use of powdered synthetic gloves still presents the risk of exposing individuals to the powder via inhalation, which can lead to airway inflammation. Additionally, use of these gloves by health care providers can expose patients' tissues during surgery and invasive examinations to deposits of glove powder, which could then result in granuloma formation in any exposed site, as well as peritoneal and other tissues adhesions. Recent studies show that cornstarch glove powder causes peritoneal adhesion formation and granulomatous reactions in experimental animal models (Refs. 24, 36 to 39) as well as in exposed patient tissues with resulting patient injury (Refs. 40 and 41). In addition to risk of powder-induced adhesion formation, many in vitro and animal studies have shown the adverse effects of glove powder on wound healing, including increases in wound inflammation (Refs. 42 to 44). These studies indicate that powder may promote infection in wounds, which can lead to wound healing complications.

4. Risks of Powdered Synthetic Patient Examination Gloves

Although the powder on patient examination gloves is not exposed to internal organs during surgery, these gloves still present a substantial risk of illness or injury because they are nevertheless exposed to internal tissue when employed in procedures such as oral, vaginal, gynecological, and rectal examinations. Powder may be introduced to the female reproductive tract during gynecological exams (Refs. 45 to 47), which may lead to female reproductive complications (Refs. 18, 48 to 50). The migration of powder into the reproductive tract was demonstrated in an animal model and human clinical studies (Refs. 21, 40, 51). The wearers of these gloves can also facilitate the migration of powder from these gloves into the body when handling instruments such as endoscopes or when performing postsurgical wound care. Thus, the powder on synthetic patient exam gloves presents risks similar to those of the powder on synthetic surgeon's gloves, including granulomas and adhesions, and the resulting complications. Finally, as with synthetic surgeon's gloves, powdered patient examination gloves also can expose those in their proximity to the risk of powder inhalation, even if not carrying NRL.

C. State of the Art

FDA has considered the reasonableness of the risks of powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's gloves relative to the state of the art, *i.e.,* the state of technical and scientific knowledge and modern practices of medicine, for medical protective gloves (see 44 FR 29214; May 18, 1979). Given that alternatives are readily available that do not carry the risks posed by powdered gloves, we have concluded that powdered gloves now lag behind the state of the art. As discussed further in sections II.D and II.E, this conclusion is illustrated both by market trends indicating that the health care industry is moving to non-powdered alternatives and by the actions of certain regulatory entities and professional organizations that have banned or restricted the use of glove powder.

Over the last two decades FDA has observed a progressive increase in the use of non-powdered gloves. Since 1998, medical glove manufacturers have developed a variety of non-powdered gloves, which can be made from various materials, including NRL, polyvinyl chloride, nitrile, and neoprene. Both non-powdered patient examination and non-powdered surgeon's gloves are currently marketed. These alternatives are readily available at similar costs to powdered gloves. As a result, both industry and glove users appear to be shifting away from the use of powdered gloves, which has led to an increase in the manufacturing and usage of alternative non-powdered gloves. Annual sales figures from 2000 through 2008 indicate a consistent increase in non-powdered surgeon's and patient examination glove sales as a percent of total glove sales, and recent projections of annual gloves sales indicate that at least 93 percent of medical providers have switched to non-powdered gloves (Ref. 52).

These trends can be at least partially attributed to scientific studies that have been conducted in this area that have helped raise public awareness of powder-induced latex hypersensitivity, peritoneal adhesions, granulomas, and other adverse events that can result from using powdered gloves. These trends can also be partially attributed to increased public awareness resulting from the availability of studies that have examined the effects of glove powder and the public health benefits that result from its removal from the market, along with industry initiatives to improve donning, doffing, and protection of non-powdered gloves, which have helped to move the state of the art forward to the use of alternative non-powdered gloves.

As described previously, some users of powdered gloves have noted ease of donning or doffing as a benefit over non-powdered gloves. However, a study of various brands of powdered and non-powdered NRL gloves by Cote et al. found that there are non-powdered latex gloves that are easily donned with wet or dry hands with relatively low force compared to the forces required to don powdered latex examination gloves (Ref. 53). Additional non-powdered alternatives to powdered gloves include synthetic gloves, which are traditionally non-powdered and offer similar levels of performance to powdered gloves and non-powdered NRL gloves (Refs. 9, 14, 54).

Studies that have examined the effects of removing powdered gloves from health care environments have shown that removing these devices consistently results in a reduction of the types of adverse events associated with glove powder. Korniewicz et al. examined the effect of conversion from powdered NRL surgical gloves to non-powdered NRL surgical gloves on operating room personnel (Ref. 32). This study found that conversion to non-powdered NRL gloves reduced adverse events related to exposure to NRL, including a significant decrease in skin and upper respiratory symptoms. During the course of the study, the authors also evaluated user satisfaction for non-powdered gloves and found that users rated their satisfaction, on average, the same or better than before conversion from powdered gloves to non-powdered

gloves in categories including quality, comfort, safety, performance, standardization, and needle stick injuries.

In another study on the effects of eliminating powdered NRL gloves from a hospital, Allmers et al. found that eliminating powdered NRL gloves reduced aerogenic NRL allergen loads and allowed latex-sensitized or latex-allergic health care workers to continue working (Ref. 25). Allmers et al. further assessed the effects of switching to non-powdered NRL gloves on the incidence of NRL allergy in personnel working in multiple health care facilities insured by the German Professional Association for Health Services and Welfare (Ref. 27). This study concluded that there was a significant correlation between an increase in the purchase of non-powdered NRL gloves and a decline in NRL-induced occupational asthma. In a subsequent study, Allmers et al. further showed that a reduction in the use of powdered NRL gloves correlated with a dramatic decline in reported NRL-induced occupational skin disease (Ref. 26). The authors of these studies concluded that removing powdered NRL gloves from health care environments successfully reduced the development of NRL-induced allergies. These observations have been confirmed by several other studies that are described further in section II.D (Refs. 21, 30, 32 to 35, 55).

FDA also expects that the removal of powdered gloves from health care environments will reduce the risks of using powdered synthetic gloves, such as granuloma formation in any exposed site, as well as peritoneal and other tissues adhesions. As discussed previously, recent literature has shown that cornstarch glove powder causes peritoneal adhesion formation and granulomatous reactions in experimental animal models (Refs. 24, 36 to 39) as well as in exposed patient tissues with resulting patient injury (Refs. 40 and 41). In addition to risk of powder-induced adhesion formation, many in vitro and animal studies have shown the adverse effects of glove powder on wound healing, including increases in wound inflammation (Refs. 42 to 44). Non-powdered gloves do not carry these risks, and their exclusive use should greatly reduce the risk of these adverse health effects in health care settings.

In comparison to the evidence considered in 1997, FDA has concluded that this proposed ban would likely have minimal economic and shortage impact on the health care industry, such that, if they have not already, health care entities that currently use powdered gloves should have little trouble transitioning to non-powdered alternatives. As described previously, there are many readily available alternatives to powdered gloves that provide similar or better protection and utility without the risks associated with powdered gloves, and available market projections and data have shown that these alternatives that represent the state of the art have already resulted in a shift away from powdered gloves. Further, more studies are now available on the positive health benefits associated with the restriction or elimination of the use of powdered gloves in health care environments where they were previously prevalent. Based on an examination of all these factors, FDA has determined that the state of the art, *i.e.,* the state of technical and scientific knowledge and modern practices of medicine, has moved beyond the use of powdered gloves in the health care industry.

D. Scientific Literature

In 1997, FDA issued the Medical Glove Powder Report (Ref. 5), discussing the potential adverse health effects of medical glove powder, along with alternatives and market information available at that time. Adverse health events documented in the scientific literature review section of the Medical Glove Powder Report included a discussion on aerosolized glove powder on NRL gloves carrying allergenic proteins that efficiently sensitized health care providers to NRL antigens. This exposure subsequently triggered respiratory allergic reactions including asthma and allergic rhinitis, conjunctivitis, and dyspnea. In addition, as discussed previously, the powdered gloves of health care providers expose patients to certain risks, including granuloma formation, as well as peritoneal and other tissue adhesions when exposed during surgery or an invasive procedure.

Since the publication of the Medical Glove Powder Report, there have been additional scientific studies published regarding the risks related to the use of medical glove powder. Many of these references were submitted to the Agency in support of the petitions received in 2008, 2009, and 2011. We also performed our own review of the scientific literature to ensure that all available evidence, including all available scientific evidence, was considered in its decision-making process. The most relevant articles gathered from these sources are briefly summarized in this document.

Clinical and laboratory studies published after 1998 still indicate that glove powder facilitates impaired respiratory function due to allergic and inflammatory responses to NRL in health care personnel and in animals exposed to glove powder because aerosolized powder particles carrying NRL antigens into the health care environment and the respiratory tracts of exposed health care personnel and patients make NRL sensitization a much more efficient process than it would be in the absence of glove powder (Refs. 8, 20 to 23). The newer studies also continue to show that cornstarch glove powder causes adhesion formation and granulomatous reactions in experimental animal models (Refs. 24, 36 to 39), as well as in exposed patient tissues with resulting patient injury (Refs. 40 and 41).

In vitro and animal studies continue to show the adverse effects of glove powder on experimental wound healing, including increases in wound inflammation (Refs. 42 to 44). Most importantly, since 1997, more data have become available on the positive health benefits associated with the restriction or elimination of the use of powdered gloves in health care environments where they were previously permitted. We reviewed studies from clinics and hospitals that have converted to either non-powdered NRL gloves or to powder-free gloves of all materials. These studies reported reductions in NRL allergy development and respiratory symptoms among health care workers (Refs. 20, 21, 23, 25 to 27, 29 to 34, 39). Although this has not been a universal finding, FDA recognizes the positive association between decreased usage of glove powder, especially on NRL gloves, and decreased adverse health events in the health care setting.

Epidemiological studies comparing the adverse health events and economic consequences in health care settings before and after conversion to powder-free gloves have limitations, such as the size of studies, the endpoint data collected, and the different populations studied. Some studies include the period before the amount of NRL protein in surgical and examination gloves was reduced. Others were performed abroad where U.S. regulations do not apply and the amounts of NRL protein and powder remaining on gloves are not stated. Despite these limitations, the preponderance of evidence suggests that use of low NRL protein powder-free gloves significantly reduces occupational asthma and the incidence of individuals developing allergies to NRL in the health care workplace (Refs. 20, 21, 23, 25 to 27, 29 to 34, 39). Importantly, these studies did not report

difficulty in replacing powdered gloves with non-powdered ones and did not note any decrease in glove performance in the replacement gloves (Refs. 32, 53).

Charous et al. (Ref. 20) reported in 2000 that a dental office was able to reduce airborne NRL antigen levels to undetectable levels with the exclusive use of non-powdered NRL gloves, permitting a highly sensitized staff member to continue to work there. Also in 2002, Kujala et al. (Ref. 22) studied NRL gloves agitated in laboratory test chambers and found that the concentration of airborne NRL allergens correlated with high levels of airborne glove powder rather than with the NRL antigen concentrations in the medical glove material. In addition, Ahmed et al. (Ref. 8) reviewed the literature to 2004 on occupational NRL allergy and concluded that the use of low NRL protein powder-free gloves reduced symptoms and markers of sensitization in hospitals that had removed powdered NRL gloves from their workplaces; however, they noted that alternatives such as nitrile and vinyl gloves may not provide as good dexterity and biological impermeability as natural rubber latex gloves. The practicality of using non-powdered gloves was studied in 1998 by Cote et al. (Ref. 53) who performed a prospective randomized trial measuring the force required for volunteers to don various gloves in the laboratory without tearing the glove. They concluded that there were available powder-free gloves that can be donned easily with forces that are comparable to those required for powdered glove donning.

Individual hospitals, health care systems, regional authorities and countries have evaluated the extent of NRL allergies among their staff and the effects of removing glove powder from the gloves used in their facilities. In 1998, Handfield-Jones (Ref. 56) found that at least 0.9 percent of health care workers in an English district general hospital had confirmable NRL allergies. Anecdotal accounts suggested that problems had worsened as glove use increased. Allmers et al. (Ref. 25) in 1998 reported a prospective study in a single hospital in Germany to evaluate the effect of eliminating powdered NRL gloves from the workplace and also giving NRL-free gloves to sensitized workers. Six of seven sensitized health care workers showed a decrease in NRL-specific Immunoglobulin E antibody concentration during followup after the elimination of powdered NRL gloves in that hospital. Two other health care workers were able to stop using asthma medication and antiallergic drugs. The study authors concluded that eliminating powdered NRL gloves reduced aerogenic NRL allergen loads and allowed sensitized or allergic health care workers to continue working.

Not every physician or locality was equally concerned about the risk associated with the use of glove powder. In 1999, Sellar and Sparrow (Ref. 57) surveyed ophthalmologists in northern England and found that, despite relatively high awareness of risks associated with powdered glove use during ophthalmic surgery, such as sterile endophthalmitis or iritis in patients, up to 15 percent of surveyed United Kingdom ophthalmic surgeons were using powdered gloves in their surgical practices. However, in 2000, Petsonk (Ref. 58) found that the role of glove powder in binding and transferring NRL antigens was widely acknowledged in the scientific literature and noted that interventions, such as limiting the use of glove powder, seemed likely to result in a decline in the prevalence of NRL allergies. Additionally, in 2000, Jackson et al. (Ref. 31) reported that 70 hospitals in the United States and 3 in Europe had registered on an Internet Web site as institutions using only powder-free gloves; however, the article did not specify whether these hospitals had removed only NRL powdered gloves from their workplaces or whether synthetic latex powdered gloves were removed from use as well, and the Web site is no longer registered. The conclusion of Jackson et al. was that the leadership shown by the hospitals that registered as not using powdered gloves should serve as a catalyst for FDA to ban the use of cornstarch on examination and surgical gloves.

In 2001, Liss and Tarlo (Ref. 33) reviewed the number of allowed occupational asthma claims in health care workers reported to the Ontario Workplace Safety and Insurance Board over time as the replacement use of powder-free synthetic latex or low protein NRL gloves was encouraged, starting in 1996, throughout the province of Ontario. Reported health care-related occupational asthma claims ranged from 7 to 11 per year during 1991 to 1994 and fell to 1 to 2 claims per year in 1997 to 1999 as exposure to powdered NRL gloves decreased. Tarlo et al. (Ref. 55) also reported on the experience with occupational allergy to NRL in an Ontario teaching hospital network of two hospitals. In this hospital system, the number of workers identified with NRL allergy each year rose from 1 in 1988 to 6 in 1993 and to 25 in 1994 after staff education and surveillance for the manifestations of NRL allergy. Powder-free, low protein NRL gloves replaced non-sterile gloves in 1995 in this hospital system, after which new workers with reported NRL allergy dropped to eight in 1995, to three in 1997 and to one in 1999. NRL allergy-related time lost from work and workers' compensation claims fell significantly after powder-free, low protein NRL gloves replaced powdered non-sterile gloves in this Ontario hospital system. In 2002, Saary et al. (Ref. 23) resurveyed the upper-year students and faculty of a dental school in Ontario for NRL allergy using the same methods as those used in the study performed by Tarlo et al. (Ref. 55). In 1995, the school was using powdered NRL gloves in patient care. Following the 1995 survey, the school changed to powder-free, low protein NRL gloves. In 2000, the incidence of positive prick tests to NRL fell from 10 percent (in 1995) to 3 percent and there were significant reductions in the incidence of urticaria and immediate pruritus after glove contact reported by the dental students.

Allmers et al. (Ref. 27) reported in 2002 occupational allergy to NRL data from the German Professional Association for Health Services and Welfare, which covered approximately half of all German hospitals and all dental offices. In 1998, Germany banned the use of powdered NRL gloves in health care facilities. From 1996 through 2001, the incidence of suspected occupational NRL allergy declined steadily as the use of powder-free NRL examination gloves and powder-free NRL sterile gloves overtook the use of powdered gloves in 1998 and 2000, respectively, in German acute care hospitals. The authors concluded that primary prevention of occupational NRL allergies could be achieved through practical interventions such as decreasing the use of powdered NRL gloves. Allmers et al. (Ref. 26) reassessed the effects of the 1998 German ban on powdered NRL gloves in 2004 and found that between 1996 and 2002, the incidence of suspected cases of NRL-induced occupational allergies reported to the German statutory accident insurance carrier decreased by almost 80 percent.

Charous et al. (Ref. 28) reviewed the scientific literature available in 2002 and subsequently recommended using only non-powdered sterile NRL gloves or low-protein NRL powdered sterile gloves as evaluation of the effect on occupational NRL allergic reactions continued, in order to reduce the burden of NRL allergy and its effects on health care personnel. Cuming (Ref. 29) also noted that the link between glove powder and the occurrence of NRL allergies and postoperative

complications in surgical patients was well supported scientifically and described how his four hospital system (not identified) with multiple ambulatory care centers and associated medical practices successfully eliminated powdered glove use after appropriate alternate glove product evaluation.

Edelstam and colleagues (Ref. 21) described the implementation of a powder-free environment in a Stockholm hospital. These authors administered symptom questionnaires to hospital staff designed to detect symptoms highly suggestive of occupational NRL allergy. They found that 8 months after a powder-free policy was fully implemented in the hospital there was a significant reduction in reported hand itching, eczema, and upper respiratory tract disorders in health care workers. The authors also noted that reduced costs associated with lower work absence rates may offset higher costs associated with the use of powder-free medical gloves.

In 2005, Korniewicz et al. (Ref. 32) examined whether switching to low NRL protein powder-free surgical gloves in the operating room suite of a single U.S. university hospital was worth the cost. Surveys prior to and 7 to 12 months after the conversion to powder-free surgical gloves found that 27 percent fewer health care workers reported skin symptoms and 12 percent fewer health care works reported upper respiratory symptoms related to NRL exposure. These authors concluded that the use of powder-free low protein NRL gloves reduced symptoms and resulted in workers compensation cost savings. In addition, because fewer different types of gloves were purchased after the conversion to non-powdered surgical gloves, a glove cost savings of $10,000 per year was estimated for the hospital. In a 2006 report, Filon and Radman (Ref. 30) described the results of following 1,040 health care workers in Trieste for 3 years before and after the introduction of powder-free gloves with low NRL levels. After the introduction of powder-free gloves, no new cases of NRL allergy, as diagnosed by skin test hypersensitivity to NRL were identified in the followup survey. The authors concluded that avoiding unnecessary NRL glove use and using non-powdered NRL gloves (and non-NRL gloves for sensitized health care workers) could stop the progression of symptoms of NRL allergy and avoid new cases of health care provider sensitization to NRL.

In 2008, Malerich et al. (Ref. 34) studied the effect of transitioning from powdered to powder-free NRL gloves on workers' compensation claims in a U.S. multihospital system, the Geisinger Health System, between 1997 and 2005. They estimated that 52 percent of the system work force at that time was occupationally exposed to NRL gloves. In 2001, the system transitioned to powder-free NRL gloves. The incidence of NRL-related workers' compensation claims decreased progressively after 2001, from 62 claims over the 5 year period before the change to only 18 claims in the next 4 years. The average annual savings in NRL-related compensation claims was estimated to be over $30,000. Although the cost of the powder-free NRL gloves resulted in a 36 percent increase in the cost of gloves, this was partially offset by the elimination of the costs of washing powder off the surgical gloves, estimated at about $57,000.

Vandenplas et al. (Ref. 35) reported in 2009 on changes in the incidence of NRL-related occupational asthma (OA) claims from health care providers submitted to the Workers' Compensation Board of Belgium from 1992 through 2004. Definite and probable NRL-related OA incidence per 100,000 full-time equivalents for health care workers was 10.9 per 100,000 in 1991, 19.7 per 100,000 in 1998, and 3.8 per 1,000,000 in 2003. The overall usage index of NRL-powdered glove use was 80.9 percent in 1989 and fell to 17.9 percent by 2004. The non-sterile NRL-powdered glove use index fell from 80.5 percent to 14.4 percent. However, the sterile procedure, NRL-powdered glove use index changed only from 84.6 percent to 48.9 percent over this 15-year period.

Although the adverse event risks of glove powder on a variety of tissues were well-documented before 1997, investigations to understand the pathogenesis of tissue damage caused by glove powder have continued. In 1999, Chegini and Rong (Ref. 36) studied the effect of glove powder, NRL proteins, and lipopolysaccharide added directly to the peritoneal cavity of mice and found that glove powder worsened the inflammatory response to tissue injury caused by NRL proteins and lipopolysaccharide alone. The study suggested that this interaction could contribute to inflammatory or immune reactions and the development of adhesions after abdominal surgery. Sjösten et al. (Ref. 38) published a study in 2000 showing that the intravaginal deposition of free glove powder in rabbit vaginas prior to laparotomy led to dense pelvic adhesions and even attachment of the Fallopian tube to the peritoneal wall after laparotomy with standardized trauma on the left Fallopian tube and the ipsilateral peritoneum. The control group was not exposed to glove powder and experienced only loose adhesions after laparotomy with standardized trauma. The authors recommended against the use of powdered gloves during gynecologic surgery.

In 2001, van den Tol et al. (Ref. 39) found that starch, either washed from gloves or pure base starch, when added to the peritoneal cavity of rats during laparotomy plus surgical peritoneal trauma, caused increased peritoneal adhesion formation. When tumor cells were added to the peritoneal cavity at the end of the experimental surgery, increased adhesion and growth of the tumor cells occurred in rats who also received powder contamination of the peritoneal cavity. These authors recommended that powdered gloves no longer be used during intra-abdominal surgery on the basis of these results. In 2003, Barbara et al. (Ref. 24) found that after guinea pigs were sensitized to NRL antigens, with or without added cornstarch powder given by intraperitoneal injection, the guinea pigs who received NRL antigens mixed with cornstarch had increased antibody production and antigen-induced constriction of the bronchial tubes when challenged with an aerosol of NRL antigens compared to animals who received intraperitoneal NRL antigens alone. They concluded that cornstarch powder used as a donning agent on NRL gloves can increase sensitization to NRL compared to exposure to NRL antigens alone.

In 2002, Smither et al. (Ref. 41) presented a case report of a 58-day-old male infant with bilateral scrotal masses due to a foreign body reaction to glove powder following a pyloromyotomy performed shortly after birth. In 2004, Sjösten et al. (Ref. 40) extended their prior work on the adverse effects of glove powder in animals to a clinical observational study. They found that in patients who underwent vaginal examination 1 or 4 days prior to a scheduled hysterectomy with either powdered or non-powdered gloves, examination of the removed tissues postoperatively detected more starch particles in the cervix and uterus of patients examined with powdered gloves. There were no differences between the patient groups in the numbers of starch particles seen in the distant sites of the Fallopian tubes or the peritoneal fluid. In 2 patients examined with powdered gloves, no starch particles were found, and 3 patients examined with only powder-free gloves had a few starch particles in their tissues.

Odum et al. (Ref. 43) studied a guinea pig model of paravertebral abscess formation. They reported that when slurries of either calcium carbonate ($CaCO_3$) or cornstarch were added to guinea pig wounds along with *Staphylococcus aureus,* the wounds with added $CaCO_3$ had higher bacterial counts 4 days later than did the wounds with added cornstarch, and both had higher bacterial counts than the control wounds with only *S. aureus* inoculated. This study was considered by the authors to support an increased risk of wound infection after wound exposure to powdered gloves. In addition, Dave et al. (Ref. 42) reviewed the literature on glove powder relating to dental powdered glove use and noted that cornstarch promoted wound infection in reported animal model studies and that cost-effective powder-free gloves were available. The authors recommended the use of non-powdered gloves in place of powdered gloves. Dwivedi et al. (Ref. 37) studied both NRL and synthetic latex gloves, both powdered and unpowdered in a rat laparotomy model. They found that both non-powdered natural rubber latex and powdered surgical gloves resulted in peritoneal adhesions. However, powdered NRL gloves further promoted increased tissue adhesions, which correlated with elevated serum cytokine levels. They suggested that the use of NRL free, powder-free gloves would be most effective in decreasing peritoneal adhesion formation. In 2010, Suding et al. (Ref. 44) performed another study of the effect of cornstarch on experimental model abscess formation. They found that the injection of starch into wound sites increased the likelihood of methicillin-resistant *S. aureus* injection abscess formation in a rat model.

E. Actions of Other Regulatory Entities and Professional Organizations

Over the past several years, some domestic health care organizations, health care systems, and other nations have banned or restricted the use of glove powder because of its deleterious effects on the body. Organizations such as the National Institute for Occupational Safety and Health (NIOSH), the American Academy of Allergy, Asthma, and Immunology (ACAAI), the American College of Surgeons (ACS), and the American Nurses Association have all issued statements discouraging the use of powdered NRL gloves (Refs. 59 to 61). In June 1997, the NIOSH of the CDC issued an Alert titled ''Preventing Allergic Reactions to Natural Rubber Latex in the Workplace'' (Ref. 59) in which it recommended that if NRL gloves are used in the workplace, they should not be powdered. The ACS issued a statement from their Committee on Perioperative Care in 1997 that recommended that surgeons should insist on using only non-powdered (''powder-free'') surgeons gloves (Ref. 62). The ACAAI issued a recommendation (Ref. 60) on the use of NRL gloves in 1997 and stated that only non-powdered (''powder-free'') NRL gloves should be purchased and used in order to reduce NRL aeroallergen levels and exposure to them.

Moreover, health care systems including the Johns Hopkins Hospital, the Cleveland Clinic's network of nine hospitals, and the University of Virginia Healthcare System have all restricted or banned the use of powdered NRL gloves in their facilities (Refs. 63–64). Finally, the international health care systems of Germany and the United Kingdom have also independently taken steps against the use of powdered NRL gloves due to the dangers of the devices and the hazards they pose in the health care setting (Refs. 65–66).

The Occupational Safety and Health Administration (OSHA) of the Department of Labor (DOL) issued a Technical Information Bulletin (TIB 99–04–12) in 1999 and updated it in 2008 (SHIB 01–28–2008) (Ref. 67) describing the risk of sensitization to natural rubber latex products used in the workplace. In both of its documents, OSHA recommended that, if NRL gloves must be used, they should be non-powdered (''powder-free'').

In the 1998 CDC Guideline for Infection Control in Hospital Personnel-1998 (Ref. 68), CDC addressed the issues of NRL sensitization in the health care workplace and recommended that the use of non-powdered natural rubber latex gloves would be more efficient than other interventions such as trying to wash powder off gloves in reducing NRL allergy in the workplace when NRL gloves were retained instead of replaced.

In January 2000, the New Jersey Department of Health and Senior Services (DHSS) issued ''Guidelines on the Management of Natural Rubber Latex Allergy; Selecting the Right Glove for the Right Task'' (Ref. 69) for the health care facility environment. The New Jersey DHSS recommended that reduced powder or, preferably, non-powdered NRL gloves be used when NRL gloves are selected.

Allmers and colleagues (Ref. 25) reported that a revised version of the technical regulations for dangerous substances (TRGS 540) was published in Germany in December 1997 that stated that the use of powdered natural rubber latex gloves was not permissible in the workplace; only ''powder-free'' NRL gloves could be used.

In the United Kingdom in 2008, the National Health Service (NHS) Plus Occupational Health Clinical Effectiveness Unit, in association with the Royal College of Surgeons, issued evidence-based guidelines (Ref. 70) on ''the occupational aspects of latex allergy management.'' These guidelines include the recommendation that when NHS employers determine that a NRL glove is the most suitable choice for use against a specific hazard, the NRL glove selected should be a low NRL protein glove without glove powder.

In 2011, the Association of Professionals in Infection Control and Epidemiology (APIC) responded to the FDA's request for comments on information related to risks and benefits of powdered gloves (Docket No. FDA–2011–N–0027). APIC stated (Ref. 71) that it supported the use of powder-free surgeon's gloves in health care. It stated also that it agreed with the position of the ACS and that of the Association of Perioperative Registered Nurses (AORN) that powdered gloves increase the risk of sensitization to NRL antigens. APIC also noted that the evidence for the role of glove powder in surgical site infection risk is limited.

F. Analysis of Medical Device Adverse Events Reported to FDA for Medical Gloves

On its own initiative, FDA evaluated adverse event reports for medical gloves that use powder as additional information to help determine whether the standard for initiating a ban was met and, if so, whether a ban was the appropriate regulatory action to address the unreasonable and substantial risk of illness or injury presented by powdered gloves.

We performed a search of our Manufacturer and User Facility Device Experience (MAUDE) database to isolate reports through September 30, 2015, to evaluate the number of adverse events reported for all types of medical gloves. A total of 3,780 reports were identified, including some that identify inflammation and granulomas. The reports retrieved in this query date back to 1992. Charting the reports entered by year indicates a bell curve in which the majority of reports were entered in 1999 with 783 reports. Since 1999, the number of adverse events reported for these devices has consistently decreased, and since 2003, the number of adverse events reported for these devices has tapered off to consistently remain below 100 per year. FDA believes that this reduction can be

attributed to the risks of powdered gloves becoming better known, which has led to suitable powder-free alternatives being developed and becoming more widely available on the market.

As discussed in section VIII ''Economic Analysis of Impacts,'' market analysis clearly indicates that use of powdered gloves is declining, but some individuals and organizations continue to use them despite the risks of illness or injury they present. As such, health care workers, patients, and other individuals who come in contact with glove powder are being exposed to risks unnecessarily, which is one of the reasons that FDA decided to initiate this ban.

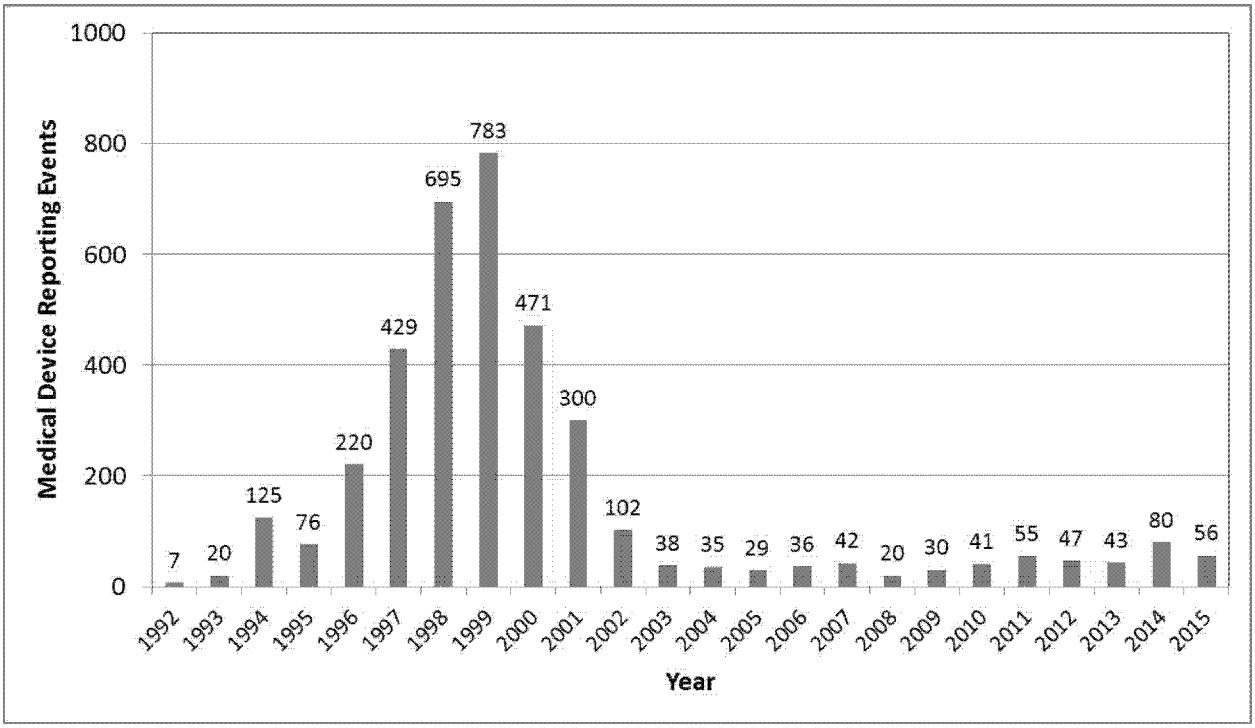

Figure 1.--Number of Reported Adverse Events, 1992-2015

III. The Reasons FDA Initiated the Proceeding; Determination That Powdered Gloves Present an Unreasonable and Substantial Risk of Illness

As described in section 1.D, section 516(a)(1) of the FD&C Act authorizes FDA to ban a device intended for human use by regulation if it finds, on the basis of all available data and information, that such a device ''presents substantial deception or an unreasonable and substantial risk of illness or injury'' In this section, we describe the reasons we initiated the proceeding to ban powdered gloves, including the determination that powdered gloves present an unreasonable and substantial risk of illness or injury. In order to make this determination, we analyzed both the benefits and the risks that these devices pose to those that may come into contact with them, comparing those benefits and risks to the benefits and risks posed by similar alternative devices.

As explained in section II, the level and types of risk presented by powdered gloves varies depending on the composition and intended use of the glove. While some glove types present less risk than others, we have concluded that the public's exposure to such risk is substantial in relation to the nominal public health benefit derived from the continued marketing of these devices. Further, it is FDA's position that exposure to these risks is unreasonable in the current market where suitable alternatives are readily available that carry none of the risks presented by powdered gloves.

The risk of acute severe airway inflammation due to ADP inhalation is a risk presented by all powdered glove types and absorbable powder alone and is considered important, material, and significant in relation to the minimal potential benefits of greater ease of donning and doffing and decreased tackiness. In considering these risks relative to the state of the art and alternative non-powdered gloves that do not present risks of acute severe airway inflammation, FDA has determined that these risks are substantial and unreasonable.

The risks of inflammatory responses, hypersensitivity reactions, and allergic reactions, including asthma, allergic rhinitis, conjunctivitis, and dyspnea, are risks presented by all powdered latex glove types. FDA has determined that these risks are important, material, and significant risks in relation to the minimal potential benefits of greater ease of donning and doffing and decreased tackiness. In relation to the state of the art of alternative non-powdered gloves that do not present risks of inflammatory responses, hypersensitivity reactions, and allergic reactions, we conclude that these risks are substantial and unreasonable.

The risk of granuloma and adhesion formation is presented to patients and health care workers via exposure to internal tissue through the use of powdered latex or synthetic surgeon's and patient examination gloves. FDA has determined that this risk is important, material, and significant in relation to the minimal potential benefits of greater ease of donning and doffing and decreased tackiness. In relation to the state of the art of

alternative non-powdered gloves that do not present risk of granuloma and adhesion formation, we have concluded that this risk is substantial and unreasonable.

A critical aspect of these devices that FDA considered in coming to the decision to propose this ban is their ability to affect persons other than the individual who decides to wear or use them. Patients often do not know the type of gloves being worn by the health care professional treating them, but are still exposed to the potential dangers of those gloves. Glove powder's expansive danger zone includes persons, including other health care workers, completely unaware or unassociated with its employment. In addition, users wear gloves as a conventional prophylactic measure to prevent harm, but may be exposed to the myriad harms posed by powdered gloves. Although we have noticed a progressive reduction in the market share of powdered gloves, some individuals and institutions continue to use them. This, in turn, has led to continued exposure to the risks presented by powdered gloves.

In aggregate, the risks posed by these devices include severe airway inflammation, hypersensitivity reactions, allergic reactions (including asthma), allergic rhinitis, conjunctivitis, dyspnea, as well as granuloma and adhesion formation when exposed to internal tissue. The state of the art of both surgeon's and patient examination gloves includes non-powdered alternatives that provide similar performance as the various powdered glove types do: That is, there are many non-powdered gloves available that have the same level of protection, dexterity, and performance. The benefits of these devices appear to only include ease of donning and doffing and increased tackiness. We have concluded that these benefits are nominal, and that the risks that are posed by the continued marketing of powdered gloves outweigh those benefits in all instances, especially in light of the current state of the art, and the fact that readily available alternatives exist in today's market that carry none of these risks. As such, FDA has determined that the standard to ban powdered gloves has been met, and that it is appropriate to issue this proposal to ban.

IV. FDA's Determination That Labeling, or a Change in Labeling, Cannot Correct or Eliminate the Risk

FDA has determined that powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's glove present an unreasonable and substantial risk of illness or injury to individuals, and that no change in labeling could correct the risk of illness or injury presented by the continued use of these devices. FDA has determined that a ban is the appropriate regulatory approach to addressing risks posed by glove powder. No labeling or warnings can mitigate the risks posed by these devices.

As discussed previously, powdered gloves have additional or increased risks to health compared to non-powdered gloves related to the spread of powder and powder-transported contaminants such as latex allergens through aerosols and inhalation or direct or indirect contact with wounds, oral, vaginal, rectal tissue, etc. Although labeling can raise awareness of these risks, we do not conclude that labeling can effectively mitigate these risks because it cannot prohibit the spread of glove powder or powder-transported contaminants. In addition, an important aspect of these devices is their ability to affect persons other than the individual who decides to wear or use them. For example, patients often do not know the type of gloves being worn by the health care professional treating them, but are still exposed to the potential dangers. Similarly, glove powder's ability to aerosolize and carry NRL proteins exposes individuals to harm via inhalation or surface contact. Glove powder's expansive danger zone includes persons completely unaware or unassociated with its employment and without the opportunity to consider the devices' labeling. Because of this inherent quality, adequate directions for use cannot be written that would ensure the safe and effective use of these devices for all persons that might come in contact with them.

In the now withdrawn draft guidance entitled ''Draft Guidance for Industry and FDA Staff: Recommended Warning for Surgeon's Gloves and Patient Examination Gloves that Use Powder,'' FDA proposed a general voluntary warning for powdered glove devices in order to alert users to the potential adverse health effects of medical glove powder while FDA assessed the benefits and risks of glove powder (Ref. 7) (80 FR 26059). In order to facilitate this assessment, concurrent with the issue of this draft guidance document, we issued a notice in the **Federal Register** requesting public input on the benefits and risks of powdered gloves (76 FR 6684, February 7, 2011; FDA–2011–N–0027). Many of the comments we received, in addition to a citizen petition filed in 2011 (FDA–2011–P–0331–0001), indicated that labeling would not sufficiently address the risks posed by glove powder because a warning label would not be visible to everyone affected by risks of glove powder.

Although the use of powdered gloves has declined in recent years, the use of these devices has not been eliminated, and patients and health care workers continue to be exposed to the risks of glove powder. Due to the ability of powder to affect people who would not have an opportunity to read warning labels, such a label would be ineffective at informing the affected persons of potential risks. In addition, potential warning labels would raise awareness of the risks, but would not eliminate the risks posed by glove powder. Therefore, despite declining use of powdered gloves and previous warning label suggestions, FDA has determined no label or warning can mitigate the risks posed by these devices.

Due to the nature of the risks presented by glove powder that are posed simply by virtue of the powder being used, we do not conclude that additional or new labeling can adequately correct or eliminate the risks. As such, in light of all available data and information, FDA has determined that it should address the risks posed by glove powder by banning its use.

V. FDA's Determination That the Ban Applies to Devices Already in Commercial Distribution and Sold to Ultimate Users, and the Reasons for This Determination

FDA has determined that this ban, if finalized, should apply to devices already in commercial distribution and devices already sold to the ultimate user, as well as to devices that would be sold or distributed in the future. (See 21 CFR 895.21(d)(7).) This means that powdered gloves currently being used in the marketplace would be subject to this ban, and thus adulterated under section 501(g) of the FD&C Act and would be subject to enforcement action.

FDA made this determination because the risks of illness or injury to individuals who are currently exposed to these devices is equally unreasonable and substantial as it would be for future individuals that might be exposed to powdered gloves. Indeed, because suitable alternatives already exist in the current marketplace, and because the market trends have shown that powder glove use is steadily decreasing, it is likely that the remaining users of powder gloves will be able to quickly transition to alternatives that are equally effective and carry none of the risks associated with powdered gloves. Further, because of the steady decrease

in powdered glove use, it is likely that the greatest number of people that might benefit from the ban include those who would be exposed to powdered gloves already in distribution. It is our conclusion that this group is being unnecessarily exposed to risks that can be eliminated through the use of alternative gloves that are readily available. For these reasons, FDA has determined that the ban should apply to powdered gloves and glove powder already in commercial distribution.

VI. Legal Authority

This proposed rule, if finalized, would amend §§ 878.4460, 878.4480, 880.6250, 895.102, 895.103, and 895.104. FDA's legal authority to modify §§ 878.4460, 878.4480, 880.6250, 895.102, 895.103, and 895.104 arises from the device and general administrative provisions of the FD&C Act (21 U.S.C. 352, 360f, 360h, 360i, and 371).

VII. Environmental Impact

FDA has carefully considered the potential environmental effects of this proposed rule and of possible alternative actions. In doing so, we focused on the environmental impacts of its action as a result of disposal of unused powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's glove that will need to be handled after the rule is finalized.

The environmental assessment (EA) considered each of the alternatives in terms of the need to provide maximum reasonable protection of human health without resulting in a significant impact on the environment. The EA considered environmental impacts related to landfill and incineration of solid waste. The proposed action, if finalized, will result in an initial batch disposal of unused powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's glove at user facilities nationwide, followed by a rapid decrease in the rate of disposal of these devices, as supplies are depleted. The proposed action does not change the ultimate disposition of these devices but expedites their rate of disposal and ceases future production. Overall, given the limited number of powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's glove, currently in commercial distribution, the proposed action is expected to have no significant impact on landfill and solid waste facilities and the environment in affected communities.

The Agency has concluded that the proposed rule will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact (FONSI) and the evidence supporting that finding, contained in an EA prepared under 21 CFR 25.40, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday (Ref. 72). FDA invites comments and submission of data concerning the EA and FONSI.

VIII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the proposed rule. We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule imposes no new burdens, we propose to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary

The proposed rule, if finalized, would prohibit marketing of powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating surgeon's gloves. The rule does not cover or include powdered radiographic gloves. In the past, powdering gloves was a popular method to make the gloves easier to put on and remove. However, recent studies indicate that these powders pose an unnecessary risk to medical workers (Ref. 73 and 74). Their results note that these powders carry the latex material on latex gloves. As a result, medical workers who are sensitive to latex are occasionally exposed to enough latex to develop an allergy.

Adopting the proposed rule is expected to provide a positive net benefit (estimated benefits minus estimated costs) to society. Banning powdered glove products is not expected to impose any costs to society because improvements to non-powdered gloves have made these products as affordable and easy to put on as powdered gloves. The ban is expected to reduce the adverse events associated with using powdered gloves. Total annual benefits are estimated to range between $26.6 million and $29.3 million.

The Economic Analysis of Impacts of the proposed rule performed in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act is available at *http://www.regulations.gov* under the docket number(s) (FDA–2015–N–5017) for this proposed rule and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 75). We invite comments on this analysis.

IX. Proposed Effective Date

FDA is proposing that any final rule based on this proposed rule become effective 30 days after the date of its publication in the **Federal Register**. FDA proposes that manufacturers must not market any new units of affected devices after the effective date of any final rule based on this proposal. FDA requests comment on the proposed effective date for this proposed rule. Once this rule is finalized, all powdered surgeon's gloves, powdered patient examination gloves, and absorbable powder for lubricating a surgeon's gloves must be removed from the market by the effective date provided in the final rule or the device will be deemed adulterated. Section 501(g) of the FD&C

Act deems a device to be adulterated if it is a banned device.

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different from or in addition to'' certain Federal requirements applicable to devices (21 U.S.C. 360k; See *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008)). This proposed rule, if finalized, would create a requirement under 21 U.S.C. 360k that bans Powdered Surgeon's Gloves, Powdered Patient Examination Gloves, and Absorbable Powder for Lubricating a Surgeon's Glove.

XII. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

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List of Subjects

21 CFR Parts 878 and 880

Medical devices.

21 CFR Part 895

Administrative practice and procedure, Labeling, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 878, 880, and 895 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Amend § 878.4460 by revising the heading and paragraph (a) to read as follows:

§ 878.4460 Non-powdered surgeon's glove.

(a) *Identification.* A non-powdered surgeon's glove is a device made of natural rubber latex or synthetic latex, intended to be worn by operating room personnel to protect a surgical wound from contamination. A non-powdered surgeon's glove does not incorporate powder for purposes other than manufacturing. The final finished glove includes only residual powder from manufacturing.

* * * * *

§ 878.4480 [Removed]

■ 3. Remove § 878.4480.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 4. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 5. Amend § 880.6250 by revising the heading and paragraph (a) to read as follows:

§ 880.6250 Non-powdered patient examination glove.

(a) *Identification.* A non-powdered patient examination glove is a disposable device made of either natural rubber latex or synthetic latex, intended for medical purposes, that is worn on the examiner's hand or finger to prevent contamination between patient and examiner. A non-powdered patient examination glove does not incorporate powder for purposes other than manufacturing. The final finished glove includes only residual powder from manufacturing.

* * * * *

PART 895—BANNED DEVICES

■ 6. The authority citation for 21 CFR part 895 continues to read as follows:

Authority: 21 U.S.C. 352, 360f, 360h, 360i, 371.

■ 7. Add § 895.102 to subpart B to read as follows:

§ 895.102 Powdered surgeon's glove.

A powdered surgeon's glove is a device made of natural rubber latex or synthetic latex, intended to be worn by operating room personnel to protect a surgical wound from contamination. A powdered surgeon's glove incorporates powder for purposes other than manufacturing.

■ 8. Add § 895.103 to subpart B to read as follows:

§ 895.103 Powdered patient examination glove.

A powdered patient examination glove is a disposable device made of natural rubber latex or synthetic latex, intended for medical purposes, that is worn on the examiner's hand or finger to prevent contamination between patient and examiner. A powdered patient examination glove incorporates powder for purposes other than manufacturing.

■ 9. Add § 895.104 to subpart B to read as follows:

§ 895.104 Absorbable powder for lubricating a surgeon's glove.

Absorbable powder for lubricating a surgeon's glove is a powder made from cornstarch that meets the specifications for absorbable powder in the United States Pharmacopeia (U.S.P.) and that is intended to be used to lubricate the surgeon's hand before putting on a surgeon's glove. The device is absorbable through biological degradation.

Dated: March 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06360 Filed 3–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–417C]

Schedules of Controlled Substances: Placement of UR–144, XLR11, and AKB48 Into Schedule I; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Drug Enforcement Administration published a document in the **Federal Register** of May 14, 2015, concerning the proposal to place (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule I of the Controlled Substances Act (CSA), specifically under cannabimimetic agents. This corrected notice of proposed rulemaking proposes to place such substances into schedule I of the CSA under hallucinogenic substances.

DATES: Interested persons may file written comments on this correction to the initial proposal in accordance with 21 CFR 1308.43(g). The DEA is requesting comments on this change only and is not soliciting comments on other aspects of the May 14, 2015, notice of proposed rulemaking published at 80 FR 27611. Electronic comments must be submitted, and written comments must be postmarked, on or before April 21, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–417C'' on all correspondence, including any attachments. The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on Regulations.gov. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purposes of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he * * * finds that such drug or other substance has a potential for abuse, and * * * makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *.'' The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on her own motion; (2) at the request of the Secretary of the Department of Health

and Human Services (HHS),[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action (80 FR 27611, May 14, 2015) is supported by a recommendation from the Assistant Secretary of the HHS and an evaluation of all other relevant data by the DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles, or proposes to handle, UR-144, XLR11, or AKB48.

Background

UR-144, XLR11, and AKB48 are currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 80 FR 27854, May 15, 2015. On May 14, 2015, the Administrator of the DEA published a notice of proposed rulemaking (NPRM) to permanently schedule (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) into schedule I pursuant to the CSA. 80 FR 27611.

In the NPRM, the DEA inadvertently proposed the addition of these substances in schedule I under 21 CFR 1308.11(g), cannabimimetic agents, by adding paragraphs (g)(16) through (18). These substances should have been proposed to be added in schedule I under 21 CFR 1308.11(d), hallucinogenic substances. This rulemaking therefore corrects the NPRM by proposing the placement of these substances in 21 CFR 1308.11(d) by adding paragraphs (d)(48) through (50). Because the DEA is proposing to classify these substances as schedule I hallucinogenic substances, then by operation of 21 U.S.C. 802(14), this classification will include any optical, positional, or geometric isomers. Interested persons may file written comments on this change in accordance with 21 CFR 1308.43(g). The DEA is requesting comments on this change only and is not soliciting comments on other aspects of the May 14, 2015, NPRM. The DEA previously had provided an opportunity for comments on other aspects of the NPRM on May 14, 2015, through June 15, 2015.

Regulatory Analyses

This correction has no effect on the regulatory analyses statements that were published with the notice of proposed rulemaking published in the **Federal Register** on May 14, 2015, at 80 FR 27611.

Correction

In proposed rule FR Doc. 2015–11762, beginning on page 27611 in the issue of May 14, 2015, make the following corrections.

■ 1. On page 27616 in the 3rd column, correct amendatory instruction 2.a. to read as follows: ''Adding paragraphs (d)(65) through (67); and''.

■ 2. On page 27616 in the 3rd column, correct § 1308.11 Schedule I regulatory text to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(65) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144)	(7144)
(66) [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl) methanone (5-fluoro-UR-144, XLR11)	(7011)
(67) *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48)	(7048)

* * * * *

Dated: March 16, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–06474 Filed 3–21–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 583

RIN 1010–AD90

[Docket ID: BOEM–2010–0041]

Negotiated Noncompetitive Leasing for the Use of Sand, Gravel, and Shell Resources on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes regulations to address the use of Outer Continental Shelf (OCS) sand, gravel and shell resources for shore protection, beach restoration, or coastal wetlands restoration projects by Federal, State, or local government agencies, or use in construction projects authorized by or funded in whole or in part by the Federal Government. The proposed rule describes the negotiated noncompetitive agreement process for qualifying projects and codifies new and existing procedures.

DATES: Submit comments by May 23, 2016. The Bureau of Ocean Energy Management (BOEM) may not fully consider comments received after this date. Submit comments to the Office of Management and Budget (OMB) on the information collection (IC) burden in this proposed rule by April 21, 2016. This does not affect the deadline for the public to comment to BOEM on the proposed regulation.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD90 as an identifier in your comment. Please reference ''Outer Continental Shelf Marine Sand, Gravel and Shell Resources, 1010–AD90'' in your comments and include your name and return address.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Bureau of Ocean Energy Management'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select BOEM–2010–0041 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. BOEM will post comments on *www.regulations.gov.*
- Mail or hand-carry comments to the U.S. Department of the Interior; Bureau of Ocean Energy Management; Attn: Office of Policy, Regulation and Analysis, 45600 Woodland Road, VAM–BOEM DIR, Sterling, Virginia 20166.
- Send comments on the IC in this proposed rule to: Interior Desk Officer 1010–AD90, Office of Management and Budget; 202–395–5806 (fax); email:

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[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

OIRA_Submission@omb.eop.gov. Please also send a copy to BOEM, Office of Policy, Regulation and Analysis at 45600 Woodland Road, Sterling, VA 20166.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: For comments or questions, contact Loren Thompson, Office of Policy, Regulation and Analysis, at *Loren.Thompson@boem.gov*, or at (202) 208–5890. To see a copy of the IC request submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also obtain a copy of the supporting statement for the new collection of information by contacting BOEM, Office of Policy, Regulation and Analysis at 45600 Woodland Rd., Sterling, VA 20166.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress amended the Outer Continental Shelf Lands Act, 43 U.S.C. 1331–1356 (OCSLA, or the Act), in 1994 to authorize the Secretary of the Interior to negotiate noncompetitive agreements with any person for the use of OCS sand, gravel and shell resources in a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State or local government agency, or in a construction project either authorized or funded in whole or in part by the Federal Government. *See* 43 U.S.C. 1337(k)(2). The Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly against a Federal, State, or local government agency. *See* 43 U.S.C. 1337(k)(2)(B).

A. Program Description

Generally, shore protection and beach and coastal wetlands restoration projects are initiated to rebuild eroding shoreline segments, such as beaches and dunes, barrier islands, and wetlands. In sensitive wetland areas, these projects are intended to forestall further erosion, restore habitat and/or to provide protection from hurricanes, storms, and coastal erosion. These projects are typically accomplished by placing sand directly on the beach, in open water areas that are the former location of an eroded beach, and/or within breaches in the shoreline that compromise integrity of the beach or barrier island system to form, and subsequently maintain, a beach. Material may also be placed updrift from the beach, allowing longshore processes to redistribute the sand, gravel and shell resources along the beach.

The Act authorizes BOEM to enter into a negotiated agreement when the use of OCS sand, gravel and shell resources is authorized for qualifying projects. This negotiated agreement will take the form of a lease or a Memorandum of Agreement (MOA), depending on the identity of the applicant(s) requesting use of OCS sand, gravel and shell resources. If a non-Federal entity requests the use of OCS sand, gravel and shell resources, the negotiated agreement required by the Act would generally take the form of a lease. If a Federal agency requests the use of OCS sand, gravel and shell resources, BOEM and the Federal agency, as well as their Federal, State or local government agency counterparts on the project, would enter into a MOA. For example, when a Federal agency partially or wholly funds a non-Federal entity to conduct a project that is otherwise eligible for OCS sand, gravel and shell resources, the negotiated agreement may take the form of a three-party MOA. As warranted, the Federal applicant(s) and BOEM would designate a lead agency and enter into a cooperating agency agreement for the environmental analysis and review. Likewise, if a non-Federal applicant is involved, BOEM would ensure that appropriate environmental analysis and review is completed. The negotiated agreement in each of these situations would describe the project and procedures that would be followed and identify environmental and administrative requirements that must be met.

B. Program History

BOEM and its predecessor agencies, the Minerals Management Service and the Bureau of Ocean Energy Management, Regulation and Enforcement, through the Marine Minerals Program, have been exercising statutory authority regarding OCS sand, gravel and shell resources under the Act pursuant to written guidelines, without the benefit of implementing regulations. Nearly fifty agreements have been negotiated, providing for the use of more than 100 million cubic yards of OCS sand, gravel and shell resources for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State or local government agency, and for Federally authorized or funded construction projects. BOEM believes that the promulgation of regulations at this time is advisable in order to provide additional clarity and certainty and to help ensure continuity of the Marine Minerals Program.

II. Section by Section Analysis of the Proposed Rule

Subpart A—General

Section 583.100 What is BOEM's authority for information collection (IC)?

This section would explain BOEM's authority for IC activities related to this proposed part 583. It would explain the reasons the information is being collected and establish the OMB approval of the collection.

Section 583.101 What is the purpose of this rule and to whom does it apply?

This section would explain that the purpose of this proposed rule is to refine and formally adopt procedures for entering into negotiated noncompetitive agreements for the use of OCS sand, gravel and shell resources for shore protection, beach or wetlands restoration by a Federal, State or local government agency or for construction projects authorized or funded, in whole or in part, by the Federal Government. This section would explain that the rule would apply exclusively to negotiated noncompetitive use of sand, gravel and shell resources in the OCS and would not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from ''public lands'' as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA). (43 U.S.C. 1701 *et seq.*)

Section 583.102 What is BOEM's authority for this rule?

This section would explain that in proposing these regulations, BOEM is operating under authority granted to the Secretary of the Interior by the Act.

Section 583.103 What definitions do I need to know?

This section would define many of the terms commonly used in the Marine Minerals Program and now used in the proposed regulation, including ''borrow area,'' ''placement area,'' and ''project.'' This section would also define new terms for purposes of this subpart, including ''Act,'' ''agreement,'' ''amendment,'' ''BOEM,'' ''Director,'' ''Federal agency,'' ''local government,'' ''modification,'' ''outer continental shelf,'' ''program,'' ''Regional Director,'' and ''Secretary.''

Section 583.104 Who is qualified for a project?

This section would explain who is qualified to enter into an agreement with BOEM for the use of OCS sand, gravel, and shell resources, and would explain the requirements to comply with the relevant debarment regulations.

Section 583.105 How do I appeal an unfavorable decision by BOEM?

This section would set out the kinds of decisions that would be subject to reconsideration or appeal, and the process that would be utilized by an unsuccessful applicant or adversely affected party for resolution of such reconsideration or appeal.

Section 583.106 What are the minimum contents of an agreement to use OCS sand, gravel and shell resources?

This section would explain who would be allowed to use OCS sand, gravel and shell resources, and would explain that use authorizations would be in the form of agreements that are negotiated on a case-by-case basis. It would also explain that the agreements would identify the location, type and volume of OCS sand, gravel and shell resources allowed to be used under the agreement. In addition, it would explain that any authorizations to use sand, gravel and shell resources would not be exclusive.

Subpart B—Reserved

Subpart C—Outer Continental Shelf Sand, Gravel and Shell Resources Negotiated Agreements

Section 583.300 How do I submit a request for an agreement?

This section would explain who may submit a request to BOEM to obtain an agreement for the use of OCS sand, gravel, and shell resources. It would list the information the request must include, such as a detailed description of the proposed project and how it qualifies as a project eligible under the Act to receive OCS sand, gravel and shell resources pursuant to a negotiated noncompetitive agreement; a description of borrow and placement areas; certain maps and data; a description of the environmental evaluations that have been completed or are being prepared that cover the project, including both onshore and offshore components; a target date or date range when the resources will be needed; a description of the Federal, State, or local agencies that are undertaking the project and points of contact; and a statement explaining who authorized the project and how the project will be funded.

Section 583.301 How will BOEM determine if a project qualifies?

This section would lay out the factors that BOEM would use to determine whether a project qualifies for use of sand, gravel and shell resources under a negotiated noncompetitive agreement. The section would enumerate the evaluation criteria, including: The project purpose; other uses of OCS sand, gravel and shell resources authorized from the same borrow area; the project funding source(s) and amounts; the proposed design and feasibility of the project; any potential environmental and safety risks associated with the project; other Federal interests located near or within the specified borrow area; comments received from potentially affected governments; the applicant's background and experience working on similar projects or activities; and whether the project is consistent with applicable statutes and their implementing regulations, which may include, but are not limited to, the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPRA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPRCA) (33 U.S.C. 1901 *et seq.*), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

Section 583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?

This section would explain the process that BOEM would follow to evaluate a project that qualifies for the use of OCS sand, gravel and shell resources to decide whether to enter into a negotiated noncompetitive agreement. It states that BOEM would coordinate with relevant Federal agencies, States, and local governments, and potentially affected Federally recognized Indian Tribes. It also describes how BOEM would evaluate the project and additional information provided under §§ 583.300 and 583.301 to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*). Finally, this section would provide that BOEM would not enter into a negotiated noncompetitive agreement until the information requested for the evaluation has been provided and BOEM has evaluated it.

Section 583.303 What is the process for negotiating and executing an agreement?

This section would describe the steps BOEM would take once it has completed its technical, environmental and other evaluations. This section would provide further that, once BOEM has completed its review of an application, BOEM would decide whether to enter into an agreement. This section would provide further that BOEM would negotiate the terms of the agreement and prepare a draft agreement for the applicant's review and comment. The section would also provide that, after BOEM considers the applicant's comments and suggestions, it would finalize the agreement for signature. This section would provide that, once the applicant signs the agreement, BOEM would execute the agreement and distribute it to the parties

to the agreement. Finally, this section would describe the process BOEM would use when an application is not approved.

Section 583.304 What kinds of information must be included in an agreement?

This section would describe the minimum information that an agreement would be required to include, such as an agreement number assigned by BOEM; the purpose of, and authorities for, the agreement; designated and delineated borrow area(s); the project description, including the timeframe within which the project is to be started and completed; the terms and conditions of the agreement, including any reporting requirements; all obligations of the parties; and the signatures of appropriate individuals authorized to bind the applicant and BOEM.

Section 583.305 What is the effective date of an agreement?

This section would describe what determines the effective date of the agreement.

Section 583.306 How will BOEM enforce the agreement?

This section would describe how BOEM would enforce the terms of an agreement and the consequences, including termination, for failure to comply with any applicable law or with the agreement terms. This section would also provide that the failure to comply in a timely and satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel and shell resources on the part of the parties to the agreement.

Section 583.307 What is the term of the agreement?

This section would explain when an agreement would terminate, either by a specified date, when parties to the agreement notify BOEM that sufficient resources have been removed to complete the project, or for other reasons specified in this section. This section would also explain that, absent extraordinary circumstances, no agreement would have an initial term that is longer than five years from its effective date. Examples of extraordinary circumstances where an initial term longer than five years may be appropriate would include a program of multiple individual projects to be carried out over multiple seasons or where the Congressional authorization for a project called for multiple phases. It would be within BOEM's sole discretion to determine when extraordinary circumstances warrant an initial term longer than five years. The parties would have the option to request an extension, modification or change to the terms of the agreement, as set forth in § 583.309.

Section 583. 308 What debarment or suspension obligations apply to transactions and contracts related to a project?

This section would explain that the applicant has the obligation to ensure that all contracts and transactions related to an agreement issued under this part comply with the suspension and debarment regulations at 2 CFR part 180 and 2 CFR part 1400.

Section 583.309 What is the process for modifying the agreement?

This section would explain how an applicant may seek to extend, modify or change an agreement and would spell out the time frames when this might be accomplished. It would provide that BOEM is under no obligation to extend, modify or change an agreement and cannot be held liable for the consequences of the expiration of an agreement. If BOEM approves a modification, BOEM would prepare an amendment to the agreement and provide it for review by the parties to the agreement prior to execution of the amendment. Should BOEM deny the request, BOEM would notify the parties to the agreement and reconsideration could be requested of the Director.

Section 583.310 When can the agreement be terminated?

This section would explain under what circumstances the Director could terminate an agreement. The termination factors include fraud; noncompliance with the agreement; national security or defense reasons; situations in which continuing with the agreement would cause serious harm or damage to natural resources, property, the environment or historical structures; and other reasons described in this section. This section would also explain the process for terminations and suspensions.

III. Legal and Regulatory Analysis

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA), a part of the OMB, will review all significant rules. OIRA has determined that this rule is not significant.

(1) This proposed rule contains virtually the same reporting and recordkeeping requirements as those in the current uncodified guidelines and procedures. A regulatory impact analysis is not required. This proposed rule formalizes existing policies and procedures that govern the use of OCS sand, gravel and shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of OCS sand, gravel and shell resources are longstanding and have remained relatively consistent for two decades. This proposed rule does not materially change the existing requirements for the use of OCS sand, gravel and shell resources through leases or MOAs for shore protection, beach or wetlands restoration by a Federal, State or local government agency, or for construction projects authorized or funded, in whole or in part, by the Federal Government. The regulatory baseline is essentially the same as the proposed rule. BOEM believes that any changes between the current BOEM process and this proposed rule are immaterial and would not impose additional compliance obligations or costs upon the regulated entities.

Formalizing the existing conveyance process will provide certainty to the public entities requesting noncompetitive leases or MOAs for OCS sand, gravel and shell resources. BOEM believes there is a benefit to the regulated entities in the form of regulatory certainty when Federal, State and local government agencies desire to use OCS sand, gravel and shell resources for qualifying projects. Entities affected by this rulemaking have the opportunity to comment through the rulemaking process on the proposed provisions, which are consistent with current practices for the conveyance of sand, gravel and shell resources.

(2) This proposed rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It reflects the existing process developed over the life of the program in cooperation with other Federal agencies, including the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS) and U.S. Army Corps of Engineers, and State and local governments.

(3) This proposed rule does not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local or tribal governments or communities.

(4) This rule does not alter the budgetary effects of existing entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Improving Regulation and Regulatory Review (E.O. 13563)

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BOEM has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

BOEM certifies this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Small public entities affected by this rulemaking may be cities, counties, towns, townships, villages or special districts, with a population of less than 50,000. Small entities are occasionally parties to an agreement for the use of OCS sand, gravel and shell resources. Over the last two decades, BOEM has issued nearly 50 leases or MOAs with 22 parties, of which 5 were small public entities. Four out of the 5 small public entities received significant Federal cost-shares to conduct beach nourishment projects. The proposed application and monitoring requirements are necessary to comply with Federal law and provide BOEM and the public the best information on the changes in the sand borrow areas. Since BOEM is not proposing any material changes to the longstanding requirements for borrowing OCS sand, gravel and shell resources, this rulemaking will not have a substantial effect on small entities.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEM enforcement activities, you may call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more;

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State and local governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule would comply with the requirements of E.O. 12988. Specifically, this rule would:

(a) Meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and,

(b) Meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

The U.S. Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self governance and tribal sovereignty. BOEM's Tribal Liaison Officer has certified that this regulation does not have tribal implications as defined in section 1(a) of E.O. 13175 and has determined that the regulation does not have substantial and direct effects on Federally recognized tribes or any Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*

As it relates to any Federally recognized Indian tribe, this proposed rule merely formalizes existing policies and procedures that govern the use of OCS sand, gravel and shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of sand, gravel and shell resources are longstanding and have remained relatively consistent for two decades. If BOEM determines an individual project authorized under this part may have effects on Federally recognized tribes or any Alaska Native Corporation, BOEM will initiate consultation as soon as possible consistent with E.O. 13175 and DOI tribal consultation policies. A tribe may also request BOEM initiate consultation pursuant to E.O. 13175.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a new collection of information request that is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The rule proposes to add a new part 583 to address the use of OCS sand, gravel and shell resources for shore protection or replenishment, wetland restoration,

or qualified construction projects. This part describes the negotiated noncompetitive agreement process for qualifying projects and would codify procedures. The title of the IC request is *30 CFR 583, Negotiated Noncompetitive Leasing for the Use of Sand, Gravel and Shell Resources on the OCS.*

Respondents that would be required to submit information under this part are other Federal, State, and local government agencies; corporations; and individual entities. Responses would primarily be required in order to obtain or retain a benefit. The frequency of response would vary depending on the requirement. BOEM would protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). BOEM proposes to collect the information under this part to evaluate applications for leases/agreements to access sand, gravel or shell resources on the OCS; to balance multiple uses of the OCS; and to monitor activities for environmental protection and safety.

The following table provides a breakdown of the IC requirements and burdens in this proposed part.

BURDEN TABLE

Citation 30 CFR 583	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General—Federal, State, & local governments				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Subpart A—General—Corporations				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Subpart A—General—Individuals				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Total Subpart A			3	6
Subpart C—OCS Sand, Gravel, & Shell Resources Negotiated Agreements—State & local governments				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM	5	1	5
303(b)	Request that the BOEM Director reconsider a disapproved agreement	Burden covered under 30 CFR Subpart A		2
303(c)–(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment	1	1	1
Subpart C—OCS Sand, Gravel, & Shell Resources Negotiated Agreements—Corporations				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM	5	1	5
303(b)	Request that the BOEM Director reconsider a disapproved agreement	Burden covered under 30 CFR Subpart A		2
303(c)–(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24

BURDEN TABLE—Continued

Citation 30 CFR 583	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment	1	1	1
Subpart C—OCS Sand, Gravel, & Shell Resources Negotiated Agreements—Individuals				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM	5	1	5
303(b)	Request that the BOEM Director reconsider a disapproved agreement	Burden covered under 30 CFR Subpart A		2
303(c)–(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment	1	1	1
Total Subpart C			39	237
Grand Total			42	243

As part of our continuing effort to reduce paperwork and response burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. We specifically solicit comments on the following questions:

(1) Is the proposed collection of information necessary for BOEM to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the IC burden on those who must respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) Total capital and startup cost component; and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you expect to incur costs. Generally, your estimates should not include equipment or services purchased (1) before October 1, 1995; (2) to comply with requirements not associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives the comment by April 21, 2016. This does not affect the deadline for the public to comment to BOEM on the proposed regulations.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this rule under the criteria of the NEPA and DOI's NEPA implementing regulations at 43 CFR 46. This rule meets the criteria set forth in 43 CFR 46.210(i) for a Departmental ''categorical exclusion'' in that this rule is '' . . . of an administrative, financial, legal, technical, or procedural nature.

. . .'' We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215.

Information Quality Act (IQA)

In accordance with the IQA, DOI has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's Web site at *http://www.doi.gov.*

Send your comments to the U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation and Analysis, Attn: IQA Comments, 45600 Woodland Road, VAM-BOEM DIR, Sterling, Virginia 20166.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever helpful.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help BOEM revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects 30 CFR 583

Administrative practice and procedure, Beach restoration, Coastal wetlands restoration, Gravel, Government contracts, Intergovernmental relations, Marine minerals, Marine minerals program, Noncompetitive agreements, Negotiated agreements, Outer Continental Shelf, Sand, Shell resources and Shore protection.

Dated: March 10, 2016.

Amanda C. Leiter,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, BOEM proposes to amend 30 CFR to add part 583 to read as follows:

PART 583—NEGOTIATED NONCOMPETITIVE AGREEMENTS FOR USE OF OUTER CONTINENTAL SHELF SAND, GRAVEL AND SHELL RESOURCES

Subpart A—General

Sec.
583.100 What is BOEM's authority for information collection (IC)?
583.101 What is the purpose of this part and to whom does it apply?
583.102 What is BOEM's authority for this part?
583.103 What definitions do I need to know?
583.104 Who is qualified for a project?
583.105 How do I appeal an unfavorable decision by BOEM?
583.106 What are the minimum contents of an agreement to use OCS sand, gravel, and shell resources?

Subpart B—[Reserved]

Subpart C—Outer Continental Shelf Sand, Gravel, and Shell Resource Negotiated Agreements

583.300 How do I submit a request for an agreement?
583.301 How will BOEM determine if a project qualifies?
583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?
583.303 What is the process for negotiating and executing an agreement?
583.304 What kinds of information must be included in an agreement?
583.305 What is the effective date of an agreement?
583.306 How will BOEM enforce the agreement?
583.307 What is the term of the agreement?
583.308 What debarment or suspension obligations apply to transactions and contracts related to a project?
583.309 What is the process for modifying the agreement?
583.310 When can the agreement be terminated?

Authority: 43 U.S.C. 1334.

Subpart A—General

§ 583.100 What is BOEM's authority for information collection (IC)?

The information collection requirements contained in the new part 583 have been approved by the OMB under 44 U.S.C. 3501 and assigned clearance number 1010–XXXX. The information is being collected to determine if the applicant for a negotiated noncompetitive agreement (agreement) for the use of sand, gravel and shell resources on the Outer Continental Shelf (OCS) is qualified to enter into such an agreement and to determine if the requested action is warranted. Applicants and parties to the agreement are required to respond to requests related to information collection activities.

§ 583.101 What is the purpose of this part and to whom does it apply?

The regulations in this part provide procedures for a negotiated noncompetitive program for utilization of OCS sand, gravel and shell resources. The rules of this part apply exclusively to negotiated noncompetitive use of OCS sand, gravel and shell resources and do not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from ''public lands'' as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

§ 583.102 What is BOEM's authority for this part?

(a) Pursuant to authority granted by the Outer Continental Shelf Lands Act (OSCLA, or the Act), as amended (43 U.S.C. 1331 *et seq.*), the Secretary has authority to negotiate an agreement for the use of OCS sand, gravel and shell resources:

(1) For use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(2) For use in a construction project, other than a project described in paragraph (1), that is funded in whole or in part by or authorized by the Federal Government.

(b) The Secretary has authorized BOEM to administer the negotiated noncompetitive agreement provisions of the Act and prescribe the rules and regulations necessary to carry out those provisions.

§ 583.103 What definitions do I need to know?

When used in this part, the following terms will have the meaning given below:

Act means the OCSLA, as amended (43 U.S.C. 1331 *et seq.*).

Agreement means a negotiated noncompetitive agreement that authorizes a person to use OCS sand, gravel and shell resources in a program of or project for shore protection, beach restoration or coastal wetlands restoration undertaken by one or more Federal, State or local government

agencies, or in a construction project, authorized by, or funded in whole or in part by the Federal government. The form of the agreement will be a Memorandum of Agreement (if one or more of the parties to the agreement, other than BOEM, is a Federal government agency) or a lease (if all of the parties to the agreement other than BOEM are non-Federal agencies or persons).

Amendment means a modification to the agreement between BOEM and the parties to the agreement that extends, modifies or changes the terms of the agreement.

Applicant means any person proposing to use OCS sand, gravel and shell resources for a shore protection, beach restoration or coastal wetlands restoration project undertaken by a Federal, State, or local government agency, or construction project, authorized by, or funded in whole or in part by the Federal government. If multiple persons or Federal, State, or local governments, other than BOEM, partner on a project they will be considered joint applicants.

BOEM means the Bureau of Ocean Energy Management of the U.S. Department of the Interior (DOI).

Borrow area means the offshore geographic area(s) or region(s) where OCS sand, gravel and shell resources have been identified for potential use in a specific project.

Director means the Director of BOEM of the DOI, or an official authorized to act on the Director's behalf.

Federal agency means any department, agency, or instrumentality of the United States.

Local government means the governing authority at the county or city level with jurisdiction to administer a particular project(s).

Modification means the process whereby parties to an agreement and BOEM mutually agree to change, alter or amend the existing agreement.

Outer continental shelf (OCS) is defined in the same way it is defined in Section 2(a) (43 U.S.C. 1331(a)) of the OCSLA, as amended (43 U.S.C. 1331 *et seq.*).

Placement area means the geographic area in which OCS sand, gravel and shell resources, used by agreement, will be placed pursuant to that agreement.

Program means a group of related projects that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel and shell resources.

Project means an undertaking that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel and shell resources.

Regional Director means the BOEM officer with responsibility and authority for a Region of the United States.

Secretary refers to the Secretary of the Interior.

§ 583.104 Who is qualified for a project?

(a) BOEM may enter into an agreement with any person proposing to use OCS sand, gravel and shell resources for a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency or in a construction project that is funded in whole or in part by or authorized by the Federal government.

(b) To qualify for an agreement under this part, the applicant must be:

(1) A Federal, State, or local government agency;

(2) A citizen or national of the United States;

(3) An alien lawfully admitted for permanent residence in the United States, as defined in the Immigration and Nationality Act, as amended (8 U.S.C. 1101 (a)(20));

(4) A private or public corporation organized under the laws of the United States or of any State or territory thereof; or

(5) An association of such citizens, nationals, resident aliens or private or public corporations.

(c) When entering into an agreement under this part, all applicants are subject to the requirements of 2 CFR part 180 and 2 CFR part 1400.

§ 583.105 How do I appeal an unfavorable decision by BOEM?

(a) After being notified of disqualification, or disapproval of an agreement or modification, an unsuccessful applicant, or adversely affected party to an agreement, may apply for reconsideration by the Director.

(1) All applications for reconsideration by the Director must be submitted within 15 days of being notified of disqualification, or disapproval of an agreement or modification, accompanied by a statement of reasons for the requested reconsideration, with one copy to the program office whose decision is the subject of the reconsideration.

(2) The Director will respond in writing within 30 days.

(b) No additional appeal rights are available under 30 CFR part 590 and 43 CFR part 4, subpart E.

§ 583.106 What are the minimum contents of an agreement to use OCS sand, gravel, and shell resources?

Any use of OCS sand, gravel and shell resources in an agreement will be negotiated on a case-by-case basis. The agreement will specify, at a minimum, who may use the OCS sand, gravel and shell resources; the nature of the rights granted; and the location, type, and volume of OCS sand, gravel and shell resources. Any authorization to use OCS sand, gravel and shell resources identified in an agreement is not exclusive; BOEM may allow other entities to use OCS sand, gravel and shell resource from the same borrow area.

Subpart B—[Reserved]

Subpart C—Outer Continental Shelf Sand, Gravel, and Shell Resources Negotiated Agreements

§ 583.300 How do I submit a request for an agreement?

Any person may submit a written request to BOEM to obtain an agreement for the use of OCS sand, gravel and shell resources for use in a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency, or in a construction project that is funded in whole or in part by or authorized by the Federal Government. The written request must include:

(a) A detailed description of the proposed project for which the OCS sand, gravel and shell resources will be used and how it qualifies as a program or project eligible under the Act to use OCS sand, gravel or shell resources;

(b) A description of the proposed borrow area(s) and placement area(s), along with maps with geographic coordinates depicting the location of the desired borrow area(s), the OCS block number(s), OCS Planning Area(s), OCS Protraction Diagram Designation(s), and the placement area(s). These should include:

(1) A detailed set of hardcopy maps with coordinates and navigation features of the desired OCS project area (including borrow area and other project features); and

(2) Digital geo-referenced spatial and tabular data depicting the borrow area with features, such as geological sampling locations and any hard or live-bottom benthic habitat present;

(c) Any available geological and geophysical data used to select, design, and delineate the borrow area(s) and potential borrow areas considered but not selected for final design in digital format, geo-referenced where relevant. These may include:

(1) Sediment sampling (sediment cores and grab samples) data such as physical description sheets,

photographs, core locations, and grain size analysis; and

(2) Geophysical data such as subbottom profiler, marine magnetometer, and side-scan sonar data, and bathymetry including geo-referenced navigation survey tracklines, shotpoints, and/or timestamps;

(d) Any other uses of the OCS in the borrow area that are known to the applicant at the time of application submittal;

(e) A description of the environmental evaluations and corresponding documents that have been completed or are being prepared, that cover all offshore and onshore components of the project, as applicable;

(f) A target date or date range when the OCS sand, gravel and shell resources will be needed;

(g) A description of the person or government entities undertaking the project;

(h) A list of any permits, licenses or authorizations required for the project and their current status;

(i) A description of any potential inconsistencies with state coastal zone management plans and/or any other applicable state and local statutes, regulations or ordinances;

(j) The name, title, telephone number, mailing address and email address of any points of contact for any Federal agencies, State or local governments, and contractor(s) with whom the applicant has contracted or intends to contract;

(k) A statement explaining who authorized the project and how the project is to be funded, indicating whether the project is Federally funded, in whole or in part, and whether the project is authorized by the Federal government; and

(l) For any other Federal, State or local government agency identified in the application, the name, title, mailing address, telephone number, and email address of both a primary and a secondary point of contact for the agency.

§ 583.301 How will BOEM determine if a project qualifies?

BOEM will make a determination as to whether the project, as described in section 583.300, qualifies for use of OCS sand, gravel and shell resources under the Act. Within 15 business days of receipt of the application, BOEM will determine if the application is complete or will request additional information. After it has determined the application is complete, BOEM will begin the application review process and notify the applicant in writing whether the project qualifies for an agreement. In determining whether a project qualifies for an agreement, BOEM will consider, among other criteria, the following:

(a) The project purpose;

(b) Other uses of OCS sand, gravel and shell resources from the same borrow area that are currently or were previously authorized by BOEM for other projects or programs, including the location, type and volume of such resources;

(c) The project funding source(s) and amounts;

(d) The proposed design and feasibility of the project;

(e) Any potential environmental and safety risks;

(f) Other Federal interests located near or within the specified borrow area;

(g) Comments received from potentially affected State or local governments, if any;

(h) The applicant's background and experience working on similar projects or activities;

(i) Whether the project operations can be conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources;

(j) Whether activities can be conducted in a manner that does not pose a threat of serious harm or damage to, or waste of, any natural resource, any life (including fish and other aquatic life), property, or the marine, coastal, or human environment; and

(k) Whether the project is consistent with the requirements of applicable statutes and their implementing regulations, which may include, but are not limited to, the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPRA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPRCA) (33 U.S.C. 1901 *et seq.*), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

§ 583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?

(a) Once BOEM has determined a project qualifies for an agreement, BOEM will begin the project evaluation process to decide whether to enter into a negotiated noncompetitive agreement.

(b) BOEM will coordinate with relevant Federal agencies, State, and local governments and any potentially affected federally recognized Indian Tribes in the project evaluation.

(c) BOEM will evaluate the project and additional information provided pursuant to sections 30 CFR 583.300 and 583.301, to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are not limited to: OCSLA (43 U.S.C. 1331 *et seq.*), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the ESA (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*).

(d) BOEM will not enter into a negotiated noncompetitive agreement with the applicant until information requested for the evaluation has been provided and evaluated.

§ 583.303 What is the process for negotiating and executing an agreement?

(a) Upon completion of the technical, environmental and other evaluations established in 30 CFR 583.301 and 30 CFR 583.302, BOEM will decide whether to enter into a negotiated noncompetitive agreement with the applicant for use of OCS sand, gravel or shell resources for its proposed project.

(b) If BOEM decides not to enter into such an agreement, BOEM will inform the applicant of its reasons for not doing so. An applicant may ask the BOEM Director for reconsideration in accordance with 30 CFR 583.105(a).

(c) If BOEM has decided to enter into a negotiated noncompetitive agreement with the applicant, BOEM will negotiate the terms and conditions of the agreement with the applicant and prepare a draft agreement for the applicant's review.

(d) After considering comments and suggestions from the applicant, BOEM, at its discretion, may finalize the agreement and distribute it to the applicant for signature.

(e) Upon receipt of the agreement with the applicant's signature, BOEM will execute the agreement. A copy of the executed agreement will be mailed to the parties.

§ 583.304 What kinds of information must be included in an agreement?

Every agreement is negotiated on a case-by-case basis, but at a minimum, must include:

(a) An agreement number, as assigned by BOEM;

(b) The purpose of and authorities for the agreement;

(c) Designated and delineated borrow area(s);

(d) A project description, including the timeframe within which the project is to be started and completed;

(e) The terms and conditions of the agreement, including any reporting requirements;

(f) All obligations of the parties; and

(g) The signatures of appropriate individuals authorized to bind the applicant and BOEM.

§ 583.305 What is the effective date of an agreement?

The agreement will become effective on the date when all parties to the agreement have signed it.

§ 583.306 How will BOEM enforce the agreement?

(a) Failure to comply with any applicable law or any provision, term, or condition of the agreement may result in the termination of the agreement and/or a referral to an appropriate Federal and/or State agency/agencies for enforcement. Termination of the agreement for noncompliance will be in the sole discretion of the Director.

(b) The failure to comply in a timely and satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel and shell resources on the part of the parties to the agreement.

§ 583.307 What is the term of the agreement?

(a) An agreement will terminate upon the following, whichever occurs first:

(1) The agreement expires by its own terms, unless the term is extended prior to expiration under § 583.309;

(2) The project is terminated, as set forth in § 583.310; or

(3) A party to the agreement notifies BOEM, in writing, that sufficient OCS sand, gravel and shell resources, up to the amount authorized in the agreement, have been obtained to complete the project.

(b) Absent extraordinary circumstances, no agreement will be for a term longer than 5 years from its effective date.

§ 583.308 What debarment or suspension obligations apply to transactions and contracts related to a project?

The parties to an agreement must ensure that all contracts and transactions related to an agreement issued under this part comply with 2 CFR part 180 and 2 CFR part 1400.

§ 583.309 What is the process for modifying the agreement?

(a) Unless otherwise provided for in the agreement, the parties to the agreement may submit to BOEM a written request to extend, modify, or change an agreement. BOEM is under no obligation to extend an agreement and cannot be held liable for the consequences of the expiration of an agreement. With the exception of paragraph (b) of this section, any such requests must be made at least 180 days before the term of the agreement expires. BOEM will respond to the request for modification within 30 days of receipt and request any necessary information and evaluations to comply with 30 CFR 583.301. BOEM may approve the request, disapprove it, or approve it with modifications subject to the requirements of 30 CFR 583.301.

(1) If BOEM approves a request to extend, modify or change an agreement, BOEM will draft an agreement modification for review by the parties to the agreement in the form of an amendment to the original agreement. The amendment will include:

(i) The agreement number, as assigned by BOEM;

(ii) The modification(s) agreed to;

(iii) Any additional mitigation required; and

(iv) The signatures of the parties to the agreement and BOEM.

(2) If BOEM disapproves a request to extend, modify, or change an agreement, BOEM will inform the parties to the agreement of the reasons in writing. Parties to the agreement may ask the BOEM Director for reconsideration in accordance with 30 CFR 583.105.

(b) By written request, for strictly minor modifications that do not change the substance of the project or the analyzed environmental effects of the project, including but not limited to, the change of a business address, the substitution of a different Federal, State or local government agency contact, or an extension of less than 30 days, parties to the agreement may memorialize the minor modification in a letter from BOEM to the parties indicating the request has been granted.

§ 583.310 When can the agreement be terminated?

(a) The Director will terminate any agreement issued under this part upon proof that it was obtained by fraud or misrepresentation, after notice and an opportunity to be heard has been afforded to the parties of the agreement.

(b) The Director may immediately suspend and subsequently terminate any agreement issued under this part when:

(1) There is noncompliance with the agreement, pursuant to 30 CFR 583.306(a); or

(2) It is necessary for reasons of national security or defense; or

(3) The Director determines that:

(i) Continued activity under the agreement would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) The advantages of termination outweigh the advantages of continuing the agreement.

(c) The Director will immediately notify the parties to the agreement of the suspension or termination. The Director will also mail a letter to the parties to the agreement at their record post office address with notice of any suspension or termination and the cause for such action.

(d) In the event that BOEM terminates an agreement under this section, none of the parties to the agreement will be entitled to compensation as a result of expenses or lost revenues that may result from the termination.

[FR Doc. 2016–06163 Filed 3–21–16; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0793; FRL–9944–08–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements To Address Interstate Transport for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a State Implementation Plan (SIP) revision submitted by the Arizona Department of Environmental Quality on December 27, 2012, and supplemented on December 3, 2015, to address the interstate transport requirements of Clean Air Act (CAA or Act) section 110(a)(2)(D) with respect to the 2008 ozone (O_3) national ambient air quality standard (NAAQS). We are proposing to approve the portion of the Arizona SIP pertaining to significant contribution to

nonattainment or interference with maintenance in another state and proposing to disapprove the portion of Arizona's SIP pertaining to interstate transport visibility requirements. EPA's rationale for proposing to partially approve and partially disapprove Arizona's December 27, 2012 SIP revision and December 3, 2015 supplement is described in this notice. EPA previously took two separate actions on Arizona's December 27, 2012 submittal, on July 14, 2015 and August 10, 2015. We are taking comments on this proposal and plan to follow with a final action no later than June 7, 2016.

DATES: Written comments must be received on or before April 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2015–0793 at *http://www.regulations.gov,* or via email to *Clancy.Maeve@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, 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, 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: Maeve Clancy, EPA Region IX, (415) 947–4105, *Clancy.Maeve@epa.gov.*

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

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I. Background

CAA sections 110(a)(1) and (2) require states to address basic SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the ''infrastructure'' of a state's air quality management program. SIP submittals that address these requirements are referred to as ''infrastructure SIPs'' (I–SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' (prong 1) or ''interfere with maintenance'' (prong 2) of the applicable air quality standard in any other state. CAA section 110(a)(2)(D)(i)(II) requires SIP provisions that prevent interference with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). This action addresses the section 110(a)(2)(D)(i) requirements of prongs 1, 2 and 4 with respect to Arizona's I–SIP submissions.

On March 27, 2008, EPA issued a revised NAAQS for ozone.[1] This action triggered a requirement for states to submit an I–SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS.

On September 13, 2013, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' which provides ''advice on the development of infrastructure SIPs for the 2008 ozone NAAQS . . . as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.''[2] EPA followed that guidance with an additional memo specific to 110(a)(2)(D)(i)(I) (prongs 1 and 2) requirements for the 2008 O_3 standard on January 22, 2015 entitled, ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2008 Ozone NAAQS Under CAA Section 110(a)(2)(D)(i)(I)'' (2015 transport memo).[3] While this memo did not provide specific guidance to western states on interstate transport, it did contain preliminary modeling information for western states. This 2015 transport memo, following the approach used in EPA's prior Cross-State Air Pollution Rule (CSAPR),[4] provided data identifying ozone monitoring sites that were projected to be in nonattainment or have maintenance problems for the 2008 ozone NAAQS in 2018. Also, EPA provided the projected contribution estimates from 2018 anthropogenic oxides of nitrogen (NO_X) and volatile organic compound (VOC) emissions in each state to ozone concentrations at each of the projected sites.

On August 4, 2015, EPA published a **Federal Register** Notice entitled, ''Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone NAAQS.''[5] This Notice of Data Availability (NODA) is an update of the preliminary air quality modeling data that was released January 22, 2015. This NODA provided data identifying ozone monitoring sites that are projected to be nonattainment or have maintenance problems (following the CSAPR approach) for the 2008 ozone NAAQS in 2017.[6] Also, EPA provided the projected ozone contribution estimates from 2017 anthropogenic NO_X and VOC emissions in each state to ozone concentrations at each of the projected monitoring sites. The 2017 modeling released in the NODA was used to support EPA's proposed update to CSAPR to address CAA section 110(a)(2)(D)(i)(I) requirements with respect to the 2008 ozone NAAQS in the eastern U.S. (''CSAPR Update Rule'').[7] CSAPR and its predecessor transport rules, the NO_X SIP Call and CAIR, were designed to address the collective contributions from the 37 states in the eastern U.S. and ozone contribution information was not calculated to or from the 11 states in the western U.S. The proposed CSAPR Update Rule and the supportive

[1] National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).

[2] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10 (September 13, 2013).

[3] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10 (January 22, 2015).

[4] Cross-State Air Pollution Rule, 76 FR 48208 (Aug. 8, 2011).

[5] Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS), 80 FR 46271 (August 4, 2015).

[6] The EPA adopted 2017 as the analytic year for the updated ozone modeling information. See 80 FR 46273.

[7] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (December 3, 2015).

modeling released in the NODA include data relevant to the West but did not evaluate potential interstate transport impacts in 11 western states, including Arizona. In this action, we are utilizing these data to evaluate the state's submittals and any interstate transport obligations under section 110(a)(2)(D)(i)(I).

EPA is obligated, pursuant to a judgement issued by the Northern District of California in *Sierra Club* vs. *McCarthy,* to take final action on 110(a)(2)(D) prongs 1, 2, and 4 of Arizona's December 2012 SIP revision by June 7, 2016.[8] In our July 2015 partial approval and partial disapproval of Arizona's I–SIP submittals for the 2008 Pb and 2008 ozone NAAQS, for the I–SIP elements C, D, J, and K, EPA partially approved and partially disapproved the submittals for purposes of 110(a)(2)(D)(i)(II) prong 3 and partially approved and partially disapproved the submittals for purposes of 110(a)(2)(D)(ii) (relating to CAA sections 115 and 126). We also stated our intention to propose action on the I–SIP for the 2008 ozone NAAQS 110(a)(2)(D)(i) prongs 1, 2, and 4 in a separate action.[9] We subsequently took action on I–SIP elements A, B, E–H, L, and M for the 2008 Pb and 2008 ozone NAAQS in August 2015.[10]

II. State Submittals

On December 27, 2012, the Arizona Department of Environmental Quality (ADEQ) submitted its 2008 ozone NAAQS I–SIP (2012 submittal). This submittal briefly summarized the CAA requirements of sections 110(a)(2)(D)(i), 110(a)(2)(D)(ii), and EPA's I–SIP action for the previous 1997 ozone NAAQS, but as to prongs 1, 2, and 4 did not identify or address any potential interstate transport impacts between Arizona and other states or interstate transport visibility requirements for the 2008 ozone NAAQS. On December 3, 2015, ADEQ submitted a supplement to the 2012 submittal addressing 110(a)(2)(D)(i) prongs 1, 2, and 4.[11] For the purposes of this action, we will refer to the supplemental submittal as the ''2015 submittal.'' The 2015 submittal represents ADEQ's comprehensive analysis of ozone transport from Arizona to surrounding states and addresses potential interstate transport linkages between Arizona and the El Centro, CA and Los Angeles, CA nonattainment receptors that were identified in the 2015 ozone transport memo and the 2015 NODA. The 2015 submittal also addresses the requirements of prong 4 (interstate transport visibility requirements).

In the 2015 submittal, ADEQ summarizes the state's impact on downwind states. While Arizona's impact on the El Centro and Los Angeles monitors is in each case above 1%, Arizona impacts only one of the seven projected nonattainment or maintenance receptors in the Los Angeles area, and contributes less than 1% to all other maintenance and nonattainment receptors. ADEQ further states that, ''In eastern states, the EPA has chosen a 1% of the standard threshold as a significant contribution. However, Arizona considers the southwest to be different.'' The state goes on to say that, ''It is unclear at this point what threshold is significant for southwestern states.'' EPA's assessment of these statements is described in the next section. The submittal also summarizes sources of VOCs and NO_X statewide, outlining the controls on anthropogenic emission sources with a focus on efforts to reduce NO_X through controls implemented via Arizona's Regional Haze SIP and EPA's Regional Haze Federal Implementation Plan (FIP) and current and future Maricopa County stationary source controls in the Arizona SIP. For more information on Arizona's source categories and emissions controls, please see the technical support document (TSD) associated with today's proposed rulemaking.

III. EPA's Assessment

110(a)(2)(D)(i)(I) Prong 1 and Prong 2

EPA proposes to approve Arizona's SIP submissions pertaining to CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, with respect to the 2008 ozone NAAQS. As explained below, EPA's proposal is based on the state's submission and EPA's analysis of several factors and available data.

To determine whether the CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2 requirement is satisfied, EPA first must determine whether a state's emissions will contribute significantly to nonattainment or interfere with maintenance of a NAAQS in other states. If a state is determined not to make such contribution or interfere with maintenance of the NAAQS, then EPA can conclude that the state's SIP complies with the requirements of section 110(a)(2)(D)(i)(I). In several prior federal rulemakings interpreting section 110(a)(2)(D)(i)(I), EPA has evaluated whether a state will significantly contribute to nonattainment or interfere with maintenance of a NAAQS by first identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS.[12] EPA has then determined which upwind states contribute to these identified air quality problems in amounts sufficient to warrant further evaluation to determine if the state can make emission reductions to reduce its contribution. CSAPR and the proposed CSAPR Update used a screening threshold (1% of the NAAQS) to identify such contributing upwind states warranting further review and analysis. EPA's NODA used air quality modeling to evaluate contributions from upwind states to downward receptors. Applying the methodology used in CSAPR, the NODA modeling information indicates that emissions from Arizona contribute amounts exceeding the CSAPR 1% threshold at two projected downwind nonattainment sites in El Centro, California, and Los Angeles, California.[13]

EPA notes that it disagrees with ADEQ's contention that it is unclear what screening threshold is significant for southwestern states when addressing interstate transport contributions. EPA believes contribution from an individual state equal to or above 1% of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located.[14]

Accordingly, although EPA's modeling indicates that emissions from

[8] See Judgment, Sierra Club v. McCarthy, Case 4:14–cv–05091–YGR (N.D. Cal. May 15, 2015).

[9] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Infrastructure Requirements for Lead and Ozone. 80 FR 40905 (July 14, 2015).

[10] Approval and Promulgation of State Implementation Plans; Arizona; Infrastructure Requirements for the 2008 Lead (Pb) and the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS). 80 FR 47859 (August 10, 2015).

[11] ''Arizona State Implementation Plan Revisions for 2008 Ozone and 2010 Nitrogen Dioxide Under Clean Air Act Section 110(a)(2)(D) . . .'' Signed December 3, 2015. And see email from Heidi Haggerty of ADEQ. ''AZ 2015 Ozone Transport I–SIP Submittal Clarification.'' Sent December 9, 2015.

[12] NO_X SIP Call, Final Rule, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), Final Rule, 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update Rule, Proposed Rule, 80 FR 75706 (Dec. 3, 2015).

[13] Data file with 2017 Ozone Contributions. Included in docket for: Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS), 80 FR 46271 (August 4, 2015).

[14] EPA has previously noted there may be additional criteria to evaluate regarding collective contribution of transported air pollution at certain locations in the West. See footnotes 4 and 7.

Arizona contribute above the 1% threshold to two projected downwind air quality problems, EPA examined several factors to determine whether Arizona should be considered to significantly contribute to nonattainment or interfere with maintenance of the NAAQS at those sites, including the air quality and contribution modeling, receptor data, and the statewide measures reducing emissions of VOCs and NO_X. EPA notes that no single piece of information is by itself dispositive of the issue for purposes of this analysis. Instead, EPA has considered the total weight of all the evidence taken together to evaluate whether Arizona significantly contributes to nonattainment or interferes with maintenance of the 2008 ozone NAAQS in those areas.

One such factor that EPA considers relevant to determining the nature of a projected receptor's interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem. In CSAPR and the CSAPR Update Rule, EPA used the 1% air quality threshold to identify linkages between upwind states and downwind maintenance receptors. States whose contributions to a specific receptor meet or exceed the threshold were considered to be linked to that receptor. The linked states' emissions (and available emission reductions) were then analyzed further as a second step to EPA's contribution analysis. States whose contributions to all receptors were below the 1% threshold did not require further evaluation to address interstate transport and we therefore found those states were determined to make insignificant contributions to downwind air quality. Therefore, the states below the threshold do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. EPA used the 1% threshold in the East because prior analysis showed that, in general, nonattainment problems result from a combined impact of relatively small individual contributions from upwind states, along with contributions from in-state sources. EPA has observed that a relatively large portion of the air quality problem at most ozone nonattainment and maintenance receptors in the East is the result of the collective contribution from a number of upwind states.

Specifically, EPA found the total upwind states' contribution to ozone concentration (from linked and unlinked states) based on modeling for 2017 ranges from 17% to 67% to identified downwind air quality problems in the East, with between 4 and 12 states each contributing above 1% to the downwind air quality problem.[15] [16] Thus, irrespective of the 1% air quality threshold in the East, EPA has found that the collective contributions from upwind states represent a large portion of the ozone concentrations at projected air quality problems. Further, in the East, EPA found that the 1% threshold is appropriate to capture a high percentage of the total pollution transport affecting downwind receptors. By comparison, according to EPA's modeling, the total upwind (linked or unlinked) states' contribution to ozone concentration at the projected nonattainment sites in El Centro, California and Los Angeles, California, is comparatively small, with only one state contributing above 1% to the downwind air quality problem.

Arizona is the only state that contributes greater than the 1% threshold to the projected 2017 levels of the 2008 ozone NAAQS at the El Centro receptor. The total contribution from all states to the El Centro receptor is 4.4% of the total ozone concentration at this receptor. Arizona is also the only state that contributes greater than 1% to the projected 2017 levels of the 2008 ozone NAAQS at the Los Angeles receptor, and the total contribution from all states is 2.5% of the ozone concentration at this receptor. EPA believes that a 4.4% and 2.5% cumulative ozone contribution from all upwind states is negligible, particularly when compared to the relatively large contributions from upwind states in the East or in certain other areas of the West. For these reasons, EPA believes the emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems in El Centro, California and Los Angeles, California, and therefore should not be treated as receptors for purposes of determining the interstate transport obligations of upwind states under section 110(a)(2)(D)(i)(I).

Additionally, EPA has evaluated the Arizona VOC and NO_X emissions inventory and emissions projections and agrees that emissions will be decreasing over time. Given that emissions within the state are expected to decrease over time due to regional haze measures, Federal engine and fuel standards, and other Federal, State, and local rules,[17] EPA believes that the Arizona SIP contains adequate provisions to ensure that air emissions in Arizona do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in California or any other state in the future.

The modeling data show that Arizona contributes either less than 1% of the NAAQS to projected air quality problems in other states, or where it contributes above 1% of the NAAQS to a projected downwind air quality problem in California, EPA proposes to find, based on the overall weight of evidence, that these particular receptors are not significantly impacted by transported ozone from upwind states. Emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. Additionally, Arizona has demonstrated that both VOC and NO_X emissions are going down and will continue to go down. EPA therefore believes that Arizona's contributions to downwind receptors in California are considered insignificant. EPA proposes to find that Arizona does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

110(a)(2)(D)(i)(II) Prong 4

EPA believes that ozone precursor emissions of NO_X may contribute to visibility impairment in Class I areas. EPA's 2013 I–SIP guidance clarifies that a state can rely upon a fully EPA-approved Regional Haze SIP to satisfy the requirements of this sub-element. Arizona's Regional Haze SIP shows that sources in Arizona impact visibility in Colorado (Great Sand Dunes National Monument, Mesa Verde National Park, Black Canyon of the Gunnison National Park, La Garita Wilderness, and Weminuche Wilderness), New Mexico (Bandelier National Monument, San Pedro Parks Wilderness, Pecos Wilderness, Bosque del Apache National Wildlife Reserve, and Gila Wilderness), and Utah (Zion National Park, Bryce Canyon National Park, Capitol Reef National Park, Canyonlands National Park, and Arches

[15] The stated range is based on the highest nonattainment or maintenance receptor in each area. All nonattainment and maintenance receptors had upwind contributions of well over 17%, except for some receptors in Dallas and Houston.

[16] Memo to Docket from EPA, Air Quality Policy Division. ''Contribution Analysis of Receptors in the Updated CSAPR Proposal.'' March 10, 2016.

[17] See TSD for details on other emissions control measures.

National Park).[18] Arizona's Regional Haze SIP is not fully approved by EPA. Instead, Arizona's 2012 and 2015 submittals rely, in part, on regulations imposed by FIPs to address visibility impairment in Class 1 Areas caused by NO_X, SO_2, and PM. These regulations include emission limits on the following facilities: Arizona Public Service Cholla Power Plant,[19] Salt River Project Coronado Generating Station,[20] Freeport McMoran Miami Smelter,[21] ASARCO Hayden Smelter,[22] Sundt Generating Station Unit 4,[23] and Nelson Lime Plant Kilns 1 and 2.[24] Emissions limits have been incorporated into the state SIP, replacing a previous FIP, at AEPCO Apache Station Units 1, 2, and 3.[25]

Because Arizona's 2012 and 2015 submittals rely in part on FIPs to address interstate transport visibility requirements, they do not meet the requirements of prong 4 for the 2008 ozone NAAQS. However, because FIPs are already in place, no additional FIP obligation would be triggered by a final disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate emission limits to address the requirements of the Regional Haze Rule into the Arizona SIP. For further discussion of our analysis of prong 4, please see the TSD associated with this proposal and in the docket for today's rulemaking.

IV. Proposed Action

EPA is proposing to approve Arizona's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2008 ozone NAAQS. EPA is proposing this approval based on the overall weight of evidence from information and analysis provided by Arizona, as well as the recent air quality modeling released in EPA's August 4, 2015 NODA, and other data analysis that confirms that emissions from Arizona will not contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in California or any other state.

EPA is proposing to disapprove Arizona's SIP with respect to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II) prong 4 for the 2008 ozone NAAQS. Because Arizona's 2012 and 2015 submittals rely, in part, on FIPs to address interstate transport visibility requirements, they do not meet the requirements of this portion of CAA § 110(a)(2)(D) for the 2008 ozone NAAQS. However, because FIPs are already in place, no additional FIP obligation would be triggered by a final disapproval of this portion of Arizona's infrastructure SIP. EPA will continue to work with Arizona to incorporate emission limits to address the requirements of the Regional Haze Rule into the Arizona SIP.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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[18] Arizona State Implementation Plan, Regional Haze Under Section 308 of the Federal Regional Haze Rule (January 2011), section 12.4.1.

[19] FIP promulgated at 77 FR 72514 (December 5, 2012).

[20] *Id.*

[21] FIP promulgated at 79 FR 5240 (September 3, 2014).

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] SIP approval promulgated for Unit 1 and FIP promulgated for Units 2 and 3 at 77 FR 72511 (December 5, 2012). SIP revision for emissions limits for Unit 1 and SIP approval for Units 2 and 3 promulgated at 80 FR 19220 (April 10, 2015).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Air pollution control, Approval and promulgation of implementation plans, Environmental protection, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

Dated: March 15, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–06438 Filed 3–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R04–OAR–2015–0798; FRL–9943–88–Region 4]

Air Plan Disapprovals; MS; Prong 4–2008 Ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove the visibility transport (prong 4) portions of revisions to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MDEQ), addressing the Clean Air Act (CAA or Act) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO_2), 2010 1-hour Sulfur Dioxide (SO_2), and 2012 annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is proposing to disapprove the prong 4 portions of Mississippi's May 29, 2012, 2008 8-hour Ozone infrastructure SIP submission; July 26, 2012, 2008 8-hour Ozone infrastructure SIP resubmission; February 28, 2013, 2010 1-hour NO_2 infrastructure SIP submission; June 20, 2013, 2010 1-hour SO_2 infrastructure SIP submission; and December 8, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before April 21, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0798 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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, 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: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is proposing to disapprove the prong 4 portions of Mississippi's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS. All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to today's proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

a. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour Ozone NAAQS to 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the

2008 8-hour Ozone NAAQS to EPA no later than March 12, 2011. For the 2008 8-hour Ozone NAAQS, today's proposed action only addresses the prong 4 element of Mississippi's infrastructure SIP submissions received on May 29, 2012, and July 26, 2012. EPA took action on the remainder of Mississippi's May 29, 2012, SIP submission, and July 26, 2012, SIP resubmission in separate rulemakings. *See* 80 FR 11131 (March 2, 2015); 80 FR 14019 (March 18, 2015); 80 FR 48355 (August 12, 2015).

b. 2010 1-Hour NO_2 NAAQS

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. For the 2010 1-hour NO_2 NAAQS, today's proposed action only addresses the prong 4 element of Mississippi's infrastructure SIP submission received on February 28, 2013. EPA will take action on the remainder of Mississippi's February 28, 2013, SIP submission through a separate rulemaking.

c. 2010 1-Hour SO_2 NAAQS

On June 2, 2010, EPA revised the primary SO_2 NAAQS to an hourly standard of 75 parts per billion based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013. For the 2010 1-hour SO_2 NAAQS, today's proposed action only addresses the prong 4 element of Mississippi's infrastructure SIP submission received on June 20, 2013. EPA will take action on the remainder of Mississippi's June 20, 2013, SIP submission through a separate rulemaking.

d. 2012 Annual $PM_{2.5}$ NAAQS

On December 14, 2012, EPA revised the primary annual $PM_{2.5}$ NAAQS to 12 micrograms per cubic meter ($\mu g/m^3$). *See* 78 FR 3086 (January 15, 2013). An area will meet the standard if the three-year average of its annual average $PM_{2.5}$ concentration (at each monitoring site in the area) is less than or equal to 12.0 $\mu g/m^3$. States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015. For the 2012 $PM_{2.5}$ NAAQS, today's proposed action only addresses the prong 4 element of Mississippi's infrastructure SIP submission received on December 8, 2015. EPA will take action on the remainder of Mississippi's December 8, 2015 SIP submission through a separate rulemaking.

II. What is EPA's approach to the review of infrastructure SIP submissions?

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 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 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

[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.

[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.

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 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

[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 submission.

[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.

[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 DC 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.

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 Greenhouse 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;[10] (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 that 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.[11] 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 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.[12] Section

[10] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[11] 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 or affirmative defense 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.

[12] 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* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] 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.[14]

III. What are the prong 4 requirements?

Section 110(a)(2)(D)(i)(II) requires a state's SIP to contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources to impacts on visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance lays out two ways in which a state's infrastructure SIP may satisfy prong 4. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

IV. What is EPA's analysis of how Mississippi addressed prong 4?

Mississippi's May 29, 2012, 2008 8-hour Ozone submission; July 26, 2012, 2008 8-hour Ozone resubmission; February 28, 2013, 2010, NO_2 submission; and December 8, 2015, 2012 $PM_{2.5}$ submission each cite to the State's regional haze SIP as satisfying prong 4 requirements. The June 20, 2013, 2010 SO_2 submission cites to the State's regional haze SIP and to EPA's February 20, 2013 (78 FR 11805) notice of proposed rulemaking (NPRM) on the prong 4 element of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS. In that notice, EPA proposed to approve the prong 4 element on the basis that Mississippi's regional haze SIP, in combination with its SIP provisions to implement the Clean Air Interstate Rule (CAIR), prevented sources from interfering with measures adopted by other states to protect visibility.

In its regional haze SIP, Mississippi relied on CAIR to satisfy the best available retrofit technology (BART) requirements for its CAIR-subject electricity generating units (EGUs).[15] Although this reliance on CAIR was consistent with the CAA at the time that the State submitted its regional haze SIP, CAIR has since been replaced by the Cross-State Air Pollution Rule (CSAPR) and can no longer be relied upon as a substitute for BART or as part of a long-term control strategy (LTS) for regional haze. Therefore, EPA finalized a limited disapproval of the Mississippi regional haze SIP to the extent that it relies on CAIR to satisfy BART and LTS requirements.[16] *See* 77 FR 33642 (June 7, 2012). Because Mississippi's regional haze SIP is not fully approved, the State cannot rely on this plan alone to meet the prong 4 requirements for the 2008 Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 $PM_{2.5}$ NAAQS. Furthermore, unlike CAIR, CSAPR does not cover SO_2 emissions from EGUs in Mississippi and therefore cannot be relied upon to fully satisfy outstanding regional haze requirements for EGUs in the State.

Mississippi's reference to EPA's February 20, 2013, NPRM to approve the prong 4 element of the State's infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS is not relevant because the legal status of CAIR and CSAPR has changed since publication of that notice. In June 2012, EPA finalized the limited disapproval of the State's regional haze SIP, which relied on CAIR to satisfy affected EGUs' BART requirements. At that time, questions regarding the legality of CSAPR were pending before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The D.C. Circuit subsequently vacated and remanded CSAPR in August 2012, leaving CAIR in place temporarily.[17] As of February 20, 2013, when EPA proposed approving the prong 4 element of the State's 1997 and 2006 $PM_{2.5}$ infrastructure SIP submissions, EPA had not yet asked the United States Supreme Court to review the D.C. Circuit's decision on CSAPR. Based upon the

[13] 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).

[14] *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).

[15] Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Implementation plans must also give specific attention to certain stationary sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources 8 built between 1962 and 1977 procure, install, and operate BART as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.

[16] EPA finalized a limited approval of Mississippi's regional haze SIP on June 27, 2012. *See* 77 FR 38191.

[17] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012).

D.C. Circuit's direction to EPA to continue administering CAIR, the Agency believed that it was appropriate for states to rely on CAIR emission reductions for prong 4 purposes. EPA intended to allow this practice until a valid replacement for CAIR was developed and EPA acted on SIPs submitted in compliance with any new rule, or until the CSAPR litigation was resolved in a way that provided different direction regarding CAIR and CSAPR. After publication of the February 20, 2013, prong 4 proposal, EPA asked the Supreme Court to review the DC Circuit's decision and the Supreme Court reversed that ruling and upheld CSAPR.[18] EPA began implementation of CSAPR, which replaced CAIR, on January 1, 2015. Therefore, because of this intervening change in the law, EPA cannot finalize its February 20, 2013, proposal to approve the prong 4 element that relies on CAIR, and Mississippi cannot rely on the outdated rationale contained in the NPRM regarding CAIR to satisfy prong 4.

As mentioned above, a state may meet the requirements of prong 4 without a fully approved regional haze SIP by showing that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Mississippi did not, however, provide a demonstration in any of the infrastructure SIP submissions subject to today's proposed action that emissions within its jurisdiction do not interfere with other states' plans to protect visibility.

As discussed above, Mississippi does not have a fully approved regional haze SIP that meets the requirements of 40 CFR 51.308 and has not otherwise shown that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Therefore, EPA is proposing to disapprove the prong 4 portions of Mississippi's May 29, 2012, 2008 8-hour Ozone infrastructure SIP submission; July 26, 2012, 2008 8-hour Ozone infrastructure SIP resubmission; February 28, 2013, 2010 1-hour NO_2 infrastructure SIP submission; June 20, 2013, 2010 1-hour SO_2 infrastructure SIP submission; and December 8, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. Mississippi did not submit these infrastructure SIPs to meet requirements for Part D or a SIP call; therefore, if EPA takes final action to disapprove the prong 4 portions of these submissions, no sanctions will be triggered. However, if EPA finalizes this proposed disapproval action, that final action will trigger the requirement under section 110(c) that EPA promulgate a FIP no later than two years from the date of the disapproval unless the State corrects the deficiency through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP.

[18] *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

V. Proposed Action

As described above, EPA is proposing to disapprove the prong 4 portions of Mississippi's May 29, 2012, 2008 Ozone infrastructure SIP submission; July 26, 2012, 2008 Ozone infrastructure SIP resubmission; February 28, 2013, 2010 NO_2 infrastructure SIP submission; June 20, 2013, 2010 SO_2 infrastructure SIP submission; and December 8, 2015, 2012 $PM_{2.5}$ infrastructure SIP submission. All other outstanding applicable infrastructure requirements for these SIP submissions will be addressed in separate rulemakings.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. EPA is proposing to determine that the prong 4 portions of the aforementioned SIP submissions do not meet Federal requirements. Therefore, this proposed action does not impose additional requirements on the state beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 8, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–06062 Filed 3–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 16–56; FCC 16–23]

Unlicensed White Space Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to amend its rules to improve the quality of the geographic location and other data submitted for fixed white space devices

operating on unused frequencies in the TV Bands and, in the future, the 600 MHz Band for wireless services. The proposed rules would eliminate the professional installer option for fixed white space devices and require that each fixed white space device incorporate a geo-location capability to determine its location, and would provide options to accommodate fixed white space device installations in locations where an internal geo-location capability is not able to provide this information. These proposals will improve the accuracy and reliability of the fixed white space device data recorded in the white space databases and assure that the potential to cause interference to protected services is minimized.

DATES: Comments must be filed on or before May 6, 2016, and reply comments must be filed on or before June 6, 2016.

ADDRESSES: You may submit comments, identified by ET Docket No. 16–56, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, email: *Hugh.VanTuyl@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking and Order* (*NPRM and Order*), ET Docket No. 16–56, FCC 16–23, adopted February 25, 2016 and released February 26, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Synopsis of Notice of Proposed Rulemaking

1. In this NPRM, the Commission proposes and seek comment on revisions to the geo-location and registration requirements for fixed white space devices. It proposes to adopt many of the recommendations outlined in the plan submitted by the National Association of Broadcasters and certain white space device manufacturers (''NAB and Manufacturers' Plan'') and believes that this approach will improve the integrity of the white space database system and better ensure efficient and beneficial use of white spaces while protecting licensees and other authorized users.

2. *Location Data.* The Commission proposes to modify section 15.711(c) to eliminate the option for professional installation of fixed white space devices, thereby eliminating the possibility that manual data entry could cause incorrect location data to be stored in the white space device or provided to a database. The Commission proposes to instead require that fixed white space devices include a geo-location capability that can automatically determine its geographic coordinates without manual intervention. It also proposes that the geographic coordinates shall be stored automatically in the fixed white space device and transmitted electronically directly from the device to the database, rather than entered manually in the database, thereby further reducing the possibility of introducing data errors.

3. The Commission proposes that when a fixed white space device is moved to another location or its coordinates become altered, its geographic coordinates and antenna height above ground must be re-established and the device re-registered with a database. With regard to the geographic coordinates, it proposes that they be re-established using an incorporated geo-location capability. The Commission seeks comment on these proposals and on whether a re-registration requirement should apply to any change in location or only those changes where the coordinates differ by more than the accuracy requirement (±50 meters) from the last registered location. With respect to the antenna height above ground, the Commission seeks comment on whether it should require that this height be determined automatically using the fixed device's incorporated geo-location capability, such as GPS. Because the vertical height accuracy of GPS is typically less than the horizontal location accuracy, the Commission seeks comment on whether it should allow users, including professional installers and operators, to override an automatically determined height if it proves to be inaccurate, or whether it should simply allow users to manually enter the antenna height above ground in all cases.

4. The Commission proposes to modify the current rule that requires a fixed white space device to contact the database at least once a day to verify that its operating channels continue to be available for its use. It proposes to require a fixed white space device to check its coordinates once each day, except when not in operation, and to report its geographic location to the database when its makes its daily request for a list of available channels. The Commission seeks comment on implementing this proposal. Should the geographic coordinates reported each day be treated by the white space database as a modification of the registration record? Should the registration record be updated only if the difference in location exceeds 50 meters? What would be the impact on device manufacturers and database administrators?

5. The Commission recognizes that there will be many important applications for fixed white space devices in which the device needs to be installed where an incorporated geo-location capability will not function (*e.g., indoors*). Thus, the Commission proposes to permit fixed white space devices to obtain their geographic coordinates from an external source that is connected to the fixed white space device when the internal geo-location capability does not function. It also proposes that, in cases where the geo-location capability is provided by an external source connected to the fixed white space device, the fixed device and external geo-location source would be required to communicate using a secure method that ensures that the fixed device obtains information only from a source that has been approved for that function by the Commission's equipment certification program. If the fixed white space device is unable to verify that the external source from which it is receiving geo-location data is an approved source, the fixed device would not be allowed to use that received data when reporting its location to the database. The Commission seeks comment on whether each fixed white space device should be associated with specific external geo-location sources or whether manufacturers should have the flexibility to design fixed white space devices to operate with a variety of geo-location sources as long as such sources are approved for use with the fixed white space device.

6. The NAB and Manufacturers' Plan makes specific suggestions for how fixed devices should rely on an external geo-location source for determining the geographic coordinates of a fixed white

space device. It suggests that the external geo-location source would be required to be connected at all times to the fixed white space device, and that the fixed white space device would be required to cease transmitting if the connection to the external geo-location source is disconnected or ceased to function properly. NAB and the Manufacturers suggest that the connection between the fixed white space device and the external geo-location source could be by Ethernet, USB, serial port or other connection, and a fixed device would be required to be located within 100 meters of the geo-location source. The parties also suggest that a separate geo-location source may be connected to more than one fixed device at the same general location as long as the white space devices it serves are all located no more than 100 meters from the geo-location source. The Commission requests comment on these specific suggestions. Do the methods suggested by the NAB and Manufacturers' Plan provide sufficient flexibility in the design of fixed devices without compromising our goal of ensuring that a device operates at the location reported to its databases. The Commission seeks comment on whether it is necessary for a fixed white space device to be connected to its external geo-location source by a cable, or whether we could permit the connection to the geo-location source via wireless. Because allowing wireless connections may create a path for entering erroneous location data, commenters are asked to address whether safeguards tailored to the wireless environment are needed to ensure location data is within the required accuracy guidelines, and, if so, what they should be. The Commission also seeks comment on the appropriate method of obtaining the antenna height above ground for indoor fixed devices (automatic determination or manual entry) that is reported to the white space database.

7. As an alternative to using any type of external geo-location source, the Commission seeks comment on whether a fixed white space device could be connected by a long cable to a separate antenna and continue to rely on its internal geo-location capability. What requirements would be necessary to ensure that the coordinates and location uncertainty reported to the white space database are accurate? Would the suggestions in the NAB and Manufacturers' plan be appropriate for this situation?

8. The NAB and Manufacturers' Plan also suggests another approach for low power (40 mW EIRP) fixed white space devices with an internal geo-location capability that operate indoors where their geo-location capability does not function. Under this provision, the rules would allow a fixed white space device operating with 40 mW or less EIRP to establish its location using its incorporated geo-location capability at a point immediately outside the indoor or other enclosure where the device's geo-location capability does not function, and then to register with its database after the device is installed at its fixed location using the location established at the outdoor point. In such applications, the device would store internally the coordinates of an outdoor position as close as possible to the location where it will be installed and also record the time that it obtained those coordinates. The device would then be installed at its fixed location and register with its database within 30 minutes using the coordinates of the outdoor location. If the device does not complete its registration within the 30 minute period, it would need to start over, re-establish its coordinates at a location where its geo-location capability functions, and initiate a new 30 minute time period. The Commission seeks comment on these suggestions and asks whether this is a workable approach that would provide additional flexibility in the methods for determining geo-location for fixed devices located indoors without increasing the potential for inaccurate locations to be recorded in the databases and/or increase the potential for interference.

9. The Commission seeks comment on alternative parameters and approaches. Is 40 mW the appropriate power level at which to define a low power fixed white space device or would 100 mW be more appropriate? Is 30 minutes sufficient time for the installer to re-locate the device to a nearby operating location, activate the device, register the device with a database, and complete any other steps necessary for the installation? Is 30 minutes the appropriate amount of time to balance the need for properly completing the installation and registration of a device while limiting the opportunity for relocating the device to a faraway place where it could cause interference?

10. The Commission also seeks comment on where the responsibility would lie in verifying that the fixed white space device registration occurs within the allowable 30 minute time period. Should the capability reside in the fixed white space device whereby after 30 minutes the data would automatically be erased if the device is not successfully registered with a database, or should an associated time stamp for the geo-location data be transmitted to the database which would not permit the registration to proceed if outside the 30 minute window? Should the Commission allow other methods of transferring location data to fixed white space devices—for example, could an outdoor location sensor, such as a GPS receiver, write an encrypted file to an SD Card or USB memory stick that could then be plugged into a fixed white space device? How would such a connection ensure that a fixed device would be located no more than 100 meters from its geo-location source? Under such a scheme, what methods could be used to ensure registration within 30 minutes of determining the fixed white space device's location?

11. Low power fixed white space devices operating indoors where their incorporated geo-location capability does not function would not be able to re-check their coordinates daily and transmit them to the database when verifying their available channel list, unless each day the device was uninstalled and moved to the outdoor location to repeat the entire initial location-determining procedure. The Commission seeks comment on whether in such situations, it should allow these devices to use the coordinates previously obtained at an outdoor position and stored in the device until such time as the device is moved or disconnected from its power supply, at which point the device would again re-establish its coordinates using its incorporated geo-location capability. If using previously obtained coordinates in this manner would not serve the public interest, does the impracticality of obtaining updated coordinates on a daily basis warrant a rejection of this proposal? Are there other methods for updating the location information of these devices, short of using a wired external geo-location source, which could be employed successfully?

12. Because the Commission adopted rules in the *Part 15 White Space Report and Order* in ET Docket No. 14–165 that provide flexibility to manufacturers and operators of white space devices that use less accurate geo-location methods, it tentatively concludes that it is not necessary to modify the default location accuracy requirement from ±50 meters to ±100 meters as requested in the NAB and Manufacturers Plan. Should parties disagree, the Commission seeks comment on what changes we should make and how they should be implemented.

13. NAB and the Manufacturers request an increase in protection

distances that is greater than their requested increase in geo-location uncertainty. If the Commission were to specify a less accurate geo-location requirement, it seeks comment on how much the protection distances to TV contours should change, and on whether and by what amount distances from any other protected service may need to be increased. It also seeks comment on whether rule changes would be needed to account for indoor operations. How could it ensure that the reported geo-location uncertainty of an indoor device is accurate? For example, should a device that obtains its location from a separate geo-location source automatically add a certain amount, such as 100 meters, to its geo-location uncertainty when providing its location to the database? How would such a requirement apply for a device that is moved outdoors to obtain its coordinates and then moved back to an indoor location?

14. The Commission proposes that effective six months after the effective date of the new rules, new applications for certification of fixed white space devices must comply with any rules it adopts in this proceeding requiring incorporated geo-location capability. Further, it proposes that within one year after the effective date of any new rules, manufacturers would no longer be able to manufacture and import fixed white space devices that do not comply with the new requirements. In order to allow manufacturers to deplete any inventory of devices that do not comply with the new requirements, the Commission proposes to permit the marketing of these devices for up to eighteen months after the effective date of the new rules, but seeks comment on whether it should specify only certification and marketing cutoff dates (*e.g.,* six months for certification and 12 or 18 months for marketing), and allow manufacturers to decide their manufacturing and importation cutoff dates. The Commission proposes to permit users of fixed white space devices that do not comply with new rules to continue to operate their devices indefinitely. Because the majority of fixed white space devices in operation today do not include a geo-location capability and would not be able to easily recheck their coordinates every day and transmit them to the database, the Commission seeks comment on whether allowing their continued operation would pose any concerns about the integrity of the data in the database.

15. The Commission proposes to treat equipment changes that simply add an incorporated geo-location capability to an existing certificated device as a permissive change under its equipment authorization rules. It seeks comment on the proposed timeframes for implementing any new requirements for incorporating a geo-location capability into all fixed white space devices and whether they are appropriate to provide for a smooth transition to new devices.

16. Finally, the Commission invites comment on the expected costs and benefits of the proposed rule changes in this section and whether the benefits will outweigh the costs. Parties who make specific suggestions for implementing the proposals also should address the costs and benefits associated with their suggestions.

17. *Device Identification, Contact Information and Other Data Issues.* The current rules assign responsibility for the accuracy of the registration information either to the party who provides the information to the database or to the party who is responsible for the white space device. Because the rules are not clear as to which party is responsible for the white space device, and thus for entering and maintaining the registration information, the Commission seeks comment on whether the responsible party should be the owner, the contact person, or some other party.

18. The Commission proposes to require the white space database that originates a registration request for a fixed device to confirm the email address and telephone number entered for the contact person. It also proposes that the database not provide service to the device nor share the registration information with other approved white space databases until it receives a confirming response from the party responsible for the device registration. The Commission further proposes that the white space database confirm the contact person's information if any of the identifying information is modified. Under these proposals, a white space database administrator would be allowed to implement the confirmation requirement using a method of its choosing as long as that method obtains a confirming response that (1) the party addressed in the message is responsible for the operation of the subject fixed device, and (2) the email address and telephone number for that party are correct and appropriate to reach that party in a timely manner.

19. Finally, the Commission invites comment on the expected costs and benefits of the proposed rule changes in this section and whether the benefits will outweigh the costs. Parties who make specific suggestions for implementing the proposals also should address the costs and benefits associated with their suggestions.

20. *Other Issues.* The Commission does not propose to amend its rules to incorporate new accountability and/or enforcement measures to ensure the integrity of the registration information for fixed devices as requested by NAB. The current rules already place responsibility for the accuracy of the data entered for fixed device registrations on the party responsible for the device and hold database administrators responsible for verifying, correcting and removing inaccurate data. These existing rules and the proposals set forth in this Notice, along with the ongoing oversight of Commission staff, are sufficient and appropriate for addressing these issues.

Procedural Matters

1. 21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

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

22. The *NPRM* proposes to amend Part 15 of the Commission' rules to improve the quality of the geographic location and other data submitted for fixed white space devices operating on unused frequencies in the TV Bands and, in the future, the new 600 MHz Band for wireless services. The proposals are designed to improve the integrity of the white space database system and, as white space device deployments grow, to increase the confidence of all spectrum users of these frequency bands that the white space geolocation/database spectrum

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

management scheme fully protects licensees and other authorized users.

23. The *NPRM* responds to a petition submitted by the National Association of Broadcasters (NAB) alleging that there are data errors in the registration records for fixed devices in the white space databases, and requesting that the Commission undertake rulemaking and other actions to correct and avoid such errors.

B. Legal Basis

24. The proposed action is taken pursuant to sections 1, 4(i), 7(a), 302(a), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302(a), 303(f), and 303(r).

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

25. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

26. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [8] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees.[9] Thus, under that size standard, the majority of firms can be considered small.

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

27. White space devices are unlicensed devices that operate in the TV bands, and in the future, the 600 MHz band, at locations where frequencies are not in use by licensed services. The rules provide for three types of white space devices: Fixed, and Mode I and Mode II personal/portable devices. To prevent harmful interference to protected services, the rules generally require that white space devices provide their geographic coordinates to a white space database and operate only on location specific channels provided by that database. The location for fixed white space devices may be determined either through an internal geo-location capability or by a professional installer.[10] Additionally, a fixed white space device must register with a database and, in addition to its location, must also provide the device's identifying information (FCC identification number and manufacturer serial number), antenna height, the name of its owner, and contact information for the party responsible for its operation.

28. Most RF transmitting equipment, including white space devices, must be authorized through the certification procedure. Certification is an equipment authorization issued by the Commission or by a designated TCB based on an application and test data submitted by the responsible party (*e.g.,* the manufacturer or importer). The *NPRM* does not propose to change the authorization procedure for white space devices, but it does propose to establish new technical requirements or modify existing technical requirements for white space devices. Specifically, the *NPRM* proposes the following changes to the fixed white space device compliance requirements:

29. *Fixed white space device geo-location requirements.* The proposed rules would eliminate the professional installer option for fixed white space devices. Instead, a fixed white space device would be required to include a geo-location capability that can determine its geographic coordinates without manual intervention. The proposed rules would also require that the geographic coordinates be stored automatically in the fixed white space device and transmitted electronically directly from the device to the databases. In addition, a fixed white space device would be required to check its coordinates once each day using its geo-location capability and to report its geographic location to the database daily when it makes a request for a list of available channels.

30. The *NPRM* also proposes options to accommodate fixed white space device installations in locations where an internal geo-location capability is not able to provide this information. It proposes to permit fixed white space devices to obtain their geographic coordinates from an external source that is connected to the fixed white space device when the internal geo-location capability does not function. It also proposes that in cases where the geo-location capability is provided by an external source connected to the fixed white space device, the fixed device and external geo-location source would be required to communicate using a secure method that ensures that the fixed device obtains information only from a source that has been approved for that function by the Commission's equipment certification program.

31. *Transition requirements for fixed white space device rule changes.* The *NPRM* proposes that, effective six months after the effective date of the new rules, new applications for certification of fixed white space devices must comply with any rules the Commission adopts in this proceeding requiring incorporated geo-location capability. The *NPRM* also proposes that, within one year after the effective date of any new rules, manufacturers would no longer be able to manufacture and import fixed white space devices that do not comply with the new

[4] *See* 5 U.S.C. 603(b)(3).

[5] *See* 5 U.S.C. 601(6).

[6] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[7] *See* 15 U.S.C. 632.

[8] The NAICS Code for this service 334220. *See* 13 CFR 121/201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[9] See *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=4500&-ds_name=EC0731SG3&-_lang=en.*

[10] Mode I and Mode II personal/portable devices have differing requirements which are not described herein because the *NPRM* addresses only fixed white space devices.

requirements. In order to allow manufacturers to deplete any inventory of devices that do not comply with the new requirements, the *NPRM* proposes to permit the marketing of these devices for up to eighteen months after the effective date of the new rules. In addition, the *NPRM* proposes to permit fixed white space devices that do not comply with new rules to continue to operate indefinitely. Further, it proposes that the Commission would treat equipment changes that simply add an incorporated geo-location capability to an existing certificated device as a permissive change.

32. *Fixed white space device registration requirements.* The *NPRM* proposes to require the white space database that receives the initial registration request for a fixed device to confirm the email address and telephone number entered for the contact person. It also proposes that the database not provide service to the device nor share the registration information with other approved white space databases until it receives a confirming response from the party responsible for the device registration. The *NPRM* further, proposes that the white space database confirm the contact person's information if any of the identifying information is modified (*e.g.,* updating the email address or phone number). A white space database administrator would be allowed to implement the confirmation requirement using a method of its choosing as long as that method obtains a confirming response that (1) the party addressed in the message is responsible for the operation of the subject fixed device, and (2) the email address and telephone number for that party are correct and appropriate to reach that party in a timely manner.

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

33. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [11]

34. The proposed requirement for all fixed white space devices to incorporate a geo-location capability would require changes to previously approved devices, because most approved fixed devices rely on the use of a professional installer and do not have a geo-location capability. As discussed above, the *NPRM* proposes transition and grandfathering provisions to minimize the impact on fixed white space device manufacturers and users. It proposes that manufacturers could continue to apply for certification of devices under the current rules for up to six months after the effective date of any new rules, and that changes that simply add an incorporated geo-location capability to an existing certificated device would be processed under the streamlined ''permissive change'' rules.[12] The *NPRM* also proposes that parties could continue to manufacture and import devices that comply with the current rules for up to one year after the effective date of any new rules. In order to allow manufacturers to deplete any inventory of devices that do not comply with new requirements, the *NPRM* proposes to permit the marketing of these devices for up to eighteen months after the effective date of any new rules. Additionally, the *NPRM* proposes to permit fixed white space devices that do not comply with any new rules adopted in this proceeding to continue to operate indefinitely.

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

35. None.

36. *Paperwork Reduction Act Analysis.* This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

[11] 5 U.S.C. 603(c)(1)–(c)(4).

[12] 47 CFR 2.1043.

Ordering Clauses

37. Pursuant to sections 1, 4(i), 7(a), 302(a), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 302a(a), 303(f), and 303(r), this Notice of Proposed Rule Making *is adopted.*

38. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation of part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 2. Section 15.711 is amended by revising paragraphs (b)(1) and (c)(1), redesignating paragraph (c)(2) as (c)(5), adding new paragraphs (c)(2) through (4), and revising newly redesignated paragraphs (c)(5)(ii) and (iv) to read as follows:

§ 15.711 Interference avoidance methods.

* * * * *

(b) * * *

(1) *Accuracy.* Fixed and Mode II white space devices shall determine their location and their geo-location uncertainty (in meters), with a confidence level of 95%.

* * * * *

(c) * * *

(1) The geographic coordinates of a fixed white space device shall be determined automatically by an incorporated geo-location capability prior to its initial service transmission at a given location and each time the device is activated from a power-off condition to determine the available channels and the corresponding maximum permitted power for each available channel at its geographic coordinates, taking into consideration the device's geo-location uncertainty.

The fixed white space device shall check its location once each day, except when not in operation, and store this information automatically in the device.

(2) If the fixed white space device is located where the incorporated geo-location capability does not function, the fixed device may obtain its geographic coordinates from an external geo-location source that is connected to the fixed device using a secure method that ensures that the external geo-location source has been approved for that function by the Commission's equipment certification program.

(3) The fixed white space device shall transmit electronically its geographic coordinates and antenna height above ground to the white space database from which it obtains its list of available channels for operation at the time it registers. The fixed white space device shall electronically transmit this information to the white space database on a daily basis when the device requests a list of the available channels for operation.

(4) If a fixed white space device is moved to another location or its stored geographic coordinates become altered, the device shall re-establish its:

(i) Geographic coordinates; and

(ii) Registration with the white space database based on the device's new coordinates and antenna height above ground level.

(5)(i) * * *

(ii) Operation is permitted only on channels and at power levels that are indicated in the white space database as being available for each white space device. Operation on a channel must cease immediately or power must be reduced to a permissible level if the database indicates that the channel is no longer available at the current operating level.

* * * * *

(iv) Fixed white space devices without a direct connection to the Internet: A fixed white space device may not operate on channels provided by a white space database for another fixed device. A fixed white space device that has not yet been initialized and registered with a white space database consistent with § 15.713 of this part, but can receive the transmissions of another fixed white space device, may transmit to that other fixed white space device on either a channel that the other white space device has transmitted on or on a channel which the other white space device indicates is available for use to access the database to register its location and receive a list of channels that are available for it to use. Subsequently, the newly registered fixed white space device must only use the channels that the database indicates are available for it to use.

* * * * *

■ 3. Section 15.713 is amended by revising paragraph (g)(3)(iii) and adding paragraph (g)(4) to read as follows:

§ 15.713 White Space Database.

* * * * *

(g) * * *

(3) * * *

(iii) Device's geographic coordinates (latitude and longitude (NAD 83)) including the location uncertainty, in meters;

* * * * *

(4) The white space database that receives a fixed white space device registration shall confirm the email address and telephone number of the contact person responsible for the operation of the fixed device. The database shall not provide service to the fixed device nor share the registration information with other approved white space databases until it receives a confirming response from the contact person verifying their information. If the registration record is modified to identify a new contact person or to provide a new email address or telephone number, the white space database shall verify the new information before continuing to provide service to the fixed white space device.

* * * * *

[FR Doc. 2016–05764 Filed 3–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 16–268; MB Docket No. 16–68; RM–11762]

Radio Broadcasting Services; Maryville, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the FM Table of Allotments by allotting Channel 285C3 at Maryville, Missouri, as the community's fourth local service. A staff engineering analysis indicates that Channel 285C3 can be allotted to Maryville consistent with the minimum distance separation requirements of the Commission's rules without a site restriction. The reference coordinates are 40–22–33 NL and 94–51–25 WL.

DATES: Comments must be filed on or before May 2, 2016, and reply comments on or before May 17, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the rule making petitioner and the counter proponent as follows: Michael Myers, 111 SW. Cross Creek Dr., Grain Valley, Missouri 64029.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 16–68, adopted March 10, 2016, and released March 11, 2016. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Maryville, Channel 285C3.

[FR Doc. 2016–06420 Filed 3–21–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0050]

49 CFR Parts 393 and 395

Hours of Service of Drivers; Parts and Accessories: ArcelorMittal Indiana Harbor, LLC, Application for Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: FMCSA announces that it has received an application from ArcelorMittal Indiana Harbor, LLC (ArcelorMittal) requesting exemptions for our regulations. The first exemption request is for ArcelorMittal's employee-drivers with commercial driver's licenses (CDLs) who transport steel coils between their production and shipping locations on public roads. ArcelorMittal requests this exemption to allow its employee-drivers to work up to 16 hours per day and be allowed to return to work with less than the mandatory 10 consecutive hours off duty. ArcelorMittal also requests exemptions in parts of our regulations for its coil carriers that do not meet all of the vehicle requirements in sections of our regulations. FMCSA requests public comment on ArcelorMittal's application for exemptions.

DATES: Comments must be received on or before April 21, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2016–0050 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0050), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2016–0050'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2016–0050'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide

the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Under 49 CFR 395.3(a)(2), a property-carrying commercial motor vehicle (CMV) driver is prohibited from operating a CMV after having been on duty for 14 consecutive hours following 10 or more consecutive hours off duty. Once an individual has reached the end of this 14 consecutive-hour period, he or she cannot drive a CMV again without taking a minimum of 10 consecutive hours off duty.

ArcelorMittal (USDOT 1098829) operates a steel plant that is located in East Chicago, Indiana, its principal place of business. The plant currently encompasses an area which has several public roadways that run through its present location. Steel coils produced in one portion of the plant require driver-employees to travel on public roadways at two points to move the coils to another portion of the plant for further processing or for shipment to customers. Both points are controlled intersections, having either traffic lights or a combination of traffic lights and signs in the area, where the vehicles cross. The first public road the CMVs cross is Riley Road. The crossing is controlled by a traffic signal in both directions. The distance traveled at this crossing is 80 feet in length. The average number of crossings at this intersection is 24 per day. The second crossing is at Dickey Road and 129th Street. The distance traveled at this crossing is .2 miles. The trucks cross 129th Street 24 times per day.

All employee-drivers are required to hold CDLs and adhere to the regulations that apply to CMV drivers. Specialized equipment and trailers are used to move steel coils due to the size of the coils. The tractors maximum speed is 30–35 miles per hour, but when moving a fully loaded trailer the maximum speed is 15 miles per hour.

Trailer beds are configured in such a way as create a cradle to hold the steel coils in place on the bed of the trailer. The trailers have a bed height of 68 inches, and bed width of 114 inches. The trailers maximum height is 14 feet.

The tractors and trailer in combination unloaded have a gross combination weight of 77,000 pounds. When fully loaded the gross combination vehicle weight is 263,171 pounds. Additionally, the trailers have off-road tires. These types of tires are necessary to operate both inside and outside the plant safely, given the type of roadway surface inside the plant area and the weight of the loads. These vehicles have many of the same features of a typical tractor and trailer, but do not meet all of the parts and accessories requirements in 49 CFR part 393.

When employee-drivers move these vehicles, they are fully marked as an ''oversize load'' and have flags on the front of the tractor. The driving of these vehicles amounts to 10 percent of the employee-drivers total work day. ArcelorMittal contends that none of these employee-drivers work more than 16 hours per day and advises that a 16-hour work day is the exception, not the rule.

According to ArcelorMittal, the current hours-of-service (HOS) regulations create problems for employee-drivers as these employees typically work an 8-hour shift plus overtime while employees in the production and shipping areas work 12-hour shifts. Employee-drivers must go home under the current arrangement leaving a 4-hour gap between production and the driver's schedule, creating a possible shortage of coils for shipping or processing. ArcelorMittal asserts that the limited amount of employees used to drive the CMVs make it difficult to schedule when the vehicles move. ArcelorMittal anticipates only 3 of the 24 crossings at each noted intersection would occur after the 14th hour on-duty.

ArcelorMittal requests an exemption from 49 CFR part 395 for its employee-drivers. Under a waiver of the HOS regulations, employee-drivers would be able to follow the same schedule as the employees in the production and shipping areas. ArcelorMittal could then minimize the chances of possible shortages of coils for shipping or processing. ArcelorMittal advises that it would ensure all employee-drivers would not work more than 16 hours per shift, would receive 8 hours off duty between shifts, and would not be allowed to drive more than 10 percent of their total work day.

ArcelorMittal also requests exemptions for its coil carriers from certain sections in 49 CFR part 393 as follows: The heavy hauler trailer definition in § 393.5; the height of rear side marker lights in § 393.11 Table 1—Footnote 4; the tire loading restrictions in § 393.75(f); and the coil securement requirements in § 393.120. As previously noted, the vehicles used to transport steel coils have many of the same features of a typical tractor and trailer, but do not meet all of the parts and accessories requirements in 49 CFR part 393.

According to ArcelorMittal, its equipment was designed for in-facility use and very limited road use. Public roadways are crossed due to operational necessity. ArcelorMittal advises that they have never had an issue at the crossings mentioned with their equipment or drivers. The coils are well-secured in the vehicles with the cradle design of their trailers. The time it would take to secure the coils per the regulations would be longer than the transit time it takes to move the coils from part of the plant to another.

ArcelorMittal asserts that it has taken additional precautions to make sure the public roadway crossings are at the shortest points and only at controlled intersections. ArcelorMittal ensures all lights are properly working on both the tractor and trailer. They also flag and mark the vehicles as ''oversize'' loads. Trailers have conspicuity tape down the entire side to make them more visible to other traffic. ArcelorMittal believes that the additional precautions ensure a level of safety that is equivalent to or exceeds the level of safety achieved by following the regulations.

ArcelorMittal acknowledges in its application that these drivers would still be subject to all of the other applicable Federal regulations. This includes qualification of drivers, controlled substance and alcohol testing and inspection, and maintenance and repair of vehicles.

Included in ArcelorMittal's application are illustrations of the plant's location, public roads crossed, and pictures of the tractors and trailers used to transport the steel coils. A copy of ArcelorMittal's application for the exemptions is available for review in the docket for this notice.

Issued on: March 16, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–06391 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 81, No. 55
Tuesday, March 22, 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

Forest Service

Shasta-Trinity National Forest; California; Lower McCloud Fuels Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: With the Lower McCloud Fuels Management Project (project), the Shasta-Trinity National Forest (Forest) is proposing to create fuel management zones (FMZs), burn using prescribed fire, and remove designated hazard trees. The project area covers 12,071 acres on National Forest System lands. A combination of treatments would be used across the project area, resulting in some acres being treated with multiple prescriptions to achieve stated objectives.

DATES: Comments concerning this scope of the analysis must be received by April 21, 2016. The draft environmental impact statement is expected in December 2016 and the final environmental impact statement is expected in June 2017.

ADDRESSES: Send written comments to Carolyn Napper, District Ranger, Shasta-McCloud Management Unit, 204 W. Alma St., Mt. Shasta, California 96067, Attn: Heather McRae. Comments may also be sent via email to: *comments-pacificsw-shasta-trinity-mtshasta-mccloud@fs.fed.us,* or via facsimile to (530) 926–5120.

FOR FURTHER INFORMATION CONTACT: Heather McRae, Fuels Specialist, at (530) 964–3770 or *hmcrae@fs.fed.us,* or Andrea Shortsleeve, Interdisciplinary Team Leader at (208) 373–4386 or *ashortsleeve@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Lower McCloud Fuels Management Project is located within the McCloud River basin, an area that is considered to contain outstandingly remarkable fisheries, geology, scenery, wildlife, and cultural and historic values. All lands within the project area are National Forest System Lands managed by the U.S. Forest Service, however, there are private properties located within the Lower McCloud watershed. Private ownership activities and designations include a nature preserve, a fishing club, a utility company, timber companies, and a ranching operation. The project area is located partly within the West Girard inventoried roadless area (IRA), and almost completely within the Iron Canyon Late-Successional Reserve (LSR).

The Iron Canyon LSR, is centrally located within the network of LSRs in the Shasta-McCloud subprovince, and contains some of the largest blocks of contiguous habitat in the network. This places a high level of importance on the protection and enhancement of the current and future habitat within the area. The Iron Canyon LSR was identified within a Forest-wide Late Successional Reserve Assessment as an area of elevated risk to large-scale disturbance due to changes in the characteristics and distribution of the mixed-conifer forests resulting from past fire suppression. High severity, high intensity wildfire was identified as the greatest threat to further loss and degradation of habitat for late-successional associated species within the network of LSRs.

Fire is the most widespread and dynamic disturbance regime affecting the project area. The historic fire regime in the Lower McCloud project area was characterized by frequent fires of low to mixed severity. However, the Lower McCloud project area has not experienced a large scale fire in over 100 years and has departed from historic fire return intervals. As a result, there is a significant departure in the current vegetative conditions from historic conditions in the project area. Past forest practices, including active fire suppression, have changed the composition and structure of the vegetation in the project area.

Current conditions include high fire hazard and risk. The absence of wildfire has resulted in uncharacteristically dense vegetation and high fuel loading, a decline in wildlife forage and habitat diversity, and an elevated risk of high-severity, stand-replacing fires within the LSR. These conditions have created a concern over potential fire behavior on public and private lands, threats to forest resources, and potential impacts to air quality.

Without the influence of fire under well-defined conditions to restore and maintain vegetation diversity, many stands are likely to continue to accumulate abundant fuels and vegetation, and are subsequently more likely to succumb to stand replacing fire that will reduce or eliminate late-successional conditions. Other stands are likely to continue to lose their structural and compositional diversity, important attributes of late-successional stands. As fire hazard and fire behavior potential increase, periods of poor air quality during wildfires are more likely to occur, soil erosion processes may accelerate, soil productivity may decrease, water quality may be degraded, habitat for terrestrial and aquatic wildlife species will diminish, and recreation opportunities will be negatively impacted.

Many of these concerns have been validated by relatively recent wildfires (*e.g.* the 2012 Bagley Complex and Ward fire, the 2009 Tennant fire; the 2007 Bolli fire; the 2005 Bagley fire; the 1999 High Complex and others) near the project area. These fires were outside of the historic fire return interval, had high fuel loading, and, due to weather conditions, burned under extreme fire conditions. The uncharacteristic fuel accumulation and weather conditions combined with poor access for firefighting forces, rugged terrain, and many other factors contributed to extreme fire behavior in most of these recent fires. During several of these fires, multiple structures were lost and air quality standards exceeded the California Air Resource Board thresholds. Additionally, areas that experienced high burn severity also experienced soil erosion, wildlife habitat loss, and degraded visual quality.

The purpose of this project is to reduce the risk of a stand-replacing fire in the LSR, improve firefighter and public safety by providing safe access in and out of the project area, and to restore fire in its natural role in the ecosystem. In order to meet the purpose of this project, there is a need to reduce fuels, improve safety of individuals, and improve forest ecosystem function and health within the project boundary. The following specific needs have been identified by the interdisciplinary team:

1. Reduction of Fuels

- There is a need to reduce fuel accumulations in the project area to minimize current fuel loading and lessen the threat of habitat loss from future wildland fires.
- There is a need to protect existing late successional habitat from threats of habitat loss that occur inside and outside of the LSR.
- There is a need to reduce the likelihood of stand replacing disturbances that would result in the loss of key late-successional structure or existing and future late-successional forest.
- There is a need for the natural role of fire to be restored to the ecosystem at historic fire return intervals to facilitate fire-related processes on this landscape.

2. Improvement of Safety of Individuals

- There is a need to provide areas and access to areas where firefighters can safely employ suppression tactics to reduce the spread and severity of uncharacteristic wildland fire.
- There is a need to remove hazard trees in FMZs, along roads, and in developed recreation sites to reduce safety risk to humans working in and visiting the area.
- There is a need to provide for the safety of individuals along access routes and within developed recreation sites.

3. Improvement of Forest Ecosystem Function and Health

- There is a need to increase habitat quality within the project area to provide for a range of species, including rare and sensitive species and those that are associated with late successional stages.
- There is a need to maintain and promote the connectivity of late successional habitat.
- There is a need to promote long term sustainability of late-successional habitat by mitigating undesirable fire effects.
- There is a need to promote the development and long term sustainability of late successional habitat characteristics within the LSR.
- There is a need to enhance riparian habitat by reducing risk of loss from fire.
- There is a need to reduce stand densities in the project area to improve the resiliency of stands to a disturbance such as a wildfire.
- There is a need to create a vegetation profile with high spatial complexity to mimic historically characteristic fire patterns.
- There is a need for the natural role of fire to be restored to the ecosystem to facilitate fire-related processes in the landscape.
- There is a need to maintain the characteristics of ecosystem composition and structure within the IRA, by reducing the risk of uncharacteristic wildfire effects within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period.

Proposed Action/Preferred Alternative

The project area is approximately 12,071 acres in total, and the proposed action involves a total of 13,153 acres of treatments, with areas of overlapping treatment. There would be no treatments occurring outside of the project area. The treatments would occur over approximately 7–10 years. The proposed action would utilize the existing road system and does not propose new road construction.

Approximately 1,630 acres are proposed for treatment as fuel management zones (FMZ). Fuel Management Zones would reduce overstory, midstory, and understory fuels, including live vegetation, and are intended to create shaded fuel breaks designed to reduce potential fire behavior in the treated area. Fuel management zones would be constructed along roads and ridge tops in order to improve those locations' functionality as evacuation routes and fuel breaks. Fuel Management Zones will range from 300 feet to 600 feet wide depending upon treatment location, and would be treated with a variety of methods, based on site specific conditions. These methods would include thinning by hand and machine, mastication by machine, machine piling, hand piling, and pile burning.

After treatment, the fuel management zones (FMZs) in the project area would reduce the current risk of large, stand-replacing fires and enhance the usability of roads and ridges in the project area for wildland fire management. Overstory trees would be thinned to reduce crown-to-crown overlap. The average height from the ground to the canopy would increase. Understory trees, shrubs, and heavy ground fuels would be reduced, increasing the potential of fire being contained at the FMZ. The density of the stand would be less that the current condition, with fewer trees per acre and the larger, more fire-resistant trees retained in the stand.

Commercial products may be removed from the fuelbreaks, primarily to reduce residual fuels and to meet the intent of applicable management direction and desired future condition. The cutting, sale, or removal of timber from the fuelbreaks may be needed to reduce the risk of uncharacteristic wildfire effects and to maintain the ecosystem's composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period, which is allowed under the 2001 Roadless Rule. Commercial products may include biomass, firewood, or timber. The amount of residual fuel generated in the treatment of the FMZ will determine if the removal of fuel from the site would occur. If treated areas have high levels of activity generated, residual fuel that would render the fuelbreak ineffective, the fuel would be removed from the site by whichever method is most practicable. Hazard trees identified within the FMZs, roads, and developed recreation sites that pose a threat to employees and the public would be felled where determined necessary. Hazard tree felling would follow Hazard Tree Guidelines for Forest Service Facilities and Roads within the Pacific Southwest Region.

Approximately 11,523 acres are proposed for treatment with prescribed fire. Low to moderate intensity prescribed fire would be applied using and underburn to consume surface and ladder fuels in proposed areas. Multiple prescribed fire entries may be required to meet desired future conditions and could be implemented at any time of the year within designated operating periods. Prescribed fire lighting techniques would consist of aerial ignition (*i.e.,* plastic sphere dispenser or helitorch) and hand lighting methods. Natural and man-made features, such as roads and trails, would be utilized for control lines to minimize ground disturbance where feasible. Fire lines would be constructed to mineral soil using a dozer and hand tools where natural barriers do not exist, and trees may be felled to facilitate holding activities during prescribed fire implementation. Approximately 0.21 miles of hand line and 1.9 miles of dozer line are part of the proposed action. The dozer line would be created by both constructing new fire line and scraping vegetation off of old roadbeds.

The hand line would use pre-existing line that was constructed during the Bagley fire. Target prescribed fire objectives following treatment are:

- Desired flame lengths in these treatment areas vary from 0–6 feet according to resource objectives.
- Large diameter dead/down material would be retained to historical levels—where appropriate—to support soil, fungal, plant, and animal functionality.
- Up to 70% of the fuels less than 3 inches in diameter would be consumed while retaining a minimum of 50% soil cover.
- Ladder fuels would be reduced in an effort to increase canopy base height to 10 feet or greater.
- In shrub dominated areas, a mosaic of age classes and diversity of species composition would be created.

Responsible Official

Forest Supervisor, Shasta-Trinity National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action/preferred alternative, take an alternative action that meets the purpose and need, or take no action.

Preliminary Issues

Potentitial issues could be related to threatened and endangered species habitat, treatments within LSR and IRA, and the private property surrounding the project area. Access to the project site and proposed treatments may be an issue due to the amount of private property located within and surrounding the project area. Potential issues will be addressed within the project design.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The scoping information and Notice for Public comment will be published in the Mt. Shasta Herald and the Redding Record Searchlight.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: March 2, 2016.

Dave Myers,

Forest Supervisor.

[FR Doc. 2016–06388 Filed 3–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–874]

Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain hot-rolled steel flat products (''hot-rolled steel'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, see the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is certain hot-rolled steel flat products from Japan. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* ''scope'').[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[5] The Department is preliminarily not modifying the scope

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[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 54261 (September 9, 2015) (''*Initiation Notice*'').

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Japan'' (''Preliminary Decision Memorandum''), dated concurrently with this notice.

[3] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice,* 80 FR at 54261.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this preliminary determination.

language as it appeared in the *Initiation Notice.*

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[6] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[7] As a result of the postponement, the revised deadline for the preliminary determination of this investigation was March 8, 2016. However, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this investigation have been extended by four business days.[8] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices (EP) have been calculated in accordance with section 772(a) of the Act. Constructed export prices (CEP) have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Single Entity Treatment

For the reasons set forth in the Preliminary Decision Memorandum and in accordance with 19 CFR 351.401(f) and the Department's practice, we are treating Nippon Steel & Sumitomo Metal Corporation and Nippon Steel & Sumikin Bussan Corporation (Nippon Group) as a single entity for the purposes of this preliminary determination. Additionally, we are treating JFE Steel Corporation and JFE Shoji Trade Corporation (JFE Group) as a single entity for the purposes of this preliminary determination.[9]

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ''all others'' rate using ''any reasonable method.''

In this investigation, we calculated weighted-average dumping margins for the JFE Group and the Nippon Group, that are above *de minimis* and which are not based on total facts available. We preliminarily calculated the all-others rate using weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration.[10]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margin (percent)
Nippon Steel & Sumitomo Metal Corporation/Nippon Steel & Sumikin Bussan Corporation[11]	11.29
JFE Steel Corporation/JFE Shoji Trade Corporation[12]	6.79
All Others	10.24

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of hot-rolled steel from Japan, as described in the Scope of the Investigation in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Because we have preliminarily found that critical circumstances exist with regard to imports produced and exported by the mandatory respondents the JFE Group and the Nippon Group,[13] we will instruct CBP to suspend liquidation of all entries of hot-rolled steel flat products from Japan, as described in the scope of the investigation, from the mandatory respondents that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the date on which suspension of liquidation is first ordered (*e.g.,* the date of publication of this notice).

In accordance with 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the preliminary weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above.[14] These suspension of

[6] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[7] *Id.*

[8] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[9] *See* ''Single Entity Analysis'' section of the Preliminary Decision Memorandum.

[10] With two respondents, we normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). *See* Memorandum to the File, ''Hot-Rolled Steel Flat Products from Japan: Calculation of the Margin for All Others Rate for the Preliminary Determination,'' dated March 14, 2016.

[11] In this investigation, the Department found that Nippon Steel & Sumitomo Metal Corporation/Nippon Steel & Sumikin Bussan Corporation are a single entity. *See* ''Methodology'' section above; *see also* the ''Single Entity Analysis'' section of the Preliminary Decision Memorandum.

[12] In this investigation, the Department found that JFE Steel Corporation and JFE Shoji Trade Corporation are a single entity. *See* ''Single Entity Treatment'' section above; *see also* the ''Single Entity Analysis'' section of the Preliminary Decision Memorandum.

[13] *See Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Determinations of Critical Circumstances,* 80 FR 76444 (December 9, 2015).

[14] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and*

Continued

liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[16] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 10, 2016, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), the JFE Group requested that, contingent upon an affirmative preliminary determination of sales at LTFV, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[17]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[18]

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[19] or countervailing duty[20] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and

Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

[15] *See* 19 CFR 351.309.

[16] *See* 19 CFR 351.310(c).

[17] *See* Letter to the Secretary of Commerce from JFE regarding, "Certain Hot-Rolled Steel Flat Products from Japan: Revised Request to Postpone Final Determination" (March 10, 2016).

[18] *See also* 19 CFR 351.210(e).

[19] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[20] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

(3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [21]
- Ball bearing steels; [22]
- Tool steels; [23] and
- Silico-manganese steels; [24]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension Of Provisional Measures
V. Preliminary Determination of Critical Circumstances
VI. Scope of the Investigation
VII. Scope Comments
VIII. Single Entity Analysis
IX. Discussion of The Methodology
X. Facts Available and Adverse Facts Available
XI. Date Of Sale
XII. Product Comparisons
XIII. Export Price And Constructed Export Price
XIV. Normal Value
XV. Currency Conversion
XVI. Conclusion

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[21] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[22] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[23] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[24] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–813]

Certain Hot-Rolled Steel Flat Products From the Netherlands: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective: March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the*

Continued

description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are hot-rolled steel from the Netherlands. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For discussion of those comments, *see* the Preliminary Decision Memorandum.

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the deadline for the preliminary determination of this investigation moved to March 8, 2016. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[5] All deadlines in this investigation have been extended by four business days.[6] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. In addition, the Department has relied on partial adverse facts available under sections 776(a) and (b) of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually investigated, which shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The Department calculated a company-specific rate for Tata Steel IJmuiden B.V that is not zero, *de minimis* or determined entirely under section 776 of the Act. Therefore, for purposes of determining the ''all-others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Tata Steel IJmuiden B.V as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average margin (percent)
Tata Steel IJmuiden B.V.	5.07
All-Others	5.07

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from the Netherlands as described in the ''Scope of the Investigation'' section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on this preliminary determination.

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue;

Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[4] *Id.*

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[6] *Id.*

[7] *See* 19 CFR 351.309.

(2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 22, 2016, pursuant to 19 CFR 351.210(b) and (e), Tata Steel IJmuiden B.V. requested that, contingent upon an affirmative preliminary determination of sales at LTFV, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise;[10] and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[11]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[12] or countervailing duty[13] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying

[8] *See* 19 CFR 351.310(c).

[9] *See* Letter to the Secretary of Commerce from Tata Steel IJmuiden B.V., ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Request for Postponement of Final Determination'' (February 22, 2016).

[10] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Netherlands: Respondent Selection,'' dated September 29, 2015.

[11] *See also* 19 CFR 351.210(e).

[12] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[13] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [14]
- Ball bearing steels; [15]
- Tool steels; [16] and
- Silico-manganese steels;[17]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Critical Circumstances
VII. Application of Facts Available and Use of Adverse Inferences
VIII. Discussion of Methodology Comparisons to Fair Value
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
IX. Date of Sale
X. Product Comparisons
XI. Export Price and Constructed Export Price
XII. Normal Value
  A. Comparison Market Viability
  B. Affiliated Party Transactions and Arm's-Length Test
  C. Level of Trade
  D. Cost of Production Analysis
  1. Calculation of COP
  2. Test of Comparison Market Sales Prices
  3. Results of the COP Test
  E. Calculation of NV Based on Comparison-Market Prices
XIII. Currency Conversion
XIV. Conclusion

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[14] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[15] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[16] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[17] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective: March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2243 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in

[1] *See Certain Cold-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Less-than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea'' (Preliminary Decision Memorandum), dated concurrently with this notice.

the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary determination of this investigation is now March 14, 2016.[3]

Scope of the Investigation

The product covered by this investigation is hot-rolled steel from Korea. For a full description of the scope of this investigation, see the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* ''scope'').[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] The Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice.*

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we calculated weighted-average dumping margins for Hyundai Steel Company and POSCO[7] that are above *de minimis* and which are not based on total facts available. Accordingly, for the preliminary determination, consistent with the Act and the Department's practice, the Department preliminarily determines that the margin for the all-others rate is the simple average of the calculated margins of the mandatory respondents.[8]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average margin (percent)
Hyundai Steel Company	3.97
POSCO	7.33
All-Others	5.65

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from Korea, as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,[9] adjusted where appropriate for export subsidies.[10] The Department has preliminarily determined in its companion countervailing duty investigation of hot-rolled steel from Korea that subject merchandise exported by POSCO and Hyundai Steel did not benefit from export subsidies.[11] As a result, the Department will make no adjustment to the cash deposit rates. The suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of public announcement of this

[3] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines as a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[4] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 80 FR at 54262.

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Hot-Rolled Steel Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated concurrently with this preliminary determination.

[7] We are collapsing the mandatory respondent POSCO with Daewoo International Corporation. *See* the Preliminary Decision Memorandum.

[8] *See* Memorandum to the File, ''Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea, All-Others Rate Calculation,'' dated March 14, 2016. We note that it is the Department's practice to calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[9] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[10] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[11] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 81 FR 2172 (January 15, 2016).

preliminary determination in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[13] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 2, 2016, and March 3, 2016, pursuant to 19 CFR 351.210(b) and (e), POSCO and Hyundai Steel Company, respectively, requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[14]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, in part; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[15]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[16] or countervailing duty[17] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

[12] *See* 19 CFR 351.309.

[13] *See* 19 CFR 351.310(c).

[14] *See* Letter to the Secretary of Commerce from POSCO, ''Request to Postpone the Final Determination'' (March 2, 2016) and also Letter to the Secretary of Commerce from Hyundai Steel, ''Request to Postpone the Final Determination'' (March 3, 2016).

[15] *See also* 19 CFR 351.210(e).

[16] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[17] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [18]
- Ball bearing steels; [19]
- Tool steels; [20] and
- Silico-manganese steels; [21]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope of the Investigation
VI. Scope Comments
VII. All-Others Rate
VIII. Affiliation and Collapsing
IX. Discussion of the Methodology
  A. Determination of the Comparison Method
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XII. Export Price and Constructed Export Price
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XV. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
XVI. Conclusion

[FR Doc. 2016–06488 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[18] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[19] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[20] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[21] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–826]

Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective: March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Alexander Cipolla or Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4956 or (202) 482–1398, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, see the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is hot-rolled steel from Turkey. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For discussion of those comments, see the Preliminary Decision Memorandum.

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is March 8, 2016. However, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[5] All deadlines in this investigation have been extended by four business days.[6] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices (EP) have been calculated in accordance with section 772(a) of the Act. Constructed export prices (CEP) have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Single Entity Treatment

For the reasons set forth in the Preliminary Decision Memorandum and in accordance with 19 CFR 351.401(f) and the Department's practice, we are treating Colakoglu Metalurji A.S. (Colakoglu) and Colakoglu Dis Ticaret A.S. (COTAS) (collectively, Colakoglu), as well as Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and Iskenderun Demir Ve Celik (Iskenderun) (collectively, Erdemir), as single entities, for the purposes of this preliminary determination.[7]

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(B) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ''all-others'' rate using ''any reasonable method.''

In this investigation, we calculated weighted-average dumping margins for Colakoglu and Erdemir that are above *de minimis* and are not based on total facts available. We calculated the all-others rate using a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration.[8]

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/manufacturer	Dumping margins (percent)
Colakoglu Metalurji A.S./ Colakoglu Dis Ticaret A.S.[9]	7.07
Eregli Demir ve Celik Fabrikalari T.A.S./ Iskenderun Demir Ve Celik[10]	5.24
All-Others	6.82

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair Value Investigations,* 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[4] *Id.*

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' (January 27, 2016).

[6] *Id.*

[7] *See* ''Affiliation And Collapsing'' section of the Preliminary Decision Memorandum.

[8] With two respondents, we normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was available, we based the all-others rate on the publically ranged sales data of the mandatory respondents. For a complete BPI explanation, please *see* the All-Others Calculation Memorandum.

[9] In this investigation, the Department found that Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S. are a single entity. *See* ''Single Entity Treatment'' section above; *see also* the ''Affiliation and Collapsing'' section of the Preliminary Decision Memorandum.

[10] In this investigation, the Department found that Eregli Demir ve Celik Fabrikalari T.A.S. and

and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from Turkey as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,[11] adjusted where appropriate for export subsidies.[12] However, the preliminary determination in the concurrent countervailing duty investigation was negative.[13] Therefore, no adjustments for export subsidies will be applied to the estimated weighted-average dumping margins calculated for each respondent, and for the all-others rate. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[15] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 8, 2016, pursuant to 19 CFR 351.210(b) and (e), Colakoglu and Erdemir requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[16]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[17]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm

Iskenderun Demir Ve Celik are a single entity. *See* ''Single Entity Treatment'' section above; *see also* the ''Affiliation and Collapsing'' section of the Preliminary Decision Memorandum.

[11] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[12] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[13] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 81 FR 2166 (January 15, 2016).

[14] *See* 19 CFR 351.309.

[15] *See* 19 CFR 351.310(c).

[16] *See* Letter from Colakoglu, ''Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu's Request to Extend the Final Determination'' (March 8, 2016); and Letter from Erdemir, ''Hot-Rolled Steel Flat Products from Turkey; Request to Extend Final Determination,'' (March 8, 2016).

[17] *See also* 19 CFR 351.210(e).

and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping [18] or countervailing duty [19] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [20]
- Ball bearing steels; [21]
- Tool steels; [22] and
- Silico-manganese steels; [23]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs and Border Protection purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
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XI. Export Price and Constructed Export Price
XII. Normal Value
XIII. Currency Conversions
XIV. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
XV. Conclusion

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BILLING CODE 3510–DS–P

[18] *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[19] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

[20] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[21] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[22] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[23] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–845]

Certain Hot-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective:* March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski or Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.*

Scope of the Investigation

The products covered by this investigation are hot-rolled steel from Brazil. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For discussion of those comments, see the Preliminary Decision Memorandum.

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is March 8, 2016. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[5] All deadlines in this investigation have been extended by four business days.[6] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. For purposes of this preliminary determination, we are assigning as the ''all-others'' rate the rate of 33.91 percent, which is based on the estimated dumping margin calculated for Companhia Siderúrgica Nacional (CSN), the only mandatory respondent for which we calculated a dumping margin.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average margin (percent)
Companhia Siderúrgica Nacional (CSN)	33.91
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	34.28
All-Others	33.91

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from Brazil as described in the Scope of the Investigation in Appendix I entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except for CSN and Usiminas, as described below. Section 733(e)(2) of the Act provides

[1] *See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the Brazil'' (Preliminary Decision Memorandum), dated concurrently with this notice and hereby adopted by this notice.

[3] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[4] *Id.*

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm 'Jonas' '' dated January 27, 2016.

[6] *Id.*

that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. On December 9, 2015, we preliminarily found that critical circumstances exist for imports exported by CSN and Usiminas.[7] For CSN and Usiminas, in accordance with section 733(e)(2)(A) of the Act, suspension of liquidation of hot-rolled steel from Brazil, as described in the ''Scope of the Investigation'' in Appendix I, shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered. Because we find critical circumstances do not exist for ''all others,'' we will begin suspension of liquidation for such firms on the date of publication of this notice in the **Federal Register**.

Pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price, adjusted where appropriate for export subsidies, as follows: (1) The rates for CSN and Usiminas, when adjusted for export subsidies, are 29.78 and 30.46 percent, respectively; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise, less export subsidies; (3) the rate for all other producers or exporters when adjusted for export subsidies is 29.93 percent.[8]

These suspensions of liquidation instructions will remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[10] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Respondents' requests for postponement of a final antidumping determination must be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.[11]

On February 22, and February 25, 2016, respectively, pursuant to 19 CFR 351.210(e), CSN and Usiminas requested that the Department postpone the final determination and extend provisional measures to a period not to exceed six months.[12]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[13]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[7] *See Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Determinations of Critical Circumstances,* 80 FR 76444 (December 9, 2015).

[8] Consistent with the Department's normal practice, because we calculated the ''All Others Rate'' in this investigation based on the calculated weighted-average dumping margin for CSN, the ''All Others Rate'' includes export subsidies at a rate equal to the average of the CVD export subsidy rates applicable to the mandatory respondents. *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46034, 46043 (August 2, 2012); *see* also, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Calculation of All-Others Rate'' (All-Others Rate Memorandum), dated concurrently with this notice.

[9] *See* 19 CFR 351.309.

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.210(e)(2).

[12] *See* Letter to the Secretary of Commerce from CSN, ''Request for Postponement of Final Determinations,'' (February 22, 2016). *See* also letter to the Secretary of Commerce from Usiminas, ''Cold-Rolled and Hot-Rolled Steel Flat Products from Brazil; Request for Postponement of Final Determinations,'' (February 25, 2016).

[13] *See* 19 CFR 351.210(e).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping [14] or countervailing duty [15] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [16]
- Ball bearing steels; [17]
- Tool steels; [18] and
- Silico-manganese steels; [19]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Preliminary Determination of Critical Circumstances
V. Scope of the Investigation

[14] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[15] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

[16] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[17] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[18] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[19] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

VI. Scope Comments
VII. All-Others Rate
VIII. Discussion of Methodology
A. Determination of the Comparison Method
B. Results of the Differential Pricing Analysis
C. Application of Facts Available and Adverse Inferences
1. Application of Facts Available With an Adverse Inference
2. Selection of Information Used as Facts Available
3. Selection and Corroboration of the AFA Rate
IX. Date of Sale
X. Product Comparisons
XI. Constructed Export Price
XII. Normal Value
A. Comparison Market Viability
B. Affiliated Party Transactions and Arm's-Length Test
C. Level of Trade
D. Cost of Production Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
E. Calculation of NV Based on Comparison-Market Prices
XIII. Currency Conversion
XIV. Adjustments to Cash Deposit Rates For Export Subsidies in the Companion Countervailing Duty Investigation
XV. Conclusion

[FR Doc. 2016–06449 Filed 3–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Aluminum Extrusions From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 14, 2015, the Department of Commerce (the Department) published the *Final Results* of the administrative review of the countervailing duty (CVD) order [1] on aluminum extrusions from the People's Republic of China (PRC) for the January 1, 2013, through December 31, 2013 period of review (POR).[2] As explained below, the Department is amending the *Final Results* to correct the net subsidy rates for the Jangho Companies,[3] non-selected cooperative respondents, and companies for which we applied total adverse facts available (AFA) in the *Final Results.* The amended final net subsidy rates are listed below in ''Amended Final Results of Administrative Review.'' [4]

DATES: Effective Date: March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, Tyler Weinhold or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0698, (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2015, the Department published the Final Results.[5] On December 15, 2015, the Jangho Companies alleged that certain ministerial errors were contained in the *Final Results,* and requested that the Department correct such errors.[6] No other party has submitted ministerial error comments or rebuttal comments.

Before the Department could take action on the alleged ministerial errors, both Taizhou United Imp & Exp Co Ltd. and the Jangho Companies filed a summons and complaint with the U.S. Court of International Trade (''CIT'') challenging the Final Results, which vested the CIT with jurisdiction over the administrative proceeding.[7] On February 8 and 12, 2016, the CIT granted the Department leave to publish amended final results upon considering the ministerial error allegations.[8]

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[9]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 9031.90.90.95, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61,

[1] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*).

[2] *See Aluminum Extrusions from the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325, dated December 14, 2015 (*Final Results*); Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado Assistant Secretary for Enforcement and Compliance regarding: ''Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Aluminum Extrusions from the People's Republic of China, 2013 (Third Review),'' December 7, 2015 (Final Results Issues and Decision Memorandum).

[3] For purposes of this administrative review, the Jangho Companies includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., (Guangzhou Jangho); Jangho Group Co., Ltd. (Jangho Group Co.); Beijing Jiangheyuan Holding Co., Ltd (Beijing Jiangheyuan); Beijing Jangho Curtain Wall System Engineering Co., Ltd. (Beijing Jangho); and Shanghai Jangho Curtain Wall System Engineering Co., Ltd., (Shanghai Jangho).

[4] On December 17, 2015, the Department issued a memorandum correcting certain inadvertent errors in the Issues and Decision Memorandum. *See* Memorandum to the File from Tyler Weinhold: ''Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Errors in the Issues and Decision Memorandum for the Final Results of the 2013 Administrative Review,'' December 17, 2015. We hereby incorporate that memorandum by reference in this notice.

[5] *See Final Results.*

[6] *See* letter from the Jangho Companies to the Department regarding: ''Aluminum Extrusions from the People's Republic of China: Ministerial Errors,'' December 15, 2015 (Ministerial Error Allegation).

[7] *See Zenith Elecs. Corp.* v. *United States,* 884 F.2d 556, 561–62 (Fed. Cir. 1989).

[8] *See Taizhou United Imp. & Exp. Co. Ltd.* v. *United States,* CIT No. 16–00009; *Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. et al* v. *United States,* CIT No. 16–00012.

[9] *See* Final Results Issues and Decision Memorandum for a complete description of the scope of the *Order.*

9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Correction to the Final Results

As discussed in the memoranda accompanying this notice, and which are hereby adopted by this notice, we determine that the *Final Results* contained two ministerial errors.[10] First, in Guangzhou Jangho's glass for less than adequate remuneration (LTAR) purchases and benefits spreadsheet, we inadvertently referenced the wrong column in the transaction-specific benefits formulas for Guangzhou Jangho's glass purchases. We have corrected this error by modifying the relevant formula to refer to the correct column. Second, in Shanghai Jangho's aluminum extrusions for LTAR purchases and benefits spreadsheet, the formulas used to reference monthly aluminum extrusions benchmark prices were returning the value for the wrong month in certain instances, and in some instances we had used incorrect formulas. We have corrected these errors.

[10] *See* Memorandum from Tyler Weinhold and Davina Friedmann, through Robert James, program Manager, Office VI, to Scot Fullerton, Director, AD/CVD Operations, Office VI, regarding: ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Ministerial Error Allegation,'' dated concurrently with this memorandum (Amended Final Results Decision Memorandum), and Memorandum from Tyler Weinhold through Robert James, Program Manager, Office VI, to the File, regarding: ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Amended Final Results Analysis Memorandum for the Jangho Companies,'' dated concurrently with this memorandum (Amended Final Analysis Memorandum for the Jangho Companies).

Amendment to Rates for Non-Selected Companies Under Review

In light of the above corrections, for the 38 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents, we have recalculated the net subsidy rate which is based on the overall subsidy rates calculated for the mandatory respondents of this review.[11]

We have also recalculated the net subsidy rate assigned to those companies for which we applied AFA in the *Final Results* because the AFA rate includes the individual subsidy rates determined for the glass for LTAR and aluminum extrusions for LTAR programs.[12]

Amended Final Results of Administrative Review

In accordance with 19 CFR 351.224(e) we determine the following amended final net subsidy rates for the 2013 administrative review:

Company	Ad Valorem rate [13] (percent)
Allied Maker Limited	28.01
Alnan Aluminum Co. Ltd	28.01
Bracalente Metal Producers (Suzhou) Co. Ltd [14]	28.01
Changzhou Changzheng Evaporator Co., Ltd	28.01
Classic & Contemporary Inc.	28.01
Danfoss Micro Channel Heat Exchanger (Jia Xing) Co. Ltd	28.01
Dongguan Golden Tiger Hardware Industrial Co., Ltd	28.01
Dynamic Technologies China Ltd	187.86
Ever Extend Ent. Ltd	28.01
Fenghua Metal Product Factory	28.01
Foreign Trade Co. of Suzhou New & High Tech Industrial Development Zone	187.86
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	187.86
Golden Dragon Precise Copper Tube Group	187.86
Guandong JMA Aluminum Profile (Group) Co., Ltd	28.01
Guangdong Whirlpool Electrical Appliances Co. Ltd	28.01
Guangdong Zhongya Aluminum Company Limited	28.01
Hanyung Alcobis Co., Ltd	28.01
Hangyung Metal (Suzhou) Co., Ltd	28.01
Henan New Kelong Electrical Appliances, Co., Ltd	28.01
IDEX Dinglee Technology (Tianjin) Co., Ltd	28.01
IDEX Technology Suzhou Co., Ltd	28.01
Jangho Companies	29.18
Jiangsu Susun Group (HK) Co., Ltd	28.01
Justhere Co., Ltd	28.01
Kromet International Inc.	28.01
Metaltek Group Co. Ltd	28.01
North Fenghua Aluminum Limited	28.01
Nidec Sankyo Singapore Pte. Ltd	28.01
Nanhai Textiles Import & Export Co., Ltd	28.01
Permasteelisa Hong Kong Ltd	28.01
Permasteelisa South China Factory	28.01
Sapa Profiles (Shanghai) Co., Ltd	28.01
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd	28.01
Shenyang Yuanda Aluminum Industry Engineering Co., Ltd	28.01
Taishan City Kam Kiu Aluminum Extrusion Co., Ltd	28.01
Taizhou United Imp & Exp Co Ltd	28.01
tenKsolar (Shanghai) Co., Ltd	28.01
Union Industry (Asia) Co., Limited	28.01
Whirlpool Microwave Products Development Ltd	28.01
WTI Building Products, Ltd	187.86
Zhaoqing Asia Aluminum Factory Company Ltd	187.86
Zhejiang Dongfeng Refrigeration Components Co. Ltd	28.01
Zhongya Shaped Aluminum (HK) Holding Limited	28.01
Zhongshan Daya Hardware Co., Ltd	28.01
Zhaoqing New Zhongya Aluminum Co., Ltd	28.01

[11] For further information *see* Memorandum from Davina Friedmann and Tyler Weinhold, Case Analysts, to Robert James, Program Manager, Office VI, AD/CVD Operations, regarding: ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: Non-Selected Rate Calculation Memorandum for the Amended Final Results,'' dated concurrently with these amended final results of review.

[12] For further information *see* Memorandum from Davina Friedmann and Tyler Weinhold, Case Analysts, to Robert James, Program Manager, Office VI, AD/CVD Operations, regarding: ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the Amended Final Results,'' dated concurrently with these amended final results of review.

[13] Because the net subsidy rate for the Guang Ya Group did not change as a result of these amended final results, their net subsidy rate remains the same as was published in the *Final Results. See Final Results,* 80 FR 77325, 77327.

[14] In the *Final Results,* the Department misspelled the name of this company. This error has been corrected for these amended final results of review.

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review, to liquidate appropriate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2013, through December 31, 2013, at the *ad valorem* rates listed above.

Cash Deposit Requirements

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 14, 2015, the date of publication of the *Final Results.* For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice. We will disclose the calculations performed for these amended final results to interested parties within five business days of the date of publication of this notice.

We are issuing and publishing these results in accordance with sections 751(a)(1), 751(h), and 777(i)(1) of the Act; and 19 CFR 351.224(e) and (h).

Dated: March 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–06425 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Rescission of 2014–2015 Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review (''NSR'') of the antidumping duty order on xanthan gum from the People's Republic of China (''PRC''). The NSR covers one exporter and producer of subject merchandise, Inner Mongolia Jianlong Biochemical Co., Ltd. (''IMJ''). The period of review (''POR'') is July 1, 2014 through June 30, 2015. The Department preliminarily determines that IMJ did not satisfy the regulatory requirements to request an NSR and did not make a *bona fide* sale during the POR; therefore, we are preliminarily rescinding this NSR. Interested parties are invited to comment on the preliminary results of this review.

DATES: Effective: March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Cara Lofaro or Brandon Farlander, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5720 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 2015, the Department published a notice of initiation of a new shipper review of the antidumping duty order on xanthan gum from the PRC.[1] The Department subsequently issued an antidumping duty questionnaire, and supplemental questionnaires, to IMJ and received timely responses thereto. Also, interested parties submitted comments on surrogate country and surrogate value selection.

The Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government because of Snowstorm ''Jonas.'' Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review, after the four business-day extension, was February 23, 2016.[2] However, on February 17, 2016, the Department extended the time period for issuing the preliminary results of this NSR by 21 days, until March 15, 2016.[3]

Scope of the Order

The scope of the order covers dry xanthan gum, whether or not coated or blended with other products. Further, xanthan gum is included in this order regardless of physical form, including, but not limited to, solutions, slurries, dry powders of any particle size, or unground fiber. Merchandise covered by the scope of this order is classified in the Harmonized Tariff Schedule (''HTS'') of the United States at subheading 3913.90.20. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope is dispositive.[4]

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and is available in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of the Antidumping New Shipper Review of IMJ

As discussed in the *Bona Fide* Sales Analysis Memorandum,[5] the Department preliminarily finds that the sale made by IMJ's affiliate in the United States, Jianlong USA, is not a *bona fide* sale. The Department reached this conclusion based on the totality of the circumstances surrounding the reported sale, including the sales price, in conjunction with the timing of the sale and the facts surrounding the establishment and operations of IMJ's U.S. affiliate, Jianlong USA. Because the

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[1] *See Xanthan Gum From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 80 FR 52031 (August 27, 2015) (''*Initiation Notice*'').

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,'' dated January 27, 2016.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''New Shipper Review of Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review,'' dated February 17, 2016.

[4] For a complete description of the scope of the order, *see* ''Decision Memorandum for the Preliminary Rescission of the 2014–2015 Antidumping Duty New Shipper Review of Xanthan Gum from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado Assistant Secretary for Enforcement and Compliance (''Preliminary Decision Memorandum''), dated concurrently with this notice.

[5] *See* Memorandum from Cara Lofaro and Brandon Farlander, International Trade Analysts, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Office IV, AD/CVD Operations entitled ''2014–2015 Antidumping Duty New Shipper Review of Xanthan Gum From the People's Republic of China: Preliminary *Bona Fide* Sales Analysis for Inner Mongolia Jianlong Biochemical Co., Ltd.'' dated concurrently with and hereby adopted by this notice (''*Bona Fide* Sales Analysis Memorandum'').

non-*bona fide* sale was the only reported sale of subject merchandise during the POR, and thus there are no reviewable transactions on this record, we are preliminarily rescinding this NSR.[6] Because the factual information used in our *bona fides* analysis of IMJ's sale involves business proprietary information, for a full discussion of the basis for our preliminary determination *see* the *Bona Fide* Sales Analysis Memorandum.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of review.[7] Rebuttals to case briefs may be filed no later than five days after the briefs are filed. All rebuttal comments must be limited to comments raised in the case briefs.[8]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[9] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.[11]

The Department intends to issue the final results of this NSR, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B) of the Act.

Assessment Rates

If the Department proceeds to a final rescission of IMJ's NSR, the assessment rate to which IMJ's shipments will be subject will not be affected by this review. However, the Department initiated an administrative review of the antidumping duty order on xanthan gum from the PRC covering numerous exporters, including IMJ, for the period of July 1, 2014 through June 30, 2015, which is the period covered by this NSR.[12] Thus, if the Department proceeds to a final rescission, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend subject merchandise exported by IMJ and entered into the United States during the period July 1, 2014 through June 30, 2015 until CBP receives instructions relating to the administrative review of this order covering that period.

If the Department does not proceed to a final rescission of this new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer-specific) assessment rates based on the final results of this review. However, pursuant to the Department's refinement to its assessment practice in NME cases,[13] for entries that were not reported in the U.S. sales database submitted by IMJ, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this NSR, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of IMJ's subject merchandise. If the Department proceeds to a final rescission of this NSR, the cash deposit rate will continue to be the PRC-wide rate for IMJ because the Department will not have determined an individual margin of dumping for IMJ. If the Department issues final results for this NSR, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: March 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Sections in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Conclusion

[FR Doc. 2016–06423 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–809]

Certain Hot-Rolled Steel Flat Products From Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain hot-rolled steel flat products (''hot-rolled steel'') from Australia are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Frances Veith, AD/CVD Operations,

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[6] *See* 19 CFR 351.213(d)(3).

[7] *See* 19 CFR 351.309(c).

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310(d).

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[12] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 53106–53111 (September 2, 2015).

[13] *See* Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694, 65694–95 (October 24, 2011).

Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4295.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, see the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are hot-rolled steel from Australia. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For discussion of those comments, see the Preliminary Decision Memorandum.

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the revised deadline for the preliminary determination of this investigation is March 8, 2016. However, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[5] All deadlines in this investigation have been extended by four business days.[6] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. There is one mandatory respondent participating in this investigation, the collapsed entity BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. (collectively, ''BlueScope''). Export price and constructed export price for this company is calculated in accordance with section 772 of the Act. Normal value (''NV'') is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Single Entity Treatment

For the reasons set forth in the Preliminary Decision Memorandum and in accordance with 19 CFR 351.401(f) and the Department's practice, we are treating BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. as a single entity, BlueScope, for the purposes of this preliminary determination.[7]

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

BlueScope is the only respondent for which the Department calculated a company-specific rate. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(d)(5)(A) of the Act, we are using the dumping margin calculated for BlueScope, as referenced in the ''Preliminary Determination'' section below.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margin (percent)
BlueScope Steel Ltd[8]	23.25
All Others	23.25

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of hot-rolled steel from Australia, as described in the Scope of the Investigation in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

In accordance with 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the preliminary weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above.[9] These suspension of liquidation

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 54261 (September 9, 2015) (''*Initiation Notice*'').

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Australia'' (''Preliminary Decision Memorandum''), dated concurrently with this notice.

[3] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[4] *Id.*

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[6] *Id.*

[7] *See* ''Affiliation And Collapsing'' section of the Preliminary Decision Memorandum.

[8] In this investgation, the Department found that BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. are a single entity. *See* ''Methodology'' section above; *see also* the ''Affiliation and Collapsing'' section of the Preliminary Decision Memorandum.

[9] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[11] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 24, 2016, pursuant to 19 CFR 351.210(b) and (e), BlueScope requested that, contingent upon an affirmative preliminary determination of sales at LTFV for BlueScope, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[13]

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[14] or countervailing duty[15] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or

[10] *See* 19 CFR 351.309.

[11] *See* 19 CFR 351.310(c).

[12] *See* Letter to the Secretary of Commerce from BlueScope regarding, "Hot-Rolled Flat Products from Australia: Request for Postponement of the Final Determination" (February 24, 2016).

[13] *See also* 19 CFR 351.210(e).

[14] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[15] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [16]
- Ball bearing steels; [17]
- Tool steels; [18] and
- Silico-manganese steels; [19]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Preliminary Negative Determination of Critical Circumstances
VI. Scope of the Investigation
VII. Scope Comments
VIII. Affiliation and Collapsing
IX. Discussion of the Methodology
X. Date of Sale
XI. Product Comparisons
XII. Export Price and Constructed Export Price
XIII. Normal Value
XIV. Currency Conversion
XV. Conclusion

[FR Doc. 2016–06447 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[16] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[17] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[18] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[19] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–825]

Certain Hot-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that certain hot-rolled steel flat products (hot-rolled steel) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective:* March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on September 9, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination

[1] *See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, The Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 54261 (September 9, 2015) (*Initiation Notice*).

and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are hot-rolled steel from the United Kingdom. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a discussion of those comments, *see* the Preliminary Decision Memorandum.

Postponement of Deadline for Preliminary Determination

The Department published the notice of postponement of preliminary determination of this investigation on November 25, 2015.[3] Pursuant to sections 733(c)(1)(B)(i) and (ii) of the Act, we postponed the preliminary determination by 50 days.[4] As a result of the postponement, the deadline for the preliminary determination of this investigation moved to March 8, 2016. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[5] All deadlines in this investigation have been extended by four business days.[6] The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually investigated, which shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The Department calculated a company-specific rate for Tata Steel UK Ltd. that is not zero, *de minimis* or determined entirely under section 776 of the Act. Therefore, for purposes of determining the ''all-others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Tata Steel UK Ltd. as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average margin (percent)
Tata Steel UK Ltd	49.05
All-Others	49.05

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from the United Kingdom as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on this preliminary determination.

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 73702 (November 25, 2015).

[4] *Id.*

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas'' dated January 27, 2016.

[6] *Id.*

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 22, 2016, pursuant to 19 CFR 351.210(b) and (e), Tata Steel UK Ltd. requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise;[10] and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[11]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: March 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieve subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[12] or countervailing duty[13] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A–580–836; C–580–837), and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and

[8] *See* 19 CFR 351.310(c).

[9] *See* Letter to the Secretary of Commerce from Tata Steel UK Ltd., ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Request for Postponement of Final Determination'' (February 22, 2016).

[10] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Minoo Hatten, Program Manager, for Antidumping and Countervailing Duty Operations, Office I, ''Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Respondent Selection'' dated October 1, 2015.

[11] *See also* 19 CFR 351.210(e).

[12] *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000).

[13] *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.,* hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling; [14]
- Ball bearing steels; [15]
- Tool steels; [16] and
- Silico-manganese steels; [17]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Discussion of Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VII. Date of Sale
VIII. Product Comparisons
IX. Export Price and Constructed Export Price
X. Normal Value
  A. Comparison Market Viability
  B. Affiliated Party Transactions and Arm's-Length Test
  C. Level of Trade
  D. Cost of Production Analysis
  1. Calculation of COP
  2. Test of Comparison Market Sales Prices
  3. Results of the COP Test
  E. Calculation of NV Based on Comparison-Market Prices
XI. Currency Conversion
XII. Conclusion

[FR Doc. 2016–06462 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[14] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[15] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[16] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[17] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE522

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Advisory Panel will hold a public meeting.

DATES: The meeting will be held Tuesday, April 5, 2016, from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: This meeting will gather input on the Council's Blueline Tilefish Management Amendment. See *http://www.mafmc.org/actions/blueline-tilefish* for details on the Amendment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 17, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–06405 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public information meeting to gather input on the likely impacts of alternative spiny dogfish trip limits.

DATES: The meeting will be held Thursday, April 7, 2016, from 7 p.m. to 8:30 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: For 2016–18 specifications, the Mid-Atlantic and New England Fishery Management Councils took no action on the spiny dogfish trip limit, which would maintain the current 5,000 pound trip limit. The Atlantic States Marine Fisheries Commission (ASMFC) has requested that the trip limit be increased to 6,000 pounds (*http://www.mafmc.org/s/2016_Spiny-Dogfish-to-GARFO_trip-limits-REB-edits_AH-2.pdf*), and this webinar-based meeting will gather public input on the potential impacts of changing the spiny dogfish trip limit.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 17, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–06389 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE481

Marine Mammals; File No. 19706

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the California State University, Bakersfield [Responsible Party: Antje Lauer, Ph.D.], 9001 Stockdale Highway, Bakersfield, CA 93311–1022, has applied in due form for a permit to conduct research on pinnipeds for scientific research, and receive, import, and export specimens from these species.

DATES: Written, telefaxed, or email comments must be received on or before April 21, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19706 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 19706 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Rosa L. González or Jennifer Skidmore; phone: (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export blood sera from up to 500 California sea lions (*Zalophus californianus*), 25 threatened Guadalupe fur seals (*Arctocephalus townsendi*), and 25 northern fur seals (*Callorhinus ursinus*) in rehabilitation annually to perform immunodiffusion assays. In addition, the applicant proposes to perform the Spherusol skin test on up to 500 California sea lions in rehabilitation annually. The skin test includes administering a drug intradermally and subsequent observation, photograph/video of swelling/induration after a period of time (*i.e.,* hours). The objective is to research Coccidioidomycosis (Valley fever) on stranded marine mammals along California's coast. The goal is to successfully detect the animal's exposure to *Coccidioides* spp. and compare the sensitivity of the tests to further health studies on the above-named marine mammal species. A permit is requested for a 3-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 16, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–06343 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE501

National Essential Fish Habitat Summit Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The National Marine Fisheries Service will host a public meeting, consisting of representatives from the Regional Fishery Management Councils, the National Marine Fisheries Service, and interested members of the public. The purpose of the meeting is to identify and share opportunities,

challenges, and successful approaches for the effective implementation of the Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat authorities. Registration is required, and participation may be limited. See *http://www.fisheriesforum.org/our-work/special-projects/efh-summit* for more information and to register.

DATES: The meeting will begin Tuesday, May 17, 2016, at 8:30 a.m. and will end on Thursday, May 19, 2016, at 3 p.m.

ADDRESSES: The meeting will be held at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401, telephone: 410–972–4300.

FOR FURTHER INFORMATION CONTACT: Terra Lederhouse at (301) 427–8639 or *terra.lederhouse@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Essential Fish Habitat (EFH) Summit is a collaborative effort between the National Marine Fisheries Service, the Regional Fishery Management Councils, and the Fisheries Leadership and Sustainability Forum. The final agenda will be responsive to the interests, questions, and areas of expertise among participating National Marine Fisheries Service and Regional Fishery Management Council representatives, and may include discussions on EFH conservation roles, responsibilities, and process, the use of habitat science for management decisions, EFH and the changing marine environment, and the future of EFH conservation. A copy of the final agenda will be available at *http://www.fisheriesforum.org/our-work/special-projects/efh-summit.*

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terra Lederhouse at (301) 427–8639 at least 5 days prior to the meeting date.

Dated: March 17, 2016.

Carrie Selberg,

Deputy Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2016–06414 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE468

Takes of Marine Mammals Incidental to Specified Activities; Seabird Research Activities in Central California, 2016–2017

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS (hereinafter, ''we'' or ''our'') received an application from Point Blue Conservation Science (Point Blue) requesting an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment, incidental to conducting proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California from May 2016 through May 2017. Per the Marine Mammal Protection Act, we request comments on our proposal to issue an Authorization to Point Blue to incidentally take, by Level B harassment only, five species [*i.e.,* California sea lion (*Zalophus californianus*), Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), and Steller sea lion (*Eumetopias jubatus*)] of marine mammals during the specified activity.

DATES: NMFS must receive comments and information no later than April 21, 2016.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Pauline@noaa.gov*. You must include 0648–XE468 in the subject line. We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the 2016 renewal request, the 2015 application, our draft Environmental Assessment (EA), or a list of the references, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm*.

Information in Point Blue's application, our draft EA and this notice collectively provide the environmental information related to the proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Robt Pauline, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Summary of Request

On September 29, 2015, NMFS received an application from Point Blue

requesting the taking by harassment of marine mammals incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the proposed activities for one year. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary. Following the initial application submission, Point Blue submitted an updated version of their application on February 23, 2016. We considered the revised renewal request for 2016–2017 activities as adequate and complete on February 25, 2016.

On December 24, 2015 (80 FR 80321), we published a **Federal Register** notice announcing our issuance of a revised Authorization (effective through January 30, 2016) to Point Blue to take marine mammals by harassment, incidental to conducting the same activities presented in this notice of proposed Authorization. The revised Authorization increased the number of authorized take for California sea lions from approximately 9,871 to 44,871 due to Point Blue encountering unprecedented numbers of California sea lions hauled out in survey areas due to warming environmental conditions in the Pacific Ocean offshore California—which researchers have attributed to a current El Nino event.

For the 2016–2017 research seasons, Point Blue again proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; and resupply a field station. The proposed activities would occur over the course of one year between May 2016 and May 2017.

The following aspects of the proposed seabird research activities have the potential to take marine mammals: (1) Acoustic stimuli from noise generated by motorboat approaches and departures; (2) noise generated during the resupplying of the field station; and (3) visual stimuli from human presence during seabird research activities. California sea lions, Pacific harbor seals, northern elephant seals, northern fur seals, and Steller sea lions hauled out in areas on Southeast Farallon Island, Año Nuevo Island, or within Point Reyes National Seashore may flush into the water or exhibit temporary modification in behavior and/or low-level physiological effects (Level B harassment). Thus, Point Blue has requested an Authorization to take 44,871 California sea lions, 343 harbor seals, 196 northern elephant seals, and 106 Steller sea lions by Level B harassment only. Point Blue did not request take for northern fur seals in their application. However, as explained later in this document, we have considered the potential for Point Blue's activities to take a small number of this species.

To date, we have issued seven, one-year Authorizations (and one revised Authorization) to Point Blue for the conduct of the same activities from 2007 to 2016 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; and 80 FR 10066, February 25, 2015, 80 FR 80321, December 24, 2015). This is Point Blue's eighth request for an Authorization. Their current Authorization expired on January 30, 2016 and the monitoring report associated with the 2015–2016 Authorization is available at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm*. The report provides additional environmental information related to proposed issuance of this Authorization for public review and comment.

Description of the Specified Activity

Overview

Seabird Research on Southeast Farallon Island

Point Blue proposes to conduct: (1) daily observations of seabird colonies at a maximum frequency of three 15-minute visits per day; and (2) conduct daily observations of breeding common murres (*Uria aalge*) at a maximum frequency of one, five-hour visit per day in September. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on Southeast Farallon Island. The researchers plan to access the island's two landing areas, the North Landing and the East Landing, by 14 to 18 feet (ft) (4.3 to 5.5 meters [m]) open motorboats which are hoisted onto the island using a derrick system and then travel by foot to coastal areas of the island to view breeding seabirds from behind an observation blind.

The potential for incidental take related to the mark/recapture studies is very low as these activities are conducted within the interior of the island away from the intertidal areas where the pinnipeds haul out. Most potential for incidental take would occur when the researchers approach or depart the intertidal area by motorboat or when the researchers walk within 50 ft (15.2 m) of the haul-out areas to enter the observation blinds to observe shorebirds.

Field Station Resupply on Southeast Farallon Island

Point Blue proposes to resupply the field station once every two weeks at a maximum frequency of 26 visits. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat. At East Landing—the primary landing site—all personnel assisting with the landing would stay on the loading platform approximately 30 ft (9.1 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal areas. Most potential for incidental take would occur when the researchers approach the area by motorboat or when the researchers load or unload supplies onshore.

Seabird Research on Año Nuevo Island

Point Blue and its partners propose to monitor seabird burrow nesting habitat quality and to conduct habitat restoration at a maximum frequency of 20 visits per year. This activity involves two to three researchers accessing the north side of the island by a 12 ft (3.7 m) Zodiac boat. Once onshore, the researchers will check subterranean nest boxes and restore any nesting habitat for approximately 15 minutes.

Most potential for incidental take would occur at the landing beach on the north side of the island when the researchers arrive and depart to check the boxes. Non-breeding pinnipeds may occasionally be present, including California sea lions that may be hauled out near a small group of subterranean seabird nest boxes on the island terrace. In both locations researchers will be more than 50 ft (15.2 m) away from any potentially hauled out pinnipeds.

Seabird Research on Point Reyes National Seashore

The National Park Service in collaboration with Point Blue monitors seabird breeding and roosting colonies; conducts habitat restoration; removes non-native plants; monitors intertidal areas; and maintains coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats (12 to 22 ft; 3.6 to 6.7 m) along the Point Reyes National Seashore shoreline. Researchers would visit the site at a maximum frequency of 20 times per year, with an emphasis on increasing monitoring during the nesting season. Researchers would conduct occasional, intermittent visits during the rest of the

year. A majority of the research occurs in areas where marine mammals are not present. However, the potential for incidental harassment will occur at the landing beaches along Point Reyes Headland, boat ramps, or parking lots where northern elephant seals, harbor seals, or California sea lions may be hauled out in the vicinity.

Dates and Duration

Point Blue proposes to conduct the seabird research activities over the course of one year. The proposed Authorization, if issued, would be effective from May 1, 2016, through April 30, 2017.

Description of the Specified Geographic Region

The proposed activities would occur in the vicinity of pinniped haul-out sites located on Southeast Farallon Island (37°41′54.32″ N.; 123°0′8.33″ W.), Año Nuevo Island (37°6′29.25″ N.; 122°20′12.20″ W.), or within Point Reyes National Seashore (37°59′38.61″ N.; 122°58′24.90″ W.) in central California. The proposed action area consists of the following three locations in the northeast Pacific Ocean:

South Farallones Islands

The South Farallon Islands consist of Southeast Farallon Island located at 37°41′54.32″ N.; 123°0′8.33″ W. and West End Island. These two islands are directly adjacent to each other and separated by only a 30-foot (ft) (9.1 meter (m)) channel. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary.

Año Nuevo Island

Año Nuevo Island located at 37°6′29.25″ N.; 122°20′12.20″ W. is one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA. This small 25-acre (0.1 square km) island is part of the Año Nuevo State Reserve, all of which is owned and operated by California State Parks. The Island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore

Point Reyes National Seashore located is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary. The proposed research areas (Life Boat Station, Drakes Beach, and Point Bonita) are within the headland coastal areas of the National Park.

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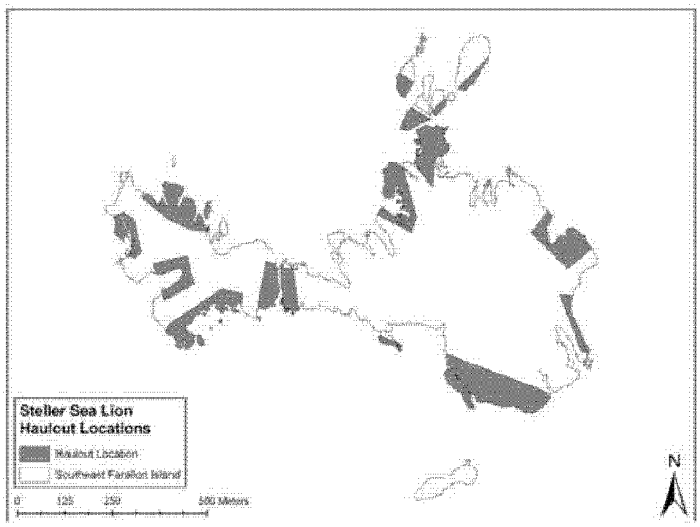
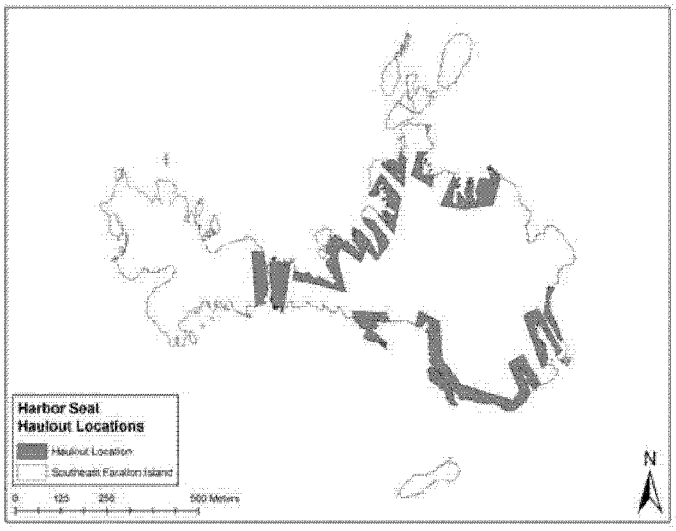
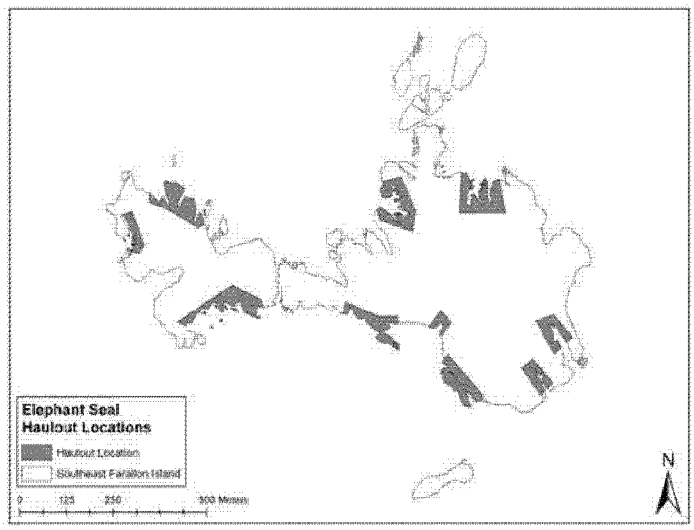
Figure 1 – Location of pinniped haul-out sites on Southeast Farallon Island.







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Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird research at the proposed research areas on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion. NMFS presents general information on these species in the next section. NMFS refers the public to Carretta *et al.* (2015) and Muto and Angliss (2015) for additional information on the status, distribution, seasonal distribution, and life history of these species. The publications are available on the Internet at *http://www.nmfs.noaa.gov/pr/sars/draft.htm.*

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the MMPA. The estimated population of the California Breeding Stock is approximately 179,000 animals and the current population trend is increasing at 3.8 percent annually (Carretta *et al.,* 2015).

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (330–800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed farther south, south of 45 °N. (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

At Point Reyes, the population ranges from 1,500 and 2,000 animals (NPS, 2013a). Adult northern elephant seals visit Point Reyes twice a year (NPS, 2013a). They arrive in early winter from their feeding grounds off Alaska and the largest congregations occur in the winter, when the females arrive to deliver their pups and nurse them, and in spring when immature seals and adult females return to molt. During the time they are onshore they are fasting (NPS, 2013b).

At Southeast Farallon, the population consists of approximately 500 animals (FNMS, 2013). Northern elephant seals began recolonizing the South Farallon Islands in the early 1970s (Stewart *et al.,* 1994) at which time the colony grew rapidly. In 1983 a record 475 pups were born on the South Farallones (Stewart *et al.,* 1994). Since then, the size of the South Farallones colony has declined, stabilizing in the early 2000s and then declining further over the past six years (USFWS, 2013). In 2012, a total of 90 cows were counted on the South Farallones, and 60 pups were weaned (USFWS, 2013). Point Blue's average monthly counts from 2000 to 2009 ranged from 20 individuals in July to nearly 500 individuals in November (USFWS, 2013).

Northern elephant seals are present on the islands and in the waters surrounding the South Farallones year-round for either breeding or molting; however, they are more abundant during breeding and peak molting seasons (Le Boeuf and Laws, 1994; Sydeman and Allen, 1997). They live and feed in deep, offshore waters the remainder of the year.

In mid-December, adult males begin arriving on the South Farallones, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al.,* 1978). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one month process) (USFWS, 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS, 2013).

The lowest numbers of elephant seals present on the rookery occurs during June, July, and August, when sub-adult and adult males molt. Another peak of young seals return to the rookery for a haul-out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994). At Año Nuevo Island the population ranges from 900 to 1,000 adults.

Observers first sighted elephant seals on Año Nuevo Island in 1955 and today the population ranges from 900 to 1,000 adults (M. Lowry, unpubl. data). Males began to haul out on the mainland in 1965. California State Park reports that by 1988/1989, approximately 2,000 elephant seals came ashore to Año Nuevo (CSP, 2012).

California Sea Lion

The estimated population of the U.S. stock of California sea lion is approximately 296,750 animals and the current maximum population growth rate is 12 percent (Carretta *et al.,* 2015). California sea lions are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the MMPA. The California sea lion is now a full species, separated from the Galapagos sea lion (*Z. wollebaeki*) and the extinct Japanese sea lion (*Z. japonicus*) (Brunner, 2003, Wolf *et al.,* 2007, Schramm *et al.,* 2009).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2015). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML, 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

The U.S. stock of California sea lion is the only stock present in the proposed research area and in recent years, California sea lions have begun to breed annually in small numbers at Southeast Farallon and Año Nuevo Islands.

On the Farallon Islands, California sea lions haul out in many intertidal areas year round, fluctuating from several hundred to several thousand animals.

California sea lions at Point Reyes National Seashore haul out at only a few locations, but will occur on human structures such as boat ramps. The annual population averages around 300 to 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data). On Año Nuevo Island, California sea lions may haul out at one of eight beach areas on the perimeter of the island (see Point Blue's Application). The island's average population ranges from 4,000 to 9,500 animals (M. Lowry, unpublished data).

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the Endangered Species Act, nor are they categorized as depleted under the MMPA. The estimated population of the California stock of harbor seals is 30,196 animals (Carretta *et al.,* 2015).

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: The outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters.

In California, over 500 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups.

In California, over 500 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2005). On the Farallon Islands, approximately 40 to 120 Pacific harbor seals haul out in the intertidal areas (Point Blue unpublished data). Harbor seals at Point Reyes National Seashore haul out at nine locations with an annual population of up to 4,000 animals (M. Lowry, unpublished data). On Año Nuevo Island, harbor seals may haul out at one of eight beach areas on the perimeter of the island (see Figure 2 in Point Blue's Application) and the island's average population ranges from 100 to 150 animals (M. Lowry, unpublished data).

Northern Fur Seal

Northern fur seals occur from southern California north to the Bering Sea and west to the Sea of Okhotsk and Honshu Island of Japan. NMFS recognizes two separate stocks of northern fur seals within U.S. waters: An Eastern Pacific stock distributed among sites in Alaska, British Columbia; and a California stock distributed along the west coast of the continental U.S. The estimated population of the California stock is 14,050 animals with a maximum population growth rate of 12 percent (Carretta *et al.,* 2015).

Northern fur seals may temporarily haul out on land at other sites in Alaska, British Columbia, and on islets along the west coast of the continental United States, but generally this occurs outside of the breeding season (Fiscus, 1983).

Northern fur seals breed in Alaska and migrate along the west coast during fall and winter. Due to their pelagic habitat, they are rarely seen from shore in the continental U.S., but individuals occasionally come ashore on islands well offshore (*i.e.,* Farallon Islands and Channel Islands in California). During the breeding season, approximately 74 percent of the worldwide population inhabits the Pribilof Islands in Alaska, with the remaining animals spread throughout the North Pacific Ocean (Lander and Kajimura, 1982).

Steller Sea Lion

Steller sea lions consist of two distinct population segments: The western and eastern distinct population segments (DPS) divided at 144 °West longitude (Cape Suckling, Alaska). The western segment of Steller sea lions inhabit central and western Gulf of Alaska, Aleutian Islands, as well as coastal waters and breed in Asia (*e.g.,* Japan and Russia). The eastern segment includes sea lions living in southeast Alaska, British Columbia, California, and Oregon. The eastern DPS includes animals born east of Cape Suckling, AK (144 °W.) and the latest abundance estimate for the stock is 60,131 to 74,448 animals (Muto and Angliss, 2015). The eastern DPS of Steller sea lion is not listed as threatened or endangered under the Endangered Species Act, but is categorized as depleted under the MMPA.

Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.,* 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas.

The eastern distinct population segment of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no rookeries located in Washington. Steller sea lions give birth in May through July and breeding commences a couple of weeks after birth. Pups are weaned during the winter and spring of the following year.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995; Trujillo *et al.,* 2004; Hoffman *et al.,* 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007).

The current population of Steller sea lions in the proposed research area is estimated to number between 50 and 750 animals. Overall, counts of non-pups at trend sites in California and Oregon have been relatively stable or increasing slowly since the 1980s (Muto and Angliss, 2015).

Point Blue estimates that between 50 and 150 Steller sea lions live on the Farallon Islands. On Southeast Farallon Island, the abundance of females declined an average of 3.6 percent per year from 1974 to 1997 (Sydeman and Allen, 1999).

The National Marine Fisheries Service's Southwest Fisheries Science Center estimates between 400 and 600 live on Año Nuevo Island (Point Blue unpublished data, 2008; Southwest Fisheries Science Center unpublished data, 2008). At Año Nuevo Island off central California, a steady decline in ground counts started around 1970, and there was an 85 percent reduction in the breeding population by 1987 (LeBoeuf *et al.,* 1991). Pup counts at Año Nuevo Island declined five percent annually through the 1990s (NOAA Stock Assessment, 2003), and have apparently stabilized between 2001 and 2005 (M. Lowry, SWFSC unpublished data). In 2000, the combined pup estimate for both islands was 349. In 2005, the pup estimate was 204 on the Island. Pup counts on the Farallon Islands have generally varied from five to 15

(Hastings and Sydeman, 2002; Point Blue unpublished data). Pups have not been born at Point Reyes Headland since the 1970s and Steller sea lions are seen in very low numbers there currently (S. Allen, unpublished data).

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the Endangered Species Act and categorized as depleted under the Marine Mammal Protection Act, usually range in coastal waters within two km of shore. Point Blue has not encountered California sea otters on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore during the course of seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

Potential Effects of the Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* exposure to vessel noise and approaches and human presence), including mitigation, may impact marine mammals. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that we expect Point Blue to take during this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity would impact marine mammals. We will consider the content of the following sections: ''Estimated Take by Incidental Harassment'' and ''Proposed Mitigation'' to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

In the following discussion, we provide general background information on sound and marine mammal hearing. Acoustic and visual stimuli generated by: (1) Motorboat operations; and (2) the appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore. The effects of sounds from motorboat operations and the appearance of researchers might include hearing impairment or behavioral disturbance (Southall, *et al.,* 2007).

Hearing Impairment

Marine mammals produce sounds in various important contexts—social interactions, foraging, navigating, and responding to predators. The best available science suggests that pinnipeds have a functional aerial hearing sensitivity between 75 hertz (Hz) and 75 kilohertz (kHz) and can produce a diversity of sounds, though generally from 100 Hz to several tens of kHz (Southall, *et al.,* 2007).

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is called temporary threshold shift (Southall *et al.,* 2007).

Pinnipeds have the potential to be disturbed by airborne and underwater noise generated by the small boats equipped with outboard engines (Richardson, Greene, Malme, and Thomson, 1995). However, there is a dearth of information on acoustic effects of motorboats on pinniped hearing and communication and to our knowledge there has been no specific documentation of hearing impairment in free-ranging pinnipeds exposed to small motorboats during realistic field conditions.

Behavioral Disturbance

Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.,* 2000; and Kucey and Tri.e., 2006). Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007).

Numerous studies have shown that human activity can flush pinnipeds off haul-out sites and beaches (Kenyon, 1972; Allen *et al.,* 1984; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999; and Mortenson *et al.,* 2000). And in one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats and sailboats) on harbor seal haul-out behavior in Métis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks-canoes which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haul-out behavior of harbor seals in the Métis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haul-out sites on Yellow Island, Washington state. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the

disturbances and returned to the haul-out site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007).

As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels re: 20 μPa) non-pulse sounds often leave haul-out areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007). Based on the available data, previous monitoring reports from Point Blue, and studies described here, we anticipate that any pinnipeds found in the vicinity of the proposed project could have short-term behavioral reactions to the noise attributed to Point Blue's motorboat operations and human presence related to the seabird research activities. We would expect the pinnipeds to return to a haul-out site within 60 minutes of the disturbance (Allen *et al.,* 1985). The effects to pinnipeds appear at the most, to displace the animals temporarily from their haul-out sites and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of the proposed research. The maximum disturbance to Steller sea lions would result in the animals slowly flushing into the water in response to presence of the researchers.

No research activities would occur on pinniped rookeries. Breeding animals are concentrated in areas where researchers would not visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during flushing. In summary, NMFS does not anticipate that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds because the timing of research visits would preclude separation of mothers and pups, as activities occur outside of the pupping/breeding areas. The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections).

Anticipated Effects on Marine Mammal Habitat

NMFS does not expect the proposed research activities to have any habitat-related effects, including to marine mammal prey species, which could cause significant or long-term consequences for individual marine mammals or their populations. NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to noise generated by: (1) Motorboat approaches and departures; (2) human presence during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities. NMFS considers this impact to habitat as temporary and reversible and considered this aspect in more detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) Protocols used during previous Point Blue seabird research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Richardson *et al.* (1995).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled-out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled-out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(9) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(10) Have the lead biologist serve as an observer to evaluate incidental take.

Mitigation Conclusions

We have carefully evaluated Point Blue's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by us should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to

reducing takes by behavioral harassment only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to stimuli that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to training exercises that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue's proposed measures, as well as other measures that may be relevant to the specified activity, we have preliminarily determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Point Blue submitted a marine mammal monitoring plan in their Authorization application. We may modify or supplement the plan based on comments or new information received from the public during the public comment period. Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

As part of its 2016–2017 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2016 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007–2016 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock.

Point Blue has submitted a draft monitoring report on the 2015–2016 research periods on February 17, 2016. Upon final review, we will post this annual report on our Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Proposed Reporting

Point Blue must submit a draft final report to NMFS' Office of Protected Resources within 60 days after the conclusion of the 2016–2017 field seasons. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization.

Point Blue will submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, within 30 days after receiving comments from NMFS on the draft final report. If Point Blue does not receive any comments from NMFS on the draft report, NMFS and Point Blue will consider the draft final report to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS proposes to authorize take by Level B harassment only for the proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Acoustic (*i.e.,* increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 53,538 California sea lions, 485 harbor seals, 221 northern elephant seals, five northern fur seals, and 38 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (44,871), harbor seals (343), northern elephant seals (196), and

Steller sea lions (106). NMFS bases these new estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research areas. In brief, for four species (*i.e.,* California sea lions, harbor seals, northern elephant seals, and Steller sea lions), we created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (*i.e.,* linear or polynomial regression) of reported take from 2007 to 2016. Next, we added the predicted annual increase in take for each species to the baseline reported take for the 2015–2016 seasons to project the estimated take for each species for the 2016–2017 proposed Authorization. We carried through the same predicted annual increase in take for future Authorizations (2017–2019) to obtain a mean projected take for each species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 95 percent confidence interval of the mean reported take (2007–2016) and mean projected take (2017–2019) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

Although Point Blue has not reported encountering northern fur seals during the course of their previously authorized activities, NMFS has included take (5) for northern fur seals based on recent stranding information in the area for that species.

There is no evidence that Point Blue's planned activities could result in injury, serious injury, or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

Negligible Impact Analysis and Preliminary Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all five species discussed earlier in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

(1) The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.

(3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the landing areas until after the pinnipeds present have slowly entered the water.

(4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the total marine mammal take from Point Blue's seabird research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent approximately 18.04 percent of the U.S. stock of California sea lion, 1.61 percent of the California stock of Pacific harbor seal, 0.12 percent of the California breeding stock of northern elephant seal, 0.04 percent of the California stock of northern fur seals, and 0.06 percent of the eastern distinct population segment of Steller sea lion.

Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haul-out sites the day the researchers are present.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

No marine mammal species listed under the ESA are anticipated to occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

We have prepared a draft Environmental Assessment (EA) analyzing the potential effects to the human environment from our proposed issuance of an Authorization to Point Blue for their seabird research activities. The draft EA titled, *Proposed Issuance of an Incidental Harassment Authorization to Point Blue Conservation Science and Partners to Take Marine Mammals by Harassment Incidental to Seabird Research Conducted in Central California* is posted on our Web site at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* Information in Point Blue's application, NMFS' DEA and this notice collectively provide the environmental information related to proposed issuance of an Authorization for public review and comment. NMFS will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the proposed Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Point Blue's seabird research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The next section provides the proposed IHA language and contains a draft of the Authorization. The wording within this section is proposed for inclusion in the Authorization (if issued).

1. This Authorization is valid from May 2016 through April 2017.

2. This Authorization is valid only for specified activities associated with seabird research activities in the vicinity of pinniped haul-out sites located on Southeast Farallon Island (37°41′54.32″ N., 123°0′8.33″ W.), Año Nuevo Island (37°6′29.25″ N., 122°20′12.20″ W.), within Point Reyes National Seashore (37°59′38.61″ N., 122°58′24.90″ W.), San Francisco Bay, or the Russian River in Sonoma County.

3. Species Authorized and Level of Takes

a. The taking, by Level B harassment only, is limited to the following species: 53,538 California sea lions (*Zalophus californianus*), 485 Pacific harbor seals (*Phoca vitulina*), 221 northern elephant seals (*Mirounga angustirostris*), five northern fur seals, and 38 Steller sea lions (*Eumetopias jubatus*).

b. The taking by injury (Level A harassment), serious injury or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

c. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the West Coast Regional Administrator, National Marine Fisheries Service (NMFS) and to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS.

4. General Conditions

a. A copy of this Authorization must be in the possession of Point Blue, its designees, and field crew personnel (including research collaborators from Point Reyes National Seashore and Oikonos—Ecosystem Knowledge) operating under the authority of this Authorization.

b. The holder must notify the Assistant Regional Administrator for Protected Resources, West Coast Region at least 24 hours prior to starting seabird research activities (unless constrained by the date of issuance of this Authorization).

5. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(a), the holder of this Authorization is required to:

a. Minimize the potential for disturbance (to the lowest level practicable near known pinniped haul-outs by boat travel and pedestrian approach during seabird research operations). Point Blue and its designees must:

- Postpone beach landings until pinnipeds that may be present in the access areas have entered the water.
- Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.
- Avoid visits to sites used by pinnipeds for pupping.
- Monitor for offshore predators and not approach hauled-out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are in the area. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.
- Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.
- Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled-out pinnipeds.
- Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.
- Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.
- Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.
- Have the lead biologist serve as an observer to evaluate incidental take.

6. Monitoring

The holder of this Authorization is required to:

a. Record the date, time, and location (or closest point of ingress) of each visit to the research site.

b. Collect the following information for each visit: Composition of the marine mammals sighted, such as species, gender and life history.

7. Reporting

The holder of this Authorization is required to:

a. Report observations of unusual behaviors of pinnipeds to West Coast Region fishery biologist so that the appropriate personnel in the Regional Office may conduct any potential follow-up observations.

b. Draft Report: Submit a draft final report to the Chief, Permits and Conservation Division, Office of Protected Resources, Headquarters, NMFS within 60 days after the expiration of the Authorization. The report will include the information gathered pursuant to the monitoring requirements listed in item 6, along with an executive summary.

c. The Draft Report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the Final Report prior to submission to NMFS. If we decide that the draft final report needs no comments, the draft final report will be considered to be the final report.

d. Final Report: Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, Headquarters, NMFS within 30 days after receiving comments from us on the draft final report.

8. Reporting Prohibited Take

In the unanticipated event that Point Blue's activities cause any taking of a marine mammal in a manner prohibited by the Authorization, such as an injury (Level A harassment), serious injury or mortality (*e.g.,* vessel-strike), Point Blue shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, and the Assistant West Coast Regional Stranding Coordinator. The report must include the following information:

Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; water depth; environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Point Blue shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume their activities until notified by NMFS in writing via a letter or email or via the telephone.

9. Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that Point Blue discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Point Blue will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources and the Assistant West Coast Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. NMFS will work with Point Blue to determine whether modifications to the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal Not Related to Point Blue's Activities

In the event that Point Blue discovers an injured or dead marine mammal, and the lead researcher determines that the injury or death is not associated with or related to the activities authorized in the Authorization (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources and the Assistant West Coast Regional Stranding Coordinator within 24 hours of the discovery. Point Blue will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us and the Marine Mammal Stranding Network. Point Blue can continue their research activities.

11. A copy of this Authorization must be in the possession of Point Blue and its designees (including contractors and marine mammal monitors) operating under the authority of this Incidental Harassment Authorization at all times.

Request for Public Comments

NMFS requests comment on the analyses, the draft Authorization, and any other aspect of the Notice of Proposed Incidental Harassment Authorization for Point Blue's seabird research activities. Please include any supporting data or literature citations with your comments to help inform our final decision on Point Blue's request for an Authorization.

Dated: March 16, 2016.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–06317 Filed 3–21–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Comparability Determination for the European Union: Dually-Registered Derivatives Clearing Organizations and Central Counterparties

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Comparability Determination for Certain Requirements Under the European Market Infrastructure Regulation.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') has determined that certain laws and regulations applicable in the European Union (''EU'') provide a sufficient basis for an affirmative finding of comparability with respect to certain regulatory obligations applicable to derivatives clearing organizations (''DCOs'') that are registered with the Commission and are authorized to operate as central counterparties (''CCPs'') in the EU. The Commission's determination provides for substituted compliance with respect to requirements for financial resources, risk management, settlement procedures, and default rules and procedures.

DATES: This determination will become effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Bandman, Acting Director, 202–418–5044, *jbandman@cftc.gov;* Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov;* Tracey Wingate, Special Counsel, 202–418–5319, *twingate@cftc.gov,* in each case at the Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC

20581; or Michael H. Margolis, Special Counsel, 312–596–0576, *mmargolis@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 10, 2016 Commission Chairman Timothy Massad issued a joint statement with Commissioner Jonathan Hill of the European Commission setting forth a common approach regarding the regulation of CCPs. Under the common approach, the European Commission (''EC'') will propose a third-country equivalence decision (''Equivalence Decision'') regarding the Commission's regulatory regime for DCOs, which is a prerequisite for the European Securities and Markets Authority (''ESMA'') to recognize U.S. DCOs as equivalent third-country CCPs. Once recognized by ESMA, U.S. DCOs may continue to operate and provide clearing services in the EU.

This Notice is being issued in connection with the resolution of equivalence for U.S. DCOs. For an Equivalence Decision under Article 25 of the European Market Infrastructure Regulation (''EMIR''), one of the conditions requires that the legal and supervisory regime of the United States must include an ''effective equivalent system'' for the recognition of CCPs authorized in the EU under EMIR.[1] As described below, U.S. law and CFTC regulations require that foreign-based CCPs register with the CFTC in certain circumstances. If registered, they must comply with the relevant U.S. requirements, including the Commission regulations applicable to registered DCOs.

Under this Notice, EU-based CCPs that register with or are currently registered with the Commission as DCOs and that are authorized to operate in the EU may comply with certain Commission requirements for financial resources, risk management, settlement procedures, and default rules and procedures (as set forth in this Notice) by complying with the terms of corresponding requirements under the EMIR Framework, as defined below.

II. Statutory and Regulatory Framework for Registration of non-U.S. CCPs

The Commodity Exchange Act (''CEA'') does not impose geographic limitations on the registration of DCOs. Nor does it mandate that clearing of futures traded on U.S. exchanges must take place in the United States.[2] To the contrary, it permits futures traded on exchanges in the United States to be cleared outside the United States. However, the CEA and CFTC regulations require that foreign-based CCPs that wish to clear such futures be registered with the Commission and comply with CFTC regulations.[3] In addition, consistent with Section 2(i) of the CEA, foreign-based CCPs that clear swaps with a sufficient nexus to U.S. commerce must register with the Commission.[4]

Thus, under this regulatory framework, a number of foreign-based CCPs have been registered with the Commission for some time. LCH.Clearnet Ltd., which is based in London, for example, has been registered with the Commission since 2001, and thus has been subject to dual supervision by UK authorities and the Commission since long before the EU adopted its current regulatory scheme—EMIR.[5] This dual registration system has been a foundation on which the cleared swaps market grew to be a global market. In addition to LCH.Clearnet Ltd., there are currently five other foreign-based DCOs that are registered both with the Commission and their home country regulators: Singapore Exchange Derivatives Clearing Limited (home country regulator is the Monetary Authority of Singapore), LCH.Clearnet SA (home country regulators are the Autorité de contrôle prudentiel et résolution, the Autorité des marchés financiers, and the Banque de France), ICE Clear Europe Ltd. (home country regulator is Bank of England), Natural Gas Exchange (home country regulator is the Alberta Securities Commission), and Eurex Clearing AG (home country regulators are Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and Deutsche Bundesbank). Two additional foreign-based CCPs have applications pending before the Commission for registration as DCOs (CME Clearing Europe Ltd. and Japan Securities Clearing Corporation). Additionally, the Commission has provided exemptions from registration for foreign-based CCPs that clear proprietary swaps positions for their U.S. members and affiliates but not for U.S. customers generally. (These foreign-based DCOs also do not clear futures traded on U.S. designated contract markets (''DCMs'').) These exemptions have been issued pursuant to Section 5b(h) of the CEA, which permits the Commission to exempt a clearing organization from DCO registration for the clearing of swaps to the extent that the Commission determines that such clearing organization is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organization's home country.[6]

For purposes of the granting of exemptions to foreign-based CCPs that are not clearing futures traded on U.S. DCMs nor clearing swaps for U.S. customers, the Commission has determined that a supervisory and regulatory framework that is consistent with the Principles for Financial Market Infrastructures (''PFMIs'') can be considered to be comparable to and as comprehensive as the supervisory and regulatory framework established by the CEA and part 39 of the Commission's regulations.[7] Pursuant to this authority, the Commission has granted exemptions to clearing organizations in Australia, Japan, South Korea, and Hong Kong, provided that each exempt CCP not offer customer clearing services for U.S. persons and limit direct clearing by U.S. persons and futures commission merchants (''FCMs'') to the following circumstances: (1) ''A U.S. person that is a clearing member of [the exempt CCP] may clear swaps for itself and those persons identified in the Commission's definition of 'proprietary account' set forth in Regulation 1.3(y)''; (2) ''A non-U.S. person that is a clearing member of [the exempt CCP] may clear swaps for any affiliated U.S. person identified in the definition of 'proprietary account' set forth in Regulation 1.3(y)''; and (3) ''An entity that is registered with the Commission

[1] *See* Regulation (EU) No 648/2012 of the European Parliament and the Council on OTC derivatives, central counterparties and trade repositories of 4 July 2012 ('EMIR'), Art. 25(6).

[2] 7 U.S.C. 7a–1(a).

[3] *See generally* 7 U.S.C. 7(d)(9)(iii) and (11); 17 CFR 38.601.

[4] 7 U.S.C. 7a–1(a); 17 CFR 39.3; *see also* 7 U.S.C. 2(i) (providing that the CEA's swap-related provisions shall not apply to activities outside the United States unless those activities have a direct and significant connection with activities in, or effect on, commerce of the United States or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA).

[5] Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

[6] 7 U.S.C. 7a–1(h).

[7] The PFMIs were jointly issued by the Committee on Payment and Settlement Systems (now, the Committee on Payments and Market Infrastructures (''CPMI'')) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') in April 2012. The PFMIs are available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

as an FCM may be a clearing member of [the exempt CCP], or otherwise maintain an account with an affiliated broker that is a clearing member, for the purpose of clearing swaps for itself and those persons identified in the definition of 'proprietary account' set forth in Regulation 1.3(y).''[8]

To clear U.S. customer transactions, the Commission requires that a CCP register with the Commission as a DCO and such a DCO becomes subject to Section 4d of the CEA, which establishes a customer protection regime for futures, options, and swaps customers.[9] For example, with respect to swaps customers, Section 4d(f)(1) states that it shall be unlawful for any person to accept money, securities, or property (funds) from a swaps customer to margin a swap cleared through a DCO unless the person is registered as an FCM.[10] Additionally, Section 4d(f)(2) requires segregation of cleared swaps customer funds from the funds of the FCM, and Section 4d(f)(6) extends these segregation requirements to DCOs.[11] These provisions of the CEA interlock with the commodity broker provisions of the Bankruptcy Code, Subchapter IV of Chapter 7.[12] No EU-based CCP has sought an exemption from registration. This is because EU-based CCPs offer, or are seeking to offer, clearing for U.S. customers and thus have obtained or are seeking to obtain, registration as DCOs. Nevertheless, EU-based CCPs that do not clear swaps for U.S. customers may petition the Commission for exempt DCO status.

Additionally, in all instances in which the Commission has granted registration to a foreign-based CCP, it also has entered into a memorandum of understanding or similar arrangement (''MOU'') with the CCP's home country regulator(s). Such MOUs establish a framework pursuant to which the Commission and the CCP's home country regulator(s) intend to cooperate with each other in fulfilling their respective regulatory responsibilities with respect to covered cross-border entities, including CCPs licensed by the home country regulator(s) and registered with the Commission. Specifically, such an MOU sets forth procedures for, among other things, information sharing between the CFTC and the home country regulator(s), notification of certain material information, conduct of on-site visits, and the use and treatment of non-public information.

III. Regulation of CCPs in the EU

EU-based CCPs are subject to the regulations laid down in EMIR and the Regulatory Technical Standards (''RTS'') (collectively, the ''EMIR Framework'').[13] EMIR and the RTS establish uniform legal requirements for EU CCPs that, as EU-level legislation, have an immediate, binding, and direct effect in all EU member states without the need for additional action by national authorities.[14] Moreover, where the European Parliament and the European Council have passed EU-level legislation, EU member states cannot legislate laws that duplicate or conflict with EMIR.[15]

The European Parliament and the European Council passed EMIR on July 4, 2012, which entered into force on August 16, 2012. The relevant technical standards for CCPs, including the RTS for capital requirements (''RTS–CR'') and the RTS for central counterparties (''RTS–CCP''), generally entered into force on March 15, 2013.

Pursuant to EMIR, each EU member state is responsible for implementing the EMIR Framework by designating a national competent authority(s) (''NCA'') to authorize and supervise the day-to-day operations of CCPs established in its territory. The NCAs are required to regularly review how the CCP complies with EMIR by examining the CCP's rules, arrangements, procedures, and mechanisms, and to evaluate the risks to which such CCPs are, or might be, exposed. At a minimum, these reviews and examinations must occur at least annually. As part of such reviews and evaluations, the CCP is subject to on-site inspections.[16]

Additionally, for each authorized CCP, a college of supervisors is established that comprises members of the NCA, ESMA, other EU national authorities that may supervise entities on which the operations of that CCP might have an impact (*i.e.,* selected clearing members, trading venues, interoperable CCPs and central securities depositories), as well as members of the European System of Central Banks (ESCB), as relevant.[17] The NCAs regularly, and at least annually, inform the college of the results of the review and evaluation of the CCP, including any remedial action taken or penalty imposed.[18] The CCP college is responsible for reaching an opinion on (1) the authorization of a CCP; (2) extensions of authorization; and (3) any changes to a CCP's risk model.

While NCAs remain in charge of supervising CCPs, ESMA, as an independent European supervisory authority, validates changes to the risk models of authorized CCPs and is responsible for harmonizing and coordinating the implementation of EMIR across the EU member states. ESMA is managed by a Board of Supervisors, which is composed of the heads of 28 national authorities (where there is more than one national authority in a Member State those authorities agree which of their heads will represent them), with observers from Norway, Iceland, and Liechtenstein. The Board makes decisions on the compliance by NCAs with community legislation, interpretation of community legislation, decisions in crisis situations, the approval of draft technical standards, guidelines, peer reviews, and any reports that are developed.[19]

IV. Comparable and Comprehensive Standard

Consistent with CEA Section 2(i) and principles of international comity, in the case of foreign-based DCOs, the Commission will make a comparability determination on a requirement-by-requirement basis, rather than on the

[8] *See* In re Petition of ASX Clear (Futures) Pty Limited for Exemption from Registration as a Derivatives Clearing Organization (Aug. 18, 2015); In re Petition of Japan Securities Clearing Corp. for Exemption from Registration as a Derivatives Clearing Organization (Oct. 26, 2015); In re Petition of Korea Exchange, Inc. for Exemption from Registration as a Derivatives Clearing Organization (Oct. 26, 2015); In re Petition of OTC Clearing Hong Kong Ltd. for Exemption from Registration as a Derivatives Clearing Organization (Dec. 21, 2015).

[9] 7 U.S.C. 6d(a), (b), and (f).

[10] Section 4d(f)(l) of the CEA, 7 U.S.C 6d(f)(l), states, in relevant part, that it shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under the CEA with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.

[11] 7 U.S.C 6d(f)(2) and (6).

[12] *See* 11 U.S.C. 761–767; *see also* Section 101(6) of the Bankruptcy Code, 11 U.S.C. 101(6).

[13] For the purposes of this Notice the Commission only considered those EMIR Framework provisions published as of the date of this Notice. The relevant RTS include: Commission Delegated Regulation No. 152/2013 with regard to regulatory technical standards on capital requirements for central counterparties (''RTS–CR''); and Commission Delegated Regulation No. 153/2013 with regard to regulatory technical standards on requirements for central counterparties (''RTS–CCP'').

[14] *See* EMIR (stating that ''[t]his Regulation shall be binding in its entirety and directly applicable in all Member States.'').

[15] EMIR Article 13(1).

[16] *See* EMIR Articles 21 and 22.

[17] *Id.* at Article 18.

[18] *Id.* at Articles 12 and 21.

[19] *See* ESMA: Board of Supervisors and NCAs, *https://www.esma.europa.eu/about-esma/governance/board-supervisors-and-ncas.*

basis of the foreign regime as a whole.[20] In making its comparability determinations, the Commission may include conditions that address, among other things, timing and other issues related to coordinating the implementation of reform efforts across jurisdictions.

In evaluating whether a particular category of foreign regulatory requirement(s) is comparable and comprehensive to the corollary requirement(s) under the CEA and Commission regulations, the Commission will take into consideration all relevant factors, including, but not limited to: The comprehensiveness of the requirement(s); the scope and objectives of the relevant requirement(s); the comprehensiveness of the foreign regulator's supervisory compliance program; and the foreign jurisdiction's authority to support and enforce its oversight of the registrant.

In making this comparability determination, the Commission is relying on the provisions of the EMIR Framework. The Commission assumes that the provisions of the EMIR Framework discussed herein are in full force and effect and that the description of the EMIR Framework that is contained within this Notice is accurate and complete.[21] The Commission also assumes that the provisions of the EMIR Framework discussed herein have been implemented in accordance with their terms and there are no Member State or EU laws, regulations, or actions of the NCAs or any other authorities that are contrary to the provisions of the EMIR Framework. Further, the Commission's determination is based on the EMIR Framework as it exists at this time; any changes to the EMIR Framework (including, but not limited to, changes in the relevant supervisory or regulatory regime) could, depending on the nature of the change, invalidate the Commission's comparability determination.

[20] The Commission has taken analogous action with respect to foreign-based swap dealers and major swap participants. *Cf* 78 FR 78864 (Dec. 27, 2013) (Australia); 78 FR 78852 (Dec. 27, 2013) (Hong Kong); 78 FR 78910 (Dec. 27, 2013) (Japan—Entity Level Requirements); 78 FR 78890 (Dec. 27, 2013) (Japan—Transaction Level Requirements);78 FR 78899 (Dec. 27, 2013) (Switzerland); 78 FR 78839 (Dec. 27, 2013) (Canada); 78 FR 78923 (Dec. 27, 2013) (EU—Entity Level Requirements); 78 FR 78878 (Dec. 27, 2013) (EU—Transaction Level Requirements); *see also* 78 FR 45292 (July 26, 2013).

[21] The Commission additionally provided the EC and ESMA the opportunity to consult regarding the relevant provisions of the EMIR Framework described in this Notice; however, in reaching its conclusions the Commission ultimately relied upon the English-language published text of the provisions of the EMIR Framework.

V. Comparability Determination

The following section presents the requirements imposed by specific sections of the CEA and Commission regulations applicable to DCOs that are the subject of this comparability determination. Following the discussion of each Commission requirement, the Commission provides the corresponding provision of the EMIR Framework.

The Commission's determinations in this regard are intended to inform the public of the Commission's views regarding whether the specific provisions of the EMIR Framework may be comparable to, and as comprehensive as, specific requirements in the CEA and CFTC regulations and, therefore, may form the basis for substituted compliance. The descriptions provided herein of CEA and CFTC requirements, as well as the provisions of the EMIR Framework, are summaries of the actual provisions and are qualified by reference to them. Statements of regulatory objectives are general in nature and provided only for the purpose of this Notice. Likewise, the Commission's summary of what is comparable as between specific CEA and CFTC requirements on the one hand and corresponding provisions of the EMIR Framework on the other is only a summary. In particular, there may be aspects that are not cited, including particular features that may not be comparable, but that do not affect the overall determination with respect to that provision or set of provisions.

A. Financial Resources (Regulation 39.11)

CEA Section 7a–1(c)(2)(B) (''Core Principle B'') establishes general requirements for DCOs to have adequate financial resources. To implement Core Principle B the Commission adopted regulation 39.11, which requires a DCO to maintain financial resources sufficient to cover its exposures with a high degree of confidence and to enable it to perform its functions in compliance with the core principles set out in Section 5b of the CEA.

Commission Requirement: Regulation 39.11 sets forth requirements by which a DCO must identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential losses that are not related to clearing members' defaults so that the DCO can continue to provide services as a going concern.

Regulation 39.11 provides that a DCO's financial resources will be considered sufficient if their value, at a minimum, exceeds the total amount that would enable the DCO to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions (''Cover 1'').[22] A DCO may use the following types of financial resources to satisfy this requirement, including: the DCO's own capital; guaranty fund deposits; default insurance; potential assessments for additional guaranty fund contributions, if permitted by the DCO's rules; and any other financial resource deemed acceptable.[23]

On a monthly basis, a DCO must perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet its Cover 1 requirement. A DCO has reasonable discretion to determine the methodology it uses to compute its Cover 1 requirement; however, the Commission may review the methodology and require changes as appropriate.[24] A DCO may allocate a financial resource to satisfy its Cover 1 credit risk or its operating costs, but it may not allocate a financial resource to satisfy both its Cover 1 credit risk and its operating costs.[25]

If a DCO's rules provide for assessments for additional guaranty fund contributions, then the DCO must: Have rules requiring that its clearing members have the ability to meet an assessment within the time frame of a normal end-of-day variation settlement cycle; monitor the financial and operational capacity of its clearing members to meet potential assessment(s); apply a 30% haircut to the value of potential assessments; and only count the value of assessments after the haircut, to meet up to 20% of those obligations.[26]

In addition, CFTC regulation 39.11 provides that a DCO must effectively measure, monitor, and manage its liquidity risks, maintaining sufficient liquid resources such that it can, at a minimum, fulfill its cash obligations when due.[27] A DCO also must hold its assets in a manner that minimizes the risk of loss or delay in accessing them.[28] The financial resources the DCO allocates to meet this liquidity requirement must be sufficiently liquid to enable the DCO to fulfill its obligations as a CCP during a one-day settlement cycle.[29] A DCO must

[22] 17 CFR 39.11(a)(1).

[23] 17 CFR 39.11(b)(1).

[24] 17 CFR 39.11(c)(1).

[25] 17 CFR 39.11(b)(3).

[26] 17 CFR 39.11(d)(2).

[27] 17 CFR 39.11(e)(1)(i).

[28] *Id.*

[29] 17 CFR 39.11(e)(1)(ii).

maintain cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation, in an amount equal or greater than an amount calculated as follows:

- Calculate the average daily settlement pay for each clearing member over the last fiscal quarter;
- Calculate the sum of those average daily settlement pays; and
- Using that sum, calculate the average of its clearing members' average pays.[30]

A DCO may take into account a committed line of credit or similar facility for the purposes of meeting the remainder of this liquidity requirement.

CFTC regulation 39.11 further provides that the assets a DCO holds in a guaranty fund must have minimal credit, market, and liquidity risks and must be readily accessible on a same-day basis.[31] Additionally, letters of credit are not permissible assets for a guaranty fund.[32]

Finally, CFTC regulation 39.11 provides that a DCO's cash balances must be invested or placed in safekeeping in a manner that bears little or no principal risk.[33]

Regulatory Objective: Core Principle B and the Commission's implementing regulations are designed to establish uniform standards that further the goals of avoiding market disruptions and financial losses to market participants and the general public, and avoiding systemic problems that could arise from a DCO's failure to maintain adequate resources. The regulations promote financial strength and stability, thereby fostering efficiency and a greater ability to compete in the broader financial market.

As highlighted by the events of 2007–2008 in global financial markets, maintaining sufficient financial resources is a critical aspect of any financial entity's risk management system, and ultimately contributes to the goal of stability in the broader financial markets. By setting specific standards with respect to how DCOs must access and monitor the adequacy of their financial resources, Core Principle B and the Commission's implementing regulations contribute to a DCO's maintenance of sound risk management practices and further the goal of minimizing systemic risk.

Comparable EU Law and Regulations: The following provisions of the EMIR Framework address financial resources.

EMIR, Art. 43: At all times, a CCP shall maintain sufficient prefunded available financial resources to enable the CCP to withstand the default of at least the two clearing members to which it has the largest exposure under extreme but plausible market conditions. Such prefunded financial resources shall include dedicated resources of the CCP, shall be freely available to the CCP, and shall not be used to meet the CCP's capital requirements.

RTS–CCP, Art. 51(2) and 53(1): On a regular basis, a CCP shall conduct stress tests designed to ensure that its combination of margin, default fund contributions, and other financial resources are sufficient to cover the default of at least the two clearing members to which the CCP has the largest exposures under extreme but plausible market conditions. As part of its stress testing, the CCP also shall examine potential losses resulting from the default of entities in the same corporate group as the two clearing members to which it has the largest exposure under extreme but plausible market conditions.

RTS–CCP, Art. 30(2) and 59(5): A CCP shall develop a framework for defining the types of extreme but plausible market conditions based on a range of (1) historical scenarios that could expose it to the greatest risk; and (2) potential future scenarios founded on consistent assumptions regarding market volatility and price correlation across markets and financial instruments, drawing on both quantitative and qualitative assessments of potential market conditions. If a CCP decides that recurrence of a historical instance of large price movements is not plausible, the CCP shall justify to the competent authority its omission from the framework. A CCP shall analyze and monitor its financial resources coverage in the event of defaults by conducting at least daily stress testing using standard and predetermined parameters and assumptions.

EMIR, Art. 44 and 47(3)–(5): At all times, a CCP shall have access to adequate liquidity to perform its services and activities and, on a daily basis, shall measure its potential liquidity needs. Financial instruments posted as margin or as default fund contributions shall be deposited in a manner that ensures the full protection of those financial instruments. Cash deposits of a CCP, other than with a central bank, shall be executed through highly secure arrangements with authorized financial institutions. Where a CCP deposits assets with a third party, it shall ensure that the assets are identifiable separately by means of differently titled accounts.

RTS–CCP, Chapter VIII (Art. 32–34): A CCP shall establish a robust liquidity risk management framework, which shall include, among other things, effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis and assess its potential future liquidity needs under a wide range of potential stress scenarios. A CCP shall maintain, in each relevant currency, liquid resources commensurate with its liquidity requirements. These liquid resources shall be limited to the following: cash deposited at a central bank of issue; cash deposited at authorized credit institutions; committed lines of credit; committed repurchase agreements; and/or highly marketable financial instruments that are readily available and convertible into cash on a same-day basis using prearranged and highly reliable funding arrangements.

EMIR, Art. 46 and 47: A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members and it shall invest its financial resources only in cash or highly liquid financial instruments with minimal market and credit risk.

EMIR, Art. 16 and 47(2): A CCP's capital, including retained earnings and reserves, shall be proportionate to the risk stemming from the activities of the CCP. Capital not invested in cash or highly liquid financial instruments with minimal credit risk, however, shall not count for purposes of calculating a CCP's regulatory capital.

RTS–CR, Art. 2(2): A CCP shall calculate and retain the amount of capital it requires to wind down or restructure. This estimated time span shall be sufficient to ensure an orderly winding down or restructuring of its activities, reorganizing its operations, liquidating its clearing portfolio, or transferring its clearing activities to another CCP, including in stressed market conditions. For the purposes of this RTS, the prescribed time span for purposes of determining sufficient capital to wind down or restructure a CCP's activities is subject to a minimum of six months.

RTS–CCP, Art. 43–46 and Annex II: A debt instrument can be considered highly liquid, bearing minimal credit and market risk if it is issued by or explicitly guaranteed by a government, central bank, multilateral development bank, or the European Financial Stability Facility or the European Stability Mechanism; the CCP can demonstrate that the debt instrument has low credit and market risk based upon an internal assessment; the

[30] 17 CFR 39.11(e)(1)(ii).
[31] 17 CFR 39.11(e)(3)(i).
[32] 17 CFR 39.11(e)(3)(iii).
[33] 17 CFR 39.11(e)(3)(ii).

average time-to-maturity of the CCP's portfolio does not exceed two years; the debt instrument is denominated in a currency the risks of which the CCP can demonstrate it is able to manage or in a currency in which the CCP clears transactions; the debt instrument is freely transferrable and without any regulatory constraint or third party claims that impair liquidation; the debt instrument has an active outright sale or repurchase market with a diverse group of buyers and sellers, including during stress conditions; and reliable price data on the debt instrument is published on a regular basis.

Commission Determination: The Commission finds that the provisions of the EMIR Framework with respect to financial resources are generally similar to the applicable provisions of CFTC Regulation 39.11, and set specific and uniform standards with respect to how CCPs should access and monitor the adequacy of their financial resources. These standards seek to ensure that CCPs can meet their financial obligations to market participants, thus contributing to the financial integrity of the derivatives market as a whole. Both regimes require prefunding of financial resources sufficient to at least cover a default caused by a clearing member creating the largest financial exposure for the EU-based CCP that is dually registered with the CFTC as a DCO (''DCO/CCP'') in extreme but plausible market conditions. Both regimes also require that a DCO/CCP's financial resources include dedicated resources (*e.g.,* prefunded mutualized resources) and require frequent and regular stress testing of financial resources. Likewise, both regimes require that assets in the default fund have minimal credit, market, and liquidity risks, and be readily accessible on a same-day basis. Additionally, both regimes prohibit a DCO/CCP from allocating the same financial resources to different categories of financial exposure and both regimes require that cash balances must be either invested or appropriately safeguarded in a manner which bears little to no principal risk.

Accordingly, the Commission finds that the provisions of the EMIR Framework with respect to financial resources discussed above and identified below in Table 1(a) are comparable to and as comprehensive as the financial resource requirements of CFTC regulation 39.11, with the exception of 39.11(f), which requires DCOs to submit to the Commission quarterly financial resource reports that include a quarterly financial statement. The Commission recognizes that European CCPs would not have financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') absent Commission registration. Thus, the Commission will permit CCPs to submit financial statements prepared in accordance with International Financial Reporting Standards (''IFRS''), with periodic reconciliation to assist staff in reviewing the financial statements.

TABLE 1(A)—FINANCIAL RESOURCES

Subject area	CFTC regulations	EMIR framework
Default financial resources (Credit risk: Cover 1).	17 CFR 39.11(a)(1), 17 CFR 39.11(b)(1), 17 CFR 39.11(d)(2).	EMIR, Art 43; RTS–CCP, Art 53(1)
Monthly stress-testing of default financial resources.	17 CFR 39.11(c)(1)	RTS–CCP, Art. 51(2) and 53(1); RTS–CCP, Art 30(2) and 59(5)
Liquidity of default financial resources	17 CFR 39.11(e)(1)	EMIR, Art 44 and 47(3)–(5); RTS–CCP, Chapter VIII (Art 32–34)
Default fund collateral	17 CFR 39.11(e)(3)(i), 17 CFR 39.11(e)(3)(iii)	EMIR, Art 46 and 47
General business risks, (Allocation of financial resources).	17 CFR 39.11(b)(3)	EMIR Art 16 and 47(2); RTS-Capital Requirements for CCP, Art 2(2)
Cash management	17 CFR 39.11(e)(3)(ii)	EMIR, Art 47; RTS–CCP, Art 43–46 and Annex II

B. Risk Management (Regulation 39.13)

CEA Section 7a–1(c)(2)(D) (''Core Principle D'') establishes general requirements for DCOs to have the ability to manage the risks associated with discharging the responsibilities of the DCO through the appropriate tools and procedures. To implement Core Principle D, the Commission adopted regulation 39.13, which requires a DCO to maintain appropriate tools and procedures to manage the risks associated with discharging the responsibilities of a DCO in compliance with the core principles set out in Section 5b of the CEA.

Commission Requirement: CFTC regulation 39.13 generally requires a DCO to measure its credit exposure to each clearing member not less than once during each business day and to monitor such exposure periodically during the business day. CFTC regulation 39.13 also requires a DCO to limit its exposure to potential losses from defaults by clearing members, through margin requirements and other risk control mechanisms, to ensure that its operations would not be disrupted and that non-defaulting clearing members would not be exposed to losses that non-defaulting clearing members cannot anticipate or control. Finally, CFTC regulation 39.13 also requires that a DCO collect margin from each clearing member sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting such margin requirements be risk-based and reviewed on a regular basis.

CFTC regulation 39.13 requires a DCO to establish, maintain, and regularly update a written risk management framework (approved by its board of directors) that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses monitoring and managing those risks, and provides a mechanism for internal audit.[34]

CFTC regulation 39.13 also requires a DCO to appoint a chief risk officer (''CRO''), who must be responsible for implementing the DCO's written risk management framework and for making appropriate recommendations to the DCO's risk management committee or board of directors.[35] Given the importance of the risk management function and the comprehensive nature of the responsibilities of a DCO's chief compliance officer (''CCO''), the Commission previously has stated that it expects that a DCO's CRO and CCO would be two different individuals.[36]

Pursuant to CFTC regulation 39.13, through margin requirements and other risk control mechanisms, a DCO must

[34] 17 CFR 39.13(b).

[35] 17 CFR 39.13(c).

[36] 76 FR 69363.

limit its exposure to potential losses from defaults by its clearing members to ensure that its operations would not be disrupted and non-defaulting clearing members would not be exposed to losses that they cannot anticipate or control.[37]

CFTC regulation 39.13 also provides that a DCO must establish initial margin requirements that are commensurate with the risk of each product and portfolio, including any unusual characteristics of, or risks associated with, particular products or portfolios, including but not limited to jump-to-default risk or other similar risk.[38] Each model and parameter used in setting initial margin requirements must be risk-based and reviewed on a regular basis.[39] On a daily basis, a DCO must determine the adequacy of its initial margin requirements.[40]

The actual coverage of a DCO's initial margin requirements must meet an established confidence level of at least 99%, based on data from an appropriate historical time period, for each product for which the DCO uses a product-based margin methodology; for each spread within or between products for which there is a defined spread margin rate; for each account held by a clearing member at the DCO, by house origin and by each customer origin; and for each swap portfolio, including any portfolio containing futures and/or options and held in a commingled account pursuant to CFTC regulation 39.15(b)(2), by beneficial owner.[41] A DCO must determine the appropriate historic time period based on the characteristics, including volatility patterns, of each product, spread, account, or portfolio.[42]

In addition, CFTC regulation 39.13 provides that on a regular basis, a qualified and independent party must review and validate a DCO's systems for generating initial margin requirements, including its theoretical models, and that this party must not be the person responsible for development or operation of the systems and models being tested.[43]

A DCO may reduce initial margin requirements for related positions if the price risks with respect to such positions are significantly and reliably correlated—*i.e.,* there is a theoretical basis for the correlation in addition to an exhibited statistical correlation.[44]

Additionally, CFTC regulation 39.13 provides that a DCO must back test its initial margin requirements by comparing its initial margin requirements with historical price changes to determine the extent of actual margin coverage using an appropriate time period but not less than the previous 30 days, as follows: On a daily basis, the DCO must back test products or swaps portfolios that are experiencing significant market volatility; and on at least a monthly basis, the DCO must back test the adequacy of all of its initial margin requirements.[45]

On a daily basis, a DCO must use prudent valuation practices to value assets posted as initial margin.[46] In particular, a DCO must appropriately reduce its valuation of the assets that it accepts in satisfaction of its initial margin requirements, to reflect credit, market, and liquidity risks, taking into account stressed market conditions, and must evaluate the appropriateness of such haircuts on at least a quarterly basis.[47]

Regulatory Objective: Core Principle D and the Commission's implementing regulations are designed to ensure that each DCO possesses the ability and necessary tools to manage the risks associated with discharging the responsibilities of being a DCO. The Commission's regulation requiring a DCO to maintain and update a written risk management framework seeks to ensure that a DCO carefully has considered its risk management framework, and it will provide guidance to DCO management, staff, and market participants. By requiring a 99% confidence level for initial margin, the Commission's regulations seek to prevent DCOs from competing with respect to how much risk they are willing to take on or from misjudging the amount of risk they would take on if they operated under lower standards. Through requiring independent validation of the DCO's margin models, the Commission's regulations seek to prevent bias in validating the DCO's models. By requiring daily review and back testing, the regulations seek to ensure that DCOs monitor the adequacy of their initial margin requirements.

Comparable EU Law and Regulations: The following provisions of the EMIR Framework address risk management.

RTS–CCP Art. 4: A CCP shall have a sound, written framework for the comprehensive management of all material risks to which it is or may be exposed. In developing its risk management framework, a CCP shall take an integrated and comprehensive view of all relevant risks.

RTS–CCP, Art. 3(3) and 4(6): A CCP shall have a CRO, who shall implement the risk management framework. The CCP shall ensure that the functions of the CRO, CCO, and chief technology officer are carried out by different individuals, who shall be employees of the CCP entrusted with the exclusive responsibility of performing these functions.

EMIR, Art. 48(2): A CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member's positions does not disrupt its operations or expose non-defaulting clearing members to losses that they cannot anticipate or control.

EMIR, Art. 41(2), 49(1): A CCP shall adopt models and parameters for setting margin requirements that capture the risk characteristics of the products and swaps cleared and take into account the interval between margin collections, market liquidity, and the possibility of changes over the duration of the transaction. The models shall be validated by the competent authority. A CCP regularly shall review its models and parameters for setting margin requirements and shall subject the models to rigorous and frequent stress tests. A CCP also shall obtain independent validations of its models and parameters.

RTS–CCP, Art. 24(2)(b): In determining the adequate confidence interval for each class of product that it clears, a CCP shall consider, among other factors, the risk characteristics of the class of product, which can include, but are not limited to, volatility, duration, liquidity, non-linear price characteristics, jump-to-default risk and wrong-way risk.

RTS–CCP, Art. 24(1): A CCP shall calculate the initial margins to cover the exposures arising from market movements for each financial instrument that is collateralized on a product basis, over an appropriate time horizon for the liquidation of the position, with a confidence level of 99.5% for over-the-counter derivatives and 99% for all other products.

RTS–CCP, Art. CCP 25: A CCP shall ensure that its model methodology and its validation process for determining initial margin covers at least the latest 12 months and captures a full range of market conditions, including periods of stress.

RTS–CCP, Art 47 and 59(1): At least annually, a CCP shall conduct a

[37] 17 CFR 39.13(f).
[38] 17 CFR 39.13(g)(2)(i).
[39] 17 CFR 39.13(g)(1).
[40] 17 CFR 39.13(g)(6).
[41] 17 CFR 39.13(g)(2)(iii).
[42] 17 CFR 39.13(g)(2)(iv).
[43] 17 CFR 39.13(g)(3).
[44] 17 CFR 39.13(g)(4).
[45] 17 CFR 39.13(g)(7).
[46] 17 CFR 39.13(g)(11).
[47] 17 CFR 39.13(g)(12).

comprehensive and well-documented validation of its models, their methodologies, and the liquidity risk management framework used to quantify, aggregate, and manage the CCP's risks.

RTS–CCP, Art. 27 and 59(9): A CCP may allow offsets or reductions in the required margin across the products and swaps that it clears if the price risk of one financial instrument or a set of products or swaps is significantly and reliably correlated, or based on an equivalent statistical parameter of dependence, with the price risk of other products or swaps. The CCP shall demonstrate the existence of an economic rationale for the price correlation. At least annually, a CCP shall test offsets among products and swaps and how correlations perform during periods of actual and hypothetical severe market conditions.

RTS–CCP, Art. 49 and 60(2): On a daily basis, a CCP shall assess its margin coverage by back testing its margin coverage against expected outcomes derived from the use of margin models to evaluate whether there are any testing exceptions to margin coverage. In conducting such back testing, the CCP shall evaluate its current positions and clearing members, and take into account possible effects from portfolio margining and, where appropriate, interoperable CCPs. The historical time horizons used for back tests shall include data from at minimum the most recent year or as long as a CCP has been clearing the relevant product or swap if that is less than a year.

RTS–CCP, Art. 40(2): A CCP shall mark-to-market its collateral on a near to real-time basis, and where not possible, a CCP shall be able to demonstrate to the competent authorities that it is able to manage the risks.

EMIR, Art. 46(1); RTS–CCP, Art. 41(2) and 59(10): A CCP shall accept highly liquid collateral with minimal credit and market risk to cover its initial and ongoing exposure to its clearing members. It shall apply adequate haircuts to collateral asset values that take into account the liquidity risk following the default of a market participant and concentration risk, and that reflect the potential for the value of such assets to decline over the interval between their last reevaluation and the time by which they reasonably can be assumed to be liquidated. Such haircuts shall consider, for each among other factors, the type of asset and the credit risk associated with the financial instrument, the maturity of the asset; the historical and hypothetical future price volatility of the asset in stressed market conditions; the liquidity of the underlying market, including bid/ask spread; the foreign exchange risks; and any wrong-way risk. The CCP shall test its haircuts at least monthly.

Commission Determination: The Commission finds that the provisions of the EMIR Framework with respect to risk management are generally similar to Core Principle D and CFTC regulation 39.13, and prescribe how CCPs should monitor, evaluate, and manage the risks to which they are exposed. These standards seek to ensure that CCPs can meet their financial obligations to market participants, thus contributing to the financial integrity of the derivatives market as a whole.

Both regimes include a broad, general requirement for a DCO/CCP to manage the risk to which it is exposed and both regimes require the appointment of a CRO to perform similar functions. Both regimes require a DCO/CCP to use risk control mechanisms, such as margin requirements, to limit exposure to potential clearing member defaults. Similarly, both regimes require that margin models and parameters be risk-based and regularly reviewed and both regimes require that the calculation of initial margin include factoring the risk characteristics of each cleared product. Both regimes require at least a 99% confidence level in determining the adequacy of initial margin and both regimes have similar proscriptions for back testing initial margin models. Finally, both regimes require that cash balances must be either invested or appropriately safeguarded in a manner that bears little or no principal risk.

Accordingly, the Commission finds that the provisions of the EMIR Framework with respect to risk management standards discussed above and identified below in Table 1(b) are comparable to and as comprehensive as the risk management requirements of CFTC regulation 39.13, with the exception of 39.13(g)(8)(i) and (ii), which respectively require FCMs to calculate initial margin for cleared customer accounts on a gross (as opposed to net) basis and require DCOs to collect additional initial margin for non-hedge positions of FCM customers. Despite the importance of gross margining of customer accounts and the collection of this additional initial margin, in an effort to promote comity, the Commission would not require DCO/CCPs to apply either of these regulations to non-FCM clearing member intermediaries or to the customers of non-FCM clearing member intermediaries. Additionally, the Commission makes this finding notwithstanding that the EMIR Framework's treatment of affiliates does not shield customers from potential losses by affiliates of the clearing member in the same manner as the CFTC's approach and in fact potentially exposes customers to proprietary trading losses.

TABLE 1(B)—RISK MANAGEMENT

Subject area	CFTC regulations	EMIR framework
General/documentation requirement	17 CFR 39.13(a)–(b)	RTS–CCP, Art 4
Chief risk officer	17 CFR 39.13(c)	RTS–CCP, Art 3(3) and 4(6)
Limitation of exposure to potential losses from defaults.	17 CFR 39.13(f)	EMIR, Art 48(2)
Margin models/parameters	17 CFR 39.13(g)(1)	EMIR, Art 41(2), 49(1)
Risk factors for margin	17 CFR 39.13(g)(2)(i)	RTS–CCP, Art 24(2)(b)
Minimum confidence level	17 CFR 39.13(g)(2)(iii)	RTS–CCP, Art 24(1)
Lookback period	17 CFR 39.13(g)(2)(iv)	RTS–CCP, Art 25
Regular independent validation	17 CFR 39.13(g)(3)	RTS–CCP, Art 47 and 59(1)
Portfolio margining	17 CFR 39.13(g)(4)	RTS–CCP, Art 27; RTS–CCP, Art 59(9)
Margin Back tests	17 CFR 39.13(g)(7)	RTS–CCP, Art 49 and 60(2)
Daily valuation of collateral posted as initial margin.	17 CFR 39.13(g)(11)	RTS–CCP, Art 40(2)
Haircuts	17 CFR 39.13(g)(12)	EMIR, Art 46(1); RTS–CCP, Art 41(2) and 59(10)
Daily determination of initial margin adequacy	17 CFR 39.13(g)(6)	EMIR, Art 49(1)

C. Settlement Procedures (Regulation 39.14)

CEA Section 7a–1(c)(2)(E) (''Core Principle E'') establishes general requirements for DCOs to have sufficient settlement procedures. To implement Core Principle E the Commission adopted regulation 39.14, which requires a DCO to complete money settlements on a timely basis, but not less frequently than once each business day; employ money settlement arrangements to eliminate or strictly limit exposure to settlement bank risks; maintain an accurate record of the flow of funds associated with money settlements; possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another DCO; establish rules that clearly state the obligation of a DCO with respect to physical deliveries; and ensure that a DCO identifies and manages each risk arising from any of its obligation with respect to physical deliveries.

Commission Requirement: Regulation 39.14 requires that a DCO collect margin from its clearing members on a daily basis. Specifically, a DCO must effect settlement with each clearing member at least once each business day, and must have the authority and operational capacity to effect a settlement with each clearing member on an intraday basis, either routinely, when thresholds specified by the DCO are breached, or in times of extreme market volatility.[48]

CFTC regulation 39.14 provides that a DCO must employ settlement arrangements that eliminate or strictly limit its exposure to settlement bank risk, by among other things, having documented criteria with respect to those banks that are acceptable settlement banks for the DCO and its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such banks.[49] A DCO further must monitor each approved settlement bank on an ongoing basis to ensure that such bank continues to meet the DCO's established criteria.[50]

A DCO must monitor the full range of and concentration of its exposure to its own and its clearing members' settlement bank(s) and assess its own and its clearing members' potential losses and liquidity in the event that the settlement bank with the largest share of settlement activity were to fail. A DCO must take any one or more of the following actions, as needed, to eliminate or strictly limit such exposures: maintain accounts at one or more additional settlement banks; approve one or more additional settlement banks that its clearing members could choose to use; impose concentration limits with respect to one or more of its own or its clearing members' settlement banks; and/or take any other appropriate actions.[51]

A DCO must maintain an accurate record of the flow of funds associated with each settlement.[52]

A DCO must possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization.[53]

For products that are settled by physical transfer of the underlying instruments or commodities, a DCO must establish rules that clearly state each obligation that the DCO has assumed with respect to such physical deliveries, including whether it has an obligation to make or receive delivery of a physical instrument or commodity, or whether it indemnifies clearing members for losses incurred in the delivery process, and ensure that the risks of each such obligation are identified and properly managed.[54]

Regulatory Objective: On a daily basis, DCOs are exposed to significant inflows and outflows of cash and other liquid financial instruments. Core Principle E and the Commission's implementing regulations are designed to ensure that a DCO has the authority and operational capacity to effect settlement with each clearing member, on an intraday basis and to also monitor, eliminate, or strictly limit the settlement risks to which a DCO is exposed.

Comparable EU Law and Regulations: The following provisions of the EMIR Framework address settlement procedures.

EMIR, Art. 41(1) and (3): A CCP shall impose, call, and collect margins to limit its exposures from its clearing members, and where relevant, from CCPs with which it has interoperability arrangements. Such margins shall be sufficient to cover potential exposures that the CCP estimates will occur until the liquidation of the relevant positions. Such margins also shall be sufficient to cover losses that result from at least 99% of the exposures' movements over an appropriate time horizon and they shall ensure that a CCP fully collateralizes its exposures with all its clearing members, and, where relevant, with CCPs with which it has interoperability arrangements, at least on a daily basis. A CCP shall regularly monitor and, if necessary, revise its margins to reflect current market conditions, taking into account any potential procyclical effects of such revisions. A CCP shall call and collect margins on an intraday basis, at a minimum when predefined thresholds are exceeded.

EMIR, Art. 50(1): Where practical and available, a CCP shall use central bank money to settle its transactions. Where a CCP cannot use central bank money, it shall take steps to strictly limit cash settlement risk.

RTS–CCP, Art. 4(2), 32(4)(a), and 51(3): A CCP shall take an integrated and comprehensive view of all relevant risk, including the risks it bears from and poses to, among other things, settlement banks. A CCP also shall assess the liquidity risk it faces, including situations in which the CCP or its clearing members cannot settle their payment obligations when due as part of the clearing or settlement process. Such assessment shall address the liquidity needs arising from the CCP's relationship with, among others, settlement banks. As part of its stress testing procedures, a CCP should consider stress testing scenarios involving the technical or financial failure of, among others, its settlement banks.

RTS–CCP, Art. 13 and Art. 14(3): A CCP shall maintain records of all transactions in all contracts it clears and shall ensure that its records include all information necessary to conduct a comprehensive and accurate reconstruction of the clearing process. A CCP shall make, and keep updated, a record of the amounts of margin, default fund contributions, and other financial resources, with respect to each single clearing member and client account, if known to the CCP.

EMIR, Art. 50(2)–(3): A CCP shall clearly state its obligations with respect to deliveries of financial instruments, including whether it has any obligation to make or receive delivery of a financial instrument or whether it indemnifies participants for losses incurred in the delivery process. Where a CCP has an obligation to make or receive deliveries of financial instruments, it shall eliminate principal risk by using delivery-versus-payment mechanisms, to the extent possible.

Commission Determination: The Commission finds that the provisions of the EMIR Framework with respect to settlement procedures are generally similar to Core Principle E and CFTC regulation 39.14, and eliminate or

[48] 17 CFR 39.14(b).

[49] 17 CFR 39.14(c)(1).

[50] 17 CFR 39.14(c)(2).

[51] 17 CFR 39.14(c)(3).

[52] 17 CFR 39.14(e).

[53] 17 CFR 39.14(f).

[54] 17 CFR 39.14(g).

strictly limit a CCP's exposure to settlement risk. Both regimes require the daily collection of margin and both require a DCO/CCP to employ settlement arrangements that limit exposure to various risks, including exposure to settlement banks, concentration risk, and physical delivery of instruments. Both regimes have similar recordkeeping requirements. Finally, both regimes require a DCO/CCP to have rules with respect to the physical delivery of an instrument or commodity, and to identify and manage the risks associated with the physical delivery of such instruments.

Accordingly, the Commission finds that the provisions of the EMIR Framework with respect to settlement procedures discussed above and identified below in Table 1(c) are comparable to and as comprehensive as the default rules and procedures of CFTC regulation 39.14.

For the avoidance of doubt, the Commission notes that the foregoing comparability determination only applies with regard to certain provisions of regulation 39.14 (*i.e.,* § 39.14(b), § 39.14(c), § 39.14(e), § 39.14(f), and § 39.14(g)). No comparability finding is made regarding § 39.14(d), which requires a DCO to ensure that settlements are final when effected by ensuring that it has entered into legal agreements that state that settlement fund transfers are irrevocable and unconditional no later than when the DCO's accounts are debited or credited.

TABLE 1(C)—SETTLEMENT PROCEDURES

Subject area	CFTC regulations	EMIR framework
Settlement procedures	17 CFR 39.14(b), (c), (e)–(g)	EMIR, Art. 41(1) and (3); EMIR, Art 50(1); RTS–CCP, Art 4(2), 32(4)(a) and 51(3); RTS–CCP, Art 13 and 14(3); EMIR, Art 50(2)-(3).

D. Default Rules and Procedures (Regulation 39.16)

CEA Section 7a-1(c)(2)(G) (''Core Principle G'') establishes general requirements for DCOs to have adequate default rules and procedures. To implement Core Principle G the Commission adopted regulation 39.16, which requires a DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants become insolvent or otherwise default on the obligations of the members or participants to the DCO.

Commission Requirement: CFTC regulation 39.16 provides requirements by which a DCO must adopt rules and procedures designed to allow DCOs to effectively manage events during which clearing members become insolvent or default on the obligations of such clearing members to the DCO.[55]

Pursuant to CFTC regulation 39.16, a DCO must adopt procedures that would permit the DCO to timely take action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the DCO.[56] Further, a DCO must adopt rules setting forth its default procedures; including the DCO's definition of default, the actions that the DCO may take upon default, which must include the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable, and which may include, in the DCO's discretion, the auctioning or allocation of positions to other clearing members; any obligations that the DCO imposes on its clearing members to participate in auctions or to accept allocations, of the customer or house positions of a defaulting clearing member, subject to certain limitations; the default waterfall—*i.e.,* the sequence in which the funds and assets of the defaulting clearing member and its customers and the financial resources maintained by the DCO would be applied in the event of a default; and a provision that the funds and assets of a defaulting clearing member must be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.[57] The DCO must make its default rules publicly available.[58]

Regulatory Objective: Core Principle G and the Commission's implementing regulations are designed to ensure that each DCO clearly states its default procedures, makes its default rules publicly available, and has rules and procedures that allow it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations.

Comparable EU Law and Regulations: The following provisions of the EMIR Framework address default rules and procedures.

EMIR, Art. 48: A CCP shall have written procedures to be followed in the event of the default of a clearing member. The CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control.

EMIR, Art. 37(6): A CCP may impose specific additional obligations on clearing members, including the participation in auctions of a defaulting member's positions. Such obligations shall be proportional to the risk brought by the clearing member and shall not restrict participation to certain categories of clearing members.

EMIR, Art. 45: A CCP shall use a defaulting clearing member's margins before using other financial resources to cover losses. Where the margins posted by the defaulting clearing member are insufficient to cover the losses covered by the CCP, the CCP shall use the default fund contribution of the defaulting member to cover the loss. A CCP shall use contributions to the default fund of the non-defaulting clearing members and any other financial resources only after having exhausted the defaulting clearing member's contributions. A CCP further shall use its own dedicated financial resources before using the default fund contributions of non-defaulting clearing members. A CCP shall not use the margins posted by non-defaulting clearing members to cover losses resulting from the default of another clearing member.

RTS–CCP, Art. 58 and 59(12): At least on a quarterly basis, a CCP shall test and review its default procedures to ensure they are both practical and effective. At least annually, a CCP shall perform simulation exercises as part of the testing of its default procedures. It also shall perform simulation exercises

[55] 17 CFR 39.16(a).

[56] 17 CFR 39.16(c)(1).

[57] 17 CFR 39.16(c)(2)(i)–(v).

[58] 17 CFR 39.16(c)(3).

following any material change to its default procedures.

ESMA Q&A CCP Question 8(f)(1): A CCP shall use the margins posted by a defaulting clearing member prior to other financial resources when covering losses and may have rules which allow it to use surplus margin on a defaulted clearing member's house account to meet any obligation of the clearing member with respect to losses on a client account of that clearing member. For the avoidance of doubt, surplus margin on a client account of a default clearing member cannot be used to meet any losses on the defaulted clearing member's house account(s).[59]

RTS–CCP, Art. 61(2): A CCP shall make publicly available key aspects of its default procedures, including the circumstances in which action may be taken, who may take action, the scope of the actions that may be taken (including the treatment of both proprietary and client positions, funds and assets), and the mechanisms for addressing a CCP's obligations to non-defaulting clearing members.

Commission Determination: The Commission finds that the provisions of the EMIR Framework with respect to default rules and procedures are generally similar to CFTC regulation 39.16, and prescribe how CCPs should clearly state their default procedures. Both regimes require a DCO/CCP to have detailed procedures to follow in the event of a default, including requirements for the orderly transfer and/or liquidation of customer or proprietary positions, participation in auctions, the sequence of the default waterfall, and public disclosure of the default procedures. These standards seek to ensure that CCPs may take timely action to contain losses and liquidity pressures and to continue meeting their obligations.

Accordingly, the Commission finds that the EMIR Framework with respect to default rules and procedures discussed above and identified below in Table 1(d) are comparable to and as comprehensive as the default rules and procedures of CFTC regulation 39.16.

For the avoidance of doubt, the Commission notes that the foregoing comparability determination only applies with regard to the above mentioned provisions of CFTC regulation 39.16 (*i.e.,* § 39.16(a), § 39.16(c)(1), § 39.16(c)(2)(i)-(v), and § 39.16(c)(3)). No comparability finding is made regarding the other provisions of § 39.16, namely § 39.16(b), which requires a DCO to maintain a written default management plan, and § 39.16(d), which requires a DCO to have certain rules in place regarding the insolvency of clearing members.

TABLE 1(D)—DEFAULT RULES AND PROCEDURES

Subject area	CFTC regulations	EMIR framework
Default rules & procedures	17 CFR 39.16(a), 17 CFR 39.16(c)(1), 17 CFR 39.16(c)(2)(i)–(v), 17 CFR 39.16(c)(3).	EMIR, Art 48, 37(6) and 45; RTS–CCP, Art 58, 59(12) and 61(2); ESMA Q&A CCP Question 8(f)1.

VI. DCO/CCP Registration

Section 5b(a) of the CEA and Commission Regulations 39.1 and 39.3 require a DCO to register with the Commission in the format and manner specified by the Commission. In particular, Regulation 39.3 specifies that a DCO seeking registration from the Commission must file a Form DCO and various supporting exhibits.

In the interest of comity, the Commission generally will tailor its registration process both in terms of administration and substantive review to reflect the availability of substituted compliance for EU CCPs. Accordingly, consistent with Regulation 39.3, EU CCPs seeking registration must complete Form DCO. However, with respect to questions and information requirements in areas where compliance with the EMIR Framework is substituted for compliance with part 39, the EU CCP may evidence its compliance with the EMIR Framework in lieu of its compliance with part 39. DCO/CCPs that are already dually registered need not take any further action to take advantage of the substituted compliance determinations made under this Notice. These determinations will be applied automatically to all current DCO/CCPs registrants.

Moreover, to streamline the registration process, an EU CCP applicant may, instead of submitting the exhibits required under the CFTC Form DCO regulation, use existing materials that it has submitted to its NCA for its EMIR authorization or other relevant documents produced by its NCA that demonstrate compliance with EMIR provisions for which substituted compliance is available (*e.g.,* supervisory examination reports or reports from its NCA). The positive opinion of the CCP supervisory college should also be submitted to the Commission by way of supporting evidence. The Commission will not require an EU CCP to obtain certification from its NCA, certifying that it has complied with the EMIR Framework.

In addition, for the Form DCO documents listed below, the Commission will accept a copy of the original document filed by the EU CCP with its NCA with an attestation by that authority that they are acceptable to that authority:

- Exhibit A–8: articles of incorporation or similar corporate documents;
- Exhibit A–10: outside service provider agreements;
- Exhibit E–1(4): settlement bank agreements;
- Exhibit F(a)(2): depository agreements; and
- Exhibit M(a): information-sharing agreements.

If these documents are not in English, and an English translation is available, the EU CCP applying for registration should provide the English translation. If an English translation is not available, the EU CCP applying for registration should inform the Commission in writing but need not provide a translated version unless requested by the CFTC.

The Commission will review the documentation received to determine if it is complete and comprehensive. In the case that information evidencing compliance with the EMIR Framework is incomplete, the Commission will seek to obtain further evidence from the relevant NCA evidencing its assessment of compliance. If the documentation is still not sufficient for the Commission to review compliance with the terms of the

[59] Questions and Answers: Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) *https://www.esma.europa.eu/system/files_force/library/2016–293_qa_xvi_on_emir_implementation.pdf?download=1.*

EMIR Framework, the Commission will request additional evidence from the CCP and notify the NCA of the request made.

The Commission will seek to obtain any other missing information from the relevant EU CCP. The Commission also will provide the relevant NCA with the opportunity to be consulted with respect to any questions if so requested at the outset by that authority.

VII. Limited Application of Certain CFTC Regulations

As a general matter, the Commission acknowledges that CCPs registered in foreign jurisdictions operate under different regulatory regimes, and that the differences between these various regimes may lead to regulatory arbitrage. The Commission also understands that the CFTC staff intends to provide limited no-action relief for DCO/CCPs from the application of Commission regulations to discrete aspects of a DCO/CCP's non-U.S. clearing activities as set forth below when this Notice becomes effective.

(1) CFTC Regulation 39.12(b)(6)'s requirement that, upon a DCO's acceptance of a swap for clearing, the original swap is extinguished and it is replaced by an equal and opposite swap between the DCO and each clearing member acting as a principal for a house trade or an agent for a customer trade will not apply where neither party is a U.S. clearing member or an FCM clearing member;

(2) Part 22 of CFTC Regulations and its ''legally segregated but operationally commingled'' (''LSOC'') account model for cleared swaps customer accounts will not apply to clearing members that are not FCMs;

(3) CFTC Regulation 39.13(g)(8)(i)'s requirement that initial margin for customer accounts cleared by an FCM be calculated and collected on a gross basis would not apply to non-FCM clearing member intermediaries;

(4) CFTC Regulation 39.13(g)(8)(ii)'s requirement that a DCO collect initial margin at a level that is greater than 100% of the DCO's initial margin requirements for the non-hedge positions of FCM customers will not apply to non-FCM clearing member intermediaries;

(5) CFTC Regulation 39.12(a)(2)(iii)'s prohibition that a DCO not set a minimum capital requirement of more than $50 million for any person that seeks to become a clearing member to clear swaps will not apply to non-U.S. clearing members or non-FCM clearing members;

(6) CFTC Regulation 39.12(b)(7)'s requirement that DCOs utilize ''straight-through-processing'' of swaps submitted for clearing will not apply to trades that are not executed on or subject to the rules of a DCM or a swap execution facility and for which neither clearing member is an FCM, a swap dealer, or a major swap participant;

(7) Regulation 39.13(h)(5)'s requirement that DCOs must require their clearing members to maintain written risk management policies and procedures and that DCOs must have the authority to obtain information and documents from clearing members regarding their risk will still apply; however, DCO/CCPs may implement different oversight programs for U.S./FCM clearing members and non-U.S. clearing members; and

(8) Regulation 39.11(f)'s and Regulation 39.19(c)(3)(ii)'s implicit requirements that DCOs submit to the CFTC quarterly financial resource reports and an audited year-end financial statement that are prepared in accordance with GAAP will not apply; rather, the DCO/CCPs may submit financial statements prepared in accordance with IFRS, with periodic reconciliation to assist staff in reviewing the financial statements.

VIII. Supervisory Arrangement

As noted above, with respect to dually-registered DCO/CCPs, the Commission retains its examination authority with respect to DCO/CCPs and requires that home country regulator(s) enter into an MOU that addresses how the regulator(s) will cooperate and share information with respect to supervision of the DCO/CCP. Thus, the Commission has entered into a supervisory MOU with the home country regulator(s) of a DCO/CCP.[60] For dual registrants in the future, the Commission similarly expects that an MOU will establish procedures for ongoing cooperation, address direct access to information, provide for notification upon the occurrence of specified events, memorialize understandings related to on-site visits, and include protections related to the use and confidentiality of non-public information shared pursuant to the MOU.

While certain principles of supervision are universal, based on its experience supervising DCO/CCPs, the Commission recognizes the benefits of tailoring a joint supervisory regime to (1) the unique legal and regulatory framework in which each regulator operates and (2) the unique financial, operational, and organizational characteristics of each DCO/CCP. With respect to CFTC regulations for which there would be substituted compliance, the Commission generally believes that there should be joint examinations. By way of example, Commission staff already has participated in joint examinations with the Bank of England, and the Commission believes that joint examinations can be an efficient means for effective, in-depth review of a DCO/CCP's regulatory compliance.

However, depending on the individual circumstances, it may be appropriate for the home country regulator(s) to assume greater responsibility for conducting the examinations. The Commission expects that its staff would be flexible in determining their approach to a given examination based on the nature and scope of the examination. Therefore, with the overall goal of applying uniform principles in a consistent yet flexible way, the Commission intends to address supervisory matters, including examinations, on a case-by-case basis for each individual DCO/CCP in close consultation with the relevant home country regulator(s).

IX. Conclusion

As noted above, the Commission finds that each provision of the EMIR Framework discussed above, is comparable to and comprehensive as the Commission requirements identified above and thus a CCP's compliance with the identified provisions of the EMIR Framework will satisfy compliance with the corresponding Commission requirements.

Issued in Washington, DC, on March 16, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendices to Comparability Determination for the European Union: Dually-Registered Derivatives Clearing Organizations and Central Counterparties—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Today, the CFTC has taken action to implement our agreement with the European Commission regarding requirements for central clearing counterparties (CCPs). Our unanimous action today means that European CCPs registered with the CFTC can comply with many of our rules by meeting

[60] The Commission also requires an MOU with respect to exempt DCOs.

the corresponding European Market Infrastructure Regulation (EMIR) requirements.

The equivalence agreement announced by European Commissioner Jonathan Hill and myself is an important step in achieving cross-border harmonization of derivatives regulation. It provides a foundation for cooperation among regulators in the oversight of the global clearinghouses that are so important in our financial system today. It resolves the issues that were standing in the way of Europe recognizing U.S. CCPs. And it helps make sure that the U.S. and European derivatives markets can continue to be dynamic, with robust competition and liquidity across borders.

The action we have taken today is an important component of that agreement. The notice identifies the rules for which the CFTC will grant substituted compliance. These include rules related to CCP financial resources, risk management, settlement procedures, and default management. We have also streamlined the process for registration, which will further harmonize our regimes.

Finally, CFTC staff today are also providing no-action relief from the application of Commission regulations to discrete aspects of a clearinghouse's non-U.S. clearing activities.

The Commission is working with U.S. clearinghouses seeking recognition by the European Securities and Market Authority (ESMA) to ensure ESMA has all necessary information to review their applications in a timely manner. I look forward to ESMA completing the recognition process in a manner that ensures the global derivatives markets can continue to function efficiently and without disruption.

Appendix 3—Statement of Commissioner J. Christopher Giancarlo

I support the comparability determinations issued by the Commodity Futures Trading Commission (''CFTC'').

Today's action furthers the commitment to a common approach for transatlantic central clearing counterparties (CCPs) announced on February 10, 2016 by my colleague, CFTC Chairman Timothy Massad, and Commissioner Jonathan Hill of the European Commission (EC). Under the comparability determinations, CCPs that are authorized in the European Union (EU) under the European Market Infrastructure Regulation (EMIR) and registered with the CFTC may comply with certain CFTC requirements for financial resources, risk management, settlement procedures, and default rules and procedures by complying with corresponding requirements under the EMIR framework. Today's notice also provides for a streamlined approach for EU CCPs that may wish to register with the CFTC in the future.

As I said when it was announced, the agreement reached between the EC and the CFTC avoids unacceptable changes to four decades of U.S. clearinghouse margin policy and higher costs of hedging risk for America's farmers, ranchers, financial institutions, energy firms and manufacturers.

Yet, as I have observed, the protracted process for reaching this compromise was made needlessly complex because both the EC and the CFTC insisted on a line-by-line rule analysis contrary to the flexible, outcomes-based approach advocated by the OTC Derivatives Regulators Group. While the end result is a good one, the approach taken to get here was needlessly circuitous and uncertain.

The CFTC and its global counterparts must now recommit themselves to work together to implement an equivalence and substituted compliance process, particularly for swaps execution and the cross-border activities of swap dealers and major swaps participants, based on common principles in order to increase regulatory harmonization and reduce market balkanization.[1] The future of the global swaps marketplace depends on it.

[FR Doc. 2016–06261 Filed 3–21–16; 8:45 am]

BILLING CODE 6351–01–P

[1] *See, e.g.,* IOSCO Task Force on Cross-Border Regulation, Final Report (Sept. 2015) (advocating for an outcomes-based approach as opposed to a line-by-line comparison of rules).

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2015–OS–0099]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Notice of response to public comments on proposed amendments to the Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: The JSC is publishing final proposed amendments to the MCM. The proposed changes concern the Rules for Courts-Martial, the Military Rules of Evidence, and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

FOR FURTHER INFORMATION CONTACT: Major Harlye Carlton, USMC, JSC Executive Secretary, at *harlye.carlton@usmc.mil.* The JSC public Web site is located at *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments: Comments and materials received from the public are available under Docket ID Number DOD–2015–OS–0099, **Federal Register** Number 2015–26485, and at the following link: *http://www.regulations.gov/#!docketDetail;D=DOD-2015-OS-0099.*

Background

On October 19, 2015 (80 FR 63204–63212), the JSC published a Notice of Proposed Amendments concerning the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on November 5, 2015. No comments were received at the public meeting. The 60-day public comment period for the notice closed on December 18, 2015. One public comment was received.

The JSC considered the public comments and after conducting deliberations, made no modifications to the proposed amendments to the MCM as a result of the public comments. The JSC conducted additional internal deliberations and made some modifications to the proposed amendments to the MCM accordingly. Comments that were submitted that are outside the scope of the originally-proposed changes will be considered as part of the JSC 2016 annual review of the MCM.

Proposed Amendments After Period for Public Comment

The proposed recommended amendments to the MCM that have been forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) The title of R.C.M. 104(b)(1) is amended to read as follows:

''(1) *Evaluation of member, defense counsel, or special victims' counsel.*''

(b) R.C.M. 104(b)(1)(B) is amended to read as follows:

''(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, ''special victims' counsel'' are judge advocates who, in accordance with 10 U.S.C. 1044e, are designated as Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocates are members, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.''

(c) R.C.M. 305(h)(2)(B)(iii)(a) is amended to read as follows:

''(a) The prisoner will not appear at trial, pretrial hearing, preliminary hearing, or investigation, or''

(d) R.C.M. 305(i)(2)(A)(iv) is amended to read as follows:

''(iv) *Victim's right to be reasonably heard.* A victim of an alleged offense committed by the prisoner has the right to reasonable, accurate, and timely notice of the 7-day review; the right to confer with the representative of the command and counsel for the government, if any; and the right to be reasonably heard during the review. However, the hearing may not be unduly delayed for this purpose. The right to be heard under this rule includes the right to be heard through counsel and the right to be reasonably protected from the prisoner during the 7-day review. The victim of an alleged offense shall be notified of these rights in accordance with regulations of the Secretary concerned.''

(e) A new R.C.M. 306(e) is inserted and reads as follows:

''(e) *Sex-related offenses.*

(1) For purposes of this subsection, a ''sex-related offense'' means any allegation of a violation of Article 120, 120a, 120b, 120c, or 125 or any attempt thereof under Article 80, UCMJ.

(2) Under such regulations as the Secretary concerned may prescribe, for alleged sex-related offenses committed in the United States, the victim of the sex-related offense shall be provided an opportunity to express views as to whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. The commander, and if charges are preferred, the convening authority, shall consider such views as to the victim's preference for jurisdiction, if available, prior to making an initial disposition decision. For purposes of this rule, ''victim'' is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an alleged sex-related offense as defined in subparagraph (A) of this rule.

(3) Under such regulations as the Secretary concerned may prescribe, if the victim of an alleged sex-related offense expresses a preference for prosecution of the offense in a civilian court, the commander, and if charges are preferred, the convening authority, shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution. If the commander, and if charges are preferred, the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in civilian court, the convening authority shall ensure the victim is notified.''

(f) R.C.M. 403(b)(5) is amended to read as follows:

''(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, and, if appropriate, forward the report of preliminary hearing with the charges to a superior commander for disposition.''

(g) R.C.M. 405(i)(2)(A) is amended to read as follows:

''(2) *Notice to and presence of the victim(s).*

(A) The victim(s) of an offense under the UCMJ has the right to reasonable, accurate, and timely notice of a preliminary hearing relating to the alleged offense, the right to be reasonably protected from the accused, and the reasonable right to confer with counsel for the government during the preliminary hearing. For the purposes of this rule, a ''victim'' is a person who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(h) R.C.M. 407(a)(5) is amended to read as follows:

''(5) Unless otherwise prescribed by the Secretary concerned, direct a preliminary hearing under R.C.M. 405, after which additional action under this rule may be taken;''

(i) R.C.M. 502(d)(4)(B) is amended to read as follows:

''(B) An investigating or preliminary hearing officer;''

(j) RCM 502(e)(2)(C) is amended to read as follows:

''(C) An investigating or preliminary hearing officer;''

(k) R.C.M. 506(b)(2) is amended by replacing ''investigation'' with ''preliminary hearing.''

(l) R.C.M 601(d)(2)(A) is amended to read as follows:

''(A) There has been substantial compliance with the preliminary hearing requirements of R.C.M. 405; and''

(m) R.C.M. 705(c)(2)(A) is amended to read as follows:

''(A) A promise to enter into a stipulation of fact concerning offenses to which a plea of guilty or a confessional stipulation will be entered;''

(n) R.C.M. 705(d)(3) is amended to read as follows:

''(3) *Acceptance.*

(A) *In general.* The convening authority may either accept or reject an offer of the accused to enter into a pretrial agreement or may propose by counteroffer any terms or conditions not prohibited by law or public policy. The decision whether to accept or reject an offer is within the sole discretion of the convening authority. When the convening authority has accepted a pretrial agreement, the agreement shall be signed by the convening authority or by a person, such as the staff judge advocate or trial counsel, who has been authorized by the convening authority to sign.

(B) *Victim consultation.* Whenever practicable, prior to the convening authority accepting a pretrial agreement the victim shall be provided an opportunity to express views concerning the pretrial agreement terms and conditions in accordance with regulations prescribed by the Secretary concerned. The convening authority shall consider any such views provided prior to accepting a pretrial agreement. For purposes of this rule, a ''victim'' is an individual who is alleged to have suffered direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration.''

(o) A new R.C.M. 806(b)(2) is inserted and reads as follows:

''(2) *Right of victim to notice.* A victim of an alleged offense committed by the accused has the right to reasonable, accurate, and timely notice of court-martial proceedings relating to the offense.''

(p) R.C.M. 806(b)(2) is renumbered as R.C.M. 806(b)(3).

(q) R.C.M. 806(b)(3) is renumbered as R.C.M. 806(b)(4).

(r) R.C.M. 806(b)(4) is renumbered as R.C.M. 806(b)(5).

(s) A new R.C.M. 806(b)(6) is inserted and reads as follows:

''(6) *Right of victim to be reasonably protected from the accused.* A victim of an alleged offense committed by the accused has the right to be reasonably protected from the accused.''

(t) R.C.M. 902(b)(2) is amended to read as follows:

''(2) Where the military judge has acted as counsel, preliminary hearing officer, investigating officer, legal officer, staff judge advocate, or convening authority as to any offense charged or in the same case generally.''

(u) R.C.M. 905(b)(1) is amended to read as follows:

''(1) Defenses or objections based on defects (other than jurisdictional defects) in the preferral, forwarding, or referral of charges, or in the preliminary hearing;''

(v) R.C.M. 907(b)(1) is amended to read as follows:

''(1) *Nonwaivable grounds.* A charge or specification shall be dismissed at any stage of the proceedings if the court-martial lacks jurisdiction to try the accused for the offense.''

(w) R.C.M. 907(b)(1)(A)–(B) is deleted.

(x) A new R.C.M. 907(b)(2)(E) is inserted and reads as follows:

''(E) The specification fails to state an offense.''

(y) R.C.M. 912(a)(1)(K) is amended to read as follows:

''(K) Whether the member has acted as accuser, counsel, preliminary hearing officer, investigating officer, convening authority, or legal officer or staff judge advocate for the convening authority in the case, or has forwarded the charges with a recommendation as to disposition.''

(z) R.C.M. 912(f)(1)(F) is amended to read as follows:

''(F) Has been an investigating or preliminary hearing officer as to any offense charged;''

(aa) R.C.M. 1002 is amended to read as follows:

''(a) *Generally.* Subject to limitations in this Manual, the sentence to be adjudged is a matter within the discretion of the court-martial; except when a mandatory minimum sentence is prescribed by the code, a court-martial may adjudge any punishment authorized in this Manual, including the maximum punishment or any lesser punishment, or may adjudge a sentence of no punishment.

(b) *Unitary Sentencing.* Sentencing by a court-martial is unitary. The court-martial will adjudge a single sentence for all the offenses of which the accused was found guilty. A court-martial may not impose separate sentences for each finding of guilty, but may impose only a single, unitary sentence covering all of the guilty findings in their entirety.''

(bb) R.C.M. 1103(b)(2)(B)(i) is amended to read as follows:

''(i) The sentence adjudged includes confinement for twelve months or more or any punishment that may not be adjudged by a special court-martial; or''

(cc) The Note currently located immediately following the title of R.C.M. 1107 and prior to R.C.M. 1107(a) is amended to read as follows:

''[Note: R.C.M. 1107(b)–(f) apply to offenses committed on or after 24 June 2014; however, if at least one offense resulting in a finding of guilty in a case occurred prior to 24 June 2014, or includes a date range where the earliest date in the range for that offense is before 24 June 2014, then the prior version of R.C.M. 1107 applies to all offenses in the case, except that mandatory minimum sentences under Article 56(b) and applicable rules under R.C.M. 1107(d)(1)(D)–(E) still apply.]''

(dd) R.C.M. 1107(b)(5) is amended to delete the sentence, ''Nothing in this subsection shall prohibit the convening authority from disapproving the findings of guilty and sentence.''

(ee) R.C.M. 1107(c) is amended to read as follows:

''(c) *Action on findings.* Action on the findings is not required. However, the convening authority may take action subject to the following limitations:

(1) Where a court-martial includes a finding of guilty for an offense listed in subparagraph (c)(1)(A) of this rule, the convening authority may not take the actions listed in subparagraph (c)(1)(B) of this rule:

(A) *Offenses*

(i) Article 120(a) or (b), Article 120b, or Article 125;

(ii) Offenses for which the maximum sentence of confinement that may be adjudged exceeds two years without regard to the jurisdictional limits of the court; or

(iii) Offenses where the adjudged sentence for the case includes dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than six months.

(B) *Prohibited actions*

(i) Dismiss a charge or specification by setting aside a finding of guilty thereto; or

(ii) Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(2) The convening authority may direct a rehearing in accordance with subsection (e) of this rule.

(3) For offenses other than those listed in subparagraph (c)(1)(A) of this rule:

(A) The convening authority may change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification; or

(B) Set aside any finding of guilty and:

(i) Dismiss the specification and, if appropriate, the charge; or

(ii) Direct a rehearing in accordance with subsection (e) of this rule.

(4) If the convening authority acts to dismiss or change any charge or specification for an offense, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(ff) R.C.M. 1107(d) is amended to read as follows:

''(d) *Action on the sentence.*

(1) The convening authority shall take action on the sentence subject to the following:

(A) The convening authority may disapprove, commute, or suspend, in whole or in part, any portion of an adjudged sentence not explicitly prohibited by this rule, to include reduction in pay grade, forfeitures of pay and allowances, fines, reprimands, restrictions, and hard labor without confinement.

(B) Except as provided in subparagraph (d)(1)(C) of this rule, the convening authority may not disapprove, commute, or suspend, in whole or in part, that portion of an adjudged sentence that includes:

(i) confinement for more than six months; or

(ii) dismissal, dishonorable discharge, or bad-conduct discharge.

(C) *Exceptions*

(i) *Trial counsel recommendation.* Upon the recommendation of the trial counsel, in recognition of the substantial assistance by the accused in the investigation or prosecution of another person who has committed an offense, the convening authority or another person authorized to act under this rule shall have the authority to disapprove, commute, or suspend the adjudged sentence, in whole or in part, even with respect to an offense for which a mandatory minimum sentence exists.

(ii) *Pretrial agreement.* If a pretrial agreement has been entered into by the convening authority and the accused, as authorized by R.C.M. 705, the convening authority or another person authorized to act under this rule shall have the authority to approve, disapprove, commute, or suspend a sentence, in whole or in part, pursuant to the terms of the pretrial agreement. However, if a mandatory minimum sentence of a dishonorable discharge applies to an offense for which an accused has been convicted, the convening authority or another person authorized to act under this rule may commute the dishonorable discharge to a bad-conduct discharge pursuant to the terms of the pretrial agreement.

(D) If the convening authority acts to disapprove, commute, or suspend, in whole or in part, the sentence of the court-martial for an offense listed in subparagraph (c)(1)(A) of this rule, the convening authority shall provide, at the same time, a written explanation of the reasons for such action. The written explanation shall be made a part of the record of trial and action thereon.''

(gg) R.C.M. 1107(e) is amended to read as follows:

''(e) *Ordering rehearing or other trial.*

(1) *Rehearings not permitted.* A rehearing may not be ordered by the convening authority where the adjudged sentence for the case includes a sentence of dismissal, dishonorable discharge, or bad-conduct discharge or confinement for more than six months.

(2) *Rehearings permitted.*

(A) *In general.* Subject to paragraph (e)(1) and subparagraphs (e)(2)(B) through (e)(2)(E) of this rule, the convening authority may in the convening authority's discretion order a rehearing. A rehearing may be ordered as to some or all offenses of which findings of guilty were entered and the sentence, or as to sentence only.

(B) *When the convening authority may order a rehearing.* The convening authority may order a rehearing:

(i) *When taking action on the court-martial under this rule.* Prior to ordering a rehearing on a finding, the convening authority must disapprove the applicable finding and the sentence and state the reasons for disapproval of said finding. Prior to ordering a rehearing on the sentence, the convening authority must disapprove the sentence.

(ii) *When authorized to do so by superior competent authority.* If the convening authority finds a rehearing as to any offenses impracticable, the convening authority may dismiss those specifications and, when appropriate, charges.

(iii) *Sentence reassessment.* If a superior competent authority has approved some of the findings of guilty and has authorized a rehearing as to other offenses and the sentence, the convening authority may, unless otherwise directed, reassess the sentence based on the approved findings of guilty and dismiss the remaining charges. Reassessment is appropriate only where the convening authority determines that the accused's sentence would have been at least of a certain magnitude had the prejudicial error not been committed and the reassessed sentence is appropriate in relation to the affirmed findings of guilty.''

(C) *Limitations.*

(i) *Sentence approved.* A rehearing shall not be ordered if, in the same action, a sentence is approved.

(ii) *Lack of sufficient evidence.* A rehearing may not be ordered as to findings of guilty when there is a lack of sufficient evidence in the record to support the findings of guilty of the offense charged or of any lesser included offense. A rehearing may be ordered, however, if the proof of guilt consisted of inadmissible evidence for which there is available an admissible substitute. A rehearing may be ordered as to any lesser offense included in an offense of which the accused was found guilty, provided there is sufficient evidence in the record to support the lesser included offense.

(iii) *Rehearing on sentence only.* A rehearing on sentence only shall not be referred to a different kind of court-martial from that which made the original findings. If the convening authority determines a rehearing on sentence is impracticable, the convening authority may approve a sentence of no punishment without conducting a rehearing.

(D) *Additional charges.* Additional charges may be referred for trial together with charges as to which a rehearing has been directed.

(E) *Lesser included offenses.* If at a previous trial the accused was convicted of a lesser included offense, a rehearing may be ordered only as to that included offense or as to an offense included in that found. If, however, a rehearing is ordered improperly on the original offense charged and the accused is convicted of that offense at the rehearing, the finding as to the lesser included offense of which the accused was convicted at the original trial may nevertheless be approved.

(3) *''Other'' trial.* The convening or higher authority may order an ''other'' trial if the original proceedings were invalid because of lack of jurisdiction or failure of a specification to state an offense. The authority ordering an ''other'' trial shall state in the action the basis for declaring the proceedings invalid.''

(hh) The Note currently located immediately following the title of R.C.M. 1108(b) and prior to the first line, ''The convening authority may . . .'', is amended to read as follows:

''[Note: R.C.M. 1108(b) applies to offenses committed on or after 24 June 2014; however, if at least one offense in a case occurred prior to 24 June 2014, then the prior version of R.C.M. 1108(b) applies to all offenses in the case.]''

(ii) R.C.M. 1109(a) is amended to read as follows:

''(a) *In general.* Suspension of execution of the sentence of a court-martial may be vacated for violation of any condition of the suspension as provided in this rule.''

(jj) R.C.M. 1109(c)(4)(A) is amended to read as follows:

''(A) *Rights of probationer.* Before the preliminary hearing, the probationer shall be notified in writing of:''

(kk) R.C.M. 1109(c)(4)(C) is amended to read as follows:

''(C) *Decision.* The hearing officer shall determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension. If the hearing officer determines that probable cause is lacking, the hearing officer shall issue a written order directing that the probationer be released from confinement. If the hearing officer determines that there is probable cause to believe that the probationer violated a condition of suspension, the hearing officer shall set forth this determination in a written memorandum that details therein the evidence relied upon and reasons for making the decision. The hearing officer shall forward the original memorandum or release order to the probationer's commander and forward a copy to the probationer and the officer in charge of the confinement facility.''

(ll) A new sentence is added to the end of R.C.M. 1109(d)(1)(A) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension.''

(mm) R.C.M. 1109(d)(1)(C) is amended to read as follows:

''(C) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(nn) A new sentence is added to the end of R.C.M. 1109(d)(1)(D) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(oo) R.C.M. 1109(d)(2)(A) is amended to read as follows:

''(A) *In general.* The officer exercising general court-martial jurisdiction over the probationer shall review the record produced by and the recommendation of the officer exercising special court-martial jurisdiction over the probationer, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising general court-martial jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(pp) A new sentence is added to the end of R.C.M. 1109(e)(1) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension.''

(qq) R.C.M. 1109(e)(3) is amended to read as follows:

''(3) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(rr) A new sentence is added to the end of R.C.M. 1109(e)(5) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(ss) R.C.M. 1109(e)(6) is amended to read as follows:

''(6) *Decision.* The special court-martial convening authority shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(tt) A new sentence is added to the end of R.C.M. 1109(g)(1) and reads as follows:

''The purpose of the hearing is for the hearing officer to determine whether there is probable cause to believe that the probationer violated the conditions of the probationer's suspension.''

(uu) R.C.M. 1109(g)(3) is amended to read as follows:

''(3) *Hearing.* The procedure for the vacation hearing shall follow that prescribed in subsection (h) of this rule.''

(vv) A new sentence is added to the end of R.C.M. 1109(g)(5) and reads as follows:

''This record shall include the recommendation, the evidence relied upon, and reasons for making the decision.''

(ww) R.C.M. 1109(g)(6) is amended to read as follows:

''(6) *Decision.* A commander with authority to vacate the suspension shall review the record produced by and the recommendation of the person who conducted the vacation proceeding, decide whether there is probable cause to believe that the probationer violated a condition of the probationer's suspension, and, if so, decide whether to vacate the suspended sentence. If the officer exercising jurisdiction decides to vacate the suspended sentence, that officer shall prepare a written statement of the evidence relied on and the reasons for vacating the suspended sentence.''

(xx) A new R.C.M. 1109(h) is inserted and reads as follows:

''(h) *Hearing procedure.*

(1) *Generally.* The hearing shall begin with the hearing officer informing the probationer of the probationer's rights. The government will then present evidence. Upon the conclusion of the government's presentation of evidence, the probationer may present evidence. The probationer shall have full opportunity to present any matters in defense, extenuation, or mitigation. Both the government and probationer shall be afforded an opportunity to cross-examine adverse witnesses. The hearing officer may also question witnesses called by the parties.

(2) *Rules of evidence.* The Military Rules of Evidence—other than Mil. R. Evid. 301, 302, 303, 305, 412, and Section V—shall not apply. Nor shall Mil. R. Evid. 412(b)(1)(C) apply. In applying these rules to a vacation hearing, the term ''military judge,'' as used in these rules, shall mean the hearing officer, who shall assume the military judge's authority to exclude evidence from the hearing, and who shall, in discharging this duty, follow the procedures set forth in these rules. However, the hearing officer is not authorized to order production of communications covered by Mil. R. Evid. 513 or 514.

(3) *Production of witnesses and other evidence.* The procedure for the production of witnesses and other evidence shall follow that prescribed in R.C.M. 405(g), except that R.C.M. 405(g)(3)(B) shall not apply. The hearing officer shall only consider testimony and other evidence that is relevant to the limited purpose of the hearing.

(4) *Presentation of testimony.* Witness testimony may be provided in person, by video teleconference, by telephone, or by similar means of remote testimony. All testimony shall be taken under oath, except that the probationer may make an unsworn statement.

(5) *Other evidence.* If relevant to the limited purpose of the hearing, and not cumulative, a hearing officer may consider other evidence, in addition to or in lieu of witness testimony, including statements, tangible evidence, or reproductions thereof, offered by either side, that the hearing officer determines is reliable. This other evidence need not be sworn.

(6) *Presence of probationer.* The taking of evidence shall not be prevented and the probationer shall be considered to have waived the right to be present whenever the probationer:

(A) After being notified of the time and place of the proceeding is voluntarily absent; or

(B) After being warned by the hearing officer that disruptive conduct will cause removal from the proceeding, persists in conduct that is such as to justify exclusion from the proceeding.

(7) *Objections.* Any objection alleging failure to comply with these rules shall be made to the convening authority via the hearing officer. The hearing officer shall include a record of all objections in the written recommendations to the convening authority.

(8) *Access by spectators.* Vacation hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the hearing or the hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open hearing. Examples of overriding interests may include: Preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or hearing officers must conclude that no lesser methods short of closing the hearing can be used to protect the overriding interest in the case. Convening authorities or hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or hearing officer believes closing the hearing is necessary, the convening authority or hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the record.

(9) *Victim's rights.* Any victim of the underlying offense for which the probationer received the suspended sentence, or any victim of the alleged offense that is the subject of the vacation hearing, has the right to reasonable, accurate, and timely notice of the vacation hearing. For purposes of this rule, the term ''victim'' is defined as an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense.''

(yy) A new R.C.M. 1203(g) is inserted and reads as follows:

''(g) *Article 6b(e) petition for writ of mandamus.* The Judge Advocates General shall establish the means by which the petitions for writs of mandamus described in Article 6b(e) are forwarded to the Courts of Criminal Appeals in accordance with their rule-making functions of Article 66(f).''

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) Mil. R. Evid. 304(c) is amended to read as follows:

''(c) *Corroboration of a Confession or Admission.*

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that would tend to establish the trustworthiness of the admission or confession.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of the admission or confession, then it may be considered as evidence against the accused. Not every element or fact contained in the confession or admission must be independently proven for the confession or admission to be admitted into evidence in its entirety.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) *Quantum of Evidence Needed.* The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the admission or confession. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) *Procedure.* The military judge alone is to determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.''

(b) Mil. R. Evid. 311(a) is amended to read as follows:

''(a) *General rule.* Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) the accused makes a timely motion to suppress or an objection to the evidence under this rule;

(2) the accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the Armed Forces; and

(3) exclusion of the evidence results in appreciable deterrence of future unlawful searches or seizures and the benefits of such deterrence outweigh the costs to the justice system.''

(c) A new Mil. R. Evid. 311(c)(4) is inserted and reads as follows:

''(4) *Reliance on Statute.* Evidence that was obtained as a result of an unlawful search or seizure may be used when the official seeking the evidence acts in objectively reasonable reliance on a statute later held violative of the Fourth Amendment.''

(d) Mil. R. Evid. 311(d)(5)(A) is amended to read as follows:

''(A) *In general.* When the defense makes an appropriate motion or objection under subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant; that the evidence was obtained by officials in objectively reasonable reliance on a statute later held violative of the Fourth Amendment; or that the deterrence of future unlawful searches or seizures is not appreciable or such deterrence does not outweigh the costs to the justice system of excluding the evidence.''

(e) Mil. R. Evid. 414(d)(2)(A) is amended to read as follows:

''(A) any conduct prohibited by Article 120 and committed with a child, or prohibited by Article 120b.''

(f) Mil. R. Evid. 504 is amended to read as follows:

''Rule 504. Marital privilege

(a) *Spousal Incapacity.* A person has a privilege to refuse to testify against his or her spouse. There is no privilege under subdivision (a) when, at the time of the testimony, the parties are divorced, or the marriage has been annulled.

(b) *Confidential Communication Made During the Marriage.*

(1) *General Rule.* A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were married and not separated as provided by law.

(2) *Who May Claim the Privilege.* The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.

(c) *Exceptions.*

(1) *To Confidential Communications Only.* Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).

(2) *To Spousal Incapacity and Confidential Communications.* There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or with respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 8 U.S.C. 1328; with transporting the other spouse in interstate commerce for prostitution, immoral purposes, or another offense in violation of 18 U.S.C. 2421–2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(d) *Definitions.* As used in this rule:

(1) ''A child of either'' means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

(A) An individual under the age of 18; or

(B) an individual with a mental handicap who functions under the age of 18.

(2) ''Temporary physical custody'' means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of his or her child for recurring care or during absences due to temporary duty or deployments.

(3) As used in this rule, a communication is ''confidential'' if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.''

(g) Mil. R. Evid. 505(e)(2) is amended by replacing ''investigating officer'' with ''preliminary hearing officer.''

(h) Mil. R. Evid. 801(d)(1)(B) is amended to read as follows:

''(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or''

(i) The first sentence of Mil. R. Evid. 803(6)(E) is amended to read as follows:

''(E) the opponent does not show that the source of information or the method or circumstance of preparation indicate a lack of trustworthiness.''

(j) Mil. R. Evid. 803(7)(C) is amended to read as follows:

''(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.''

(k) The first sentence of Mil. R. Evid. 803(8)(B) is amended to read as follows:

''(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.''

(l) Mil. R. Evid. 803(10)(B) is amended to read as follows:

''(B) a counsel for the government who intends to offer a certification provides written notice of that intent at least 14 days before trial, and the accused does not object in writing within 7 days of receiving the notice—unless the military judge sets a different time for the notice or the objection.''

(m) Mil. R. Evid. 804(b)(1)(B) is amended by replacing ''pretrial investigation'' with ''preliminary hearing.''

(n) Mil. R. Evid. 1101(d)(2) is amended by replacing ''pretrial investigations'' with ''preliminary hearings.''

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 4, Article 80—Attempts, subparagraph e. is amended to read as follows:

''e. *Maximum punishment.* Any person subject to the code who is found guilty of an attempt under Article 80 to commit any offense punishable by the code shall be subject to the same maximum punishment authorized for the commission of the offense attempted, except that in no case shall the death penalty be adjudged, and in no case, other than attempted murder, shall confinement exceeding 20 years be adjudged. Except in the cases of attempts of Article 120(a) or (b), rape or sexual assault of a child under Article 120b(a) or (b), and forcible sodomy under Article 125, mandatory minimum punishment provisions shall not apply.''

(b) Paragraph 57, Article 131—Perjury, subparagraph c.(1) is amended by replacing ''an investigation'' with ''a preliminary hearing.''

(c) Paragraph 57, Article 131—Perjury, subparagraph c.(3) is amended by replacing ''investigation'' with ''preliminary hearing.''

(d) Paragraph 96, Article 134—Obstructing justice, subparagraph f. is amended to read as follows:

''f. *Sample specification.* In that (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about 20, wrongfully (endeavor to) (impede (a trial by court-martial) (an investigation) (a preliminary hearing) (____)) [influence the actions of ____, (a trial counsel of the court-martial) (a defense counsel of the court-martial) (an officer responsible for making a recommendation concerning disposition of charges) (____)] [(influence) (alter) the testimony of ____as a witness before a (court-martial) (an investigating officer) (a preliminary hearing) (____)] in the case of ____by [(promising) (offering) (giving) to the said, (the sum of $) (____, of a value of about $)] [communicating to the said ____a threat to ____] [____], (if) (unless) he/she, the said ____, would [recommend dismissal of the charges against said ____] [(wrongfully refuse to testify) (testify falsely concerning ____) (____)] [(at such trial) (before such investigating officer) (before such preliminary hearing officer)] [____].''

(e) Paragraph 108, Testify: Wrongful refusal, subparagraph f. is amended by replacing ''officer conducting an investigation under Article 32, Uniform Code of Military Justice'' with ''officer conducting a preliminary hearing under Article 32, Uniform Code of Military Justice.''

(f) Paragraph 110, Article 134—Threat, communicating, subparagraph c. is amended to read as follows:

''c. *Explanation.* For purposes of this paragraph, to establish that the communication was wrongful it is necessary that the accused transmitted the communication for the purpose of issuing a threat, with the knowledge that the communication would be viewed as a threat, or acted recklessly with regard to whether the communication would be viewed as a threat. However, it is not necessary to establish that the accused actually intended to do the injury threatened. Nor is the offense committed by the mere statement of intent to commit an unlawful act not involving injury to another. *See also* paragraph 109, Threat or hoax designed or intended to cause panic or public fear.''

Dated: March 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06393 Filed 3–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Amendments to Appendix 22

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense.

ACTION: Publication of Discussion and Analysis (Supplementary Materials) accompanying the Manual for Courts-Martial, United States (2012 ed.) (MCM).

SUMMARY: The JSC hereby publishes Supplementary Materials accompanying the MCM as amended by Executive Orders 13643, 13669, and 13696. These changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation,

Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters and Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency. These Supplementary Materials have been approved by the JSC and the Acting General Counsel of the Department of Defense.

DATES: The Supplementary Materials are effective as of March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Major Harlye S.M. Carlton, USMC, (703) 963–9299 or *harlye.carlton@usmc.mil.* The JSC Web site is located at: *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION:

Annex

Section 1: The Discussion to Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) A new Discussion is inserted immediately after Paragraph 40.c.1. and reads as follows:

''Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether the injury by the service member was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.''

(b) A new Discussion is inserted immediately after Paragraph 103a.c.1. and reads as follows:

''Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether the injury by the service member was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.''

Sec. 2: Appendix 22 of the Manual for Courts-Martial, United States, is amended as follows:

(a) The Note at the beginning of the first paragraph, Section I, General Provisions, is deleted.

(b) Section I, General Provisions, is amended by adding the following after the final paragraph:

''*2013 Amendment.* On December 1, 2011, the Federal Rules of Evidence were amended by restyling the rules, making them simpler to understand and use, without changing the substantive meaning of any rule.

In light of the amendments to the Federal Rules of Evidence, significant changes to the Military Rules of Evidence (Mil. R. Evid.) were implemented by Executive Order 13643, dated May 15, 2013. In addition to stylistic changes that harmonize the Mil. R. Evid. with the Federal Rules, the changes also ensure that the rules address the admissibility of evidence, rather than the conduct of the individual actors. Like the Federal Rules of Evidence, these rules ultimately dictate whether evidence is admissible and, therefore, it is appropriate to phrase the rules with admissibility as the focus, rather than a focus on the actor (*i.e.,* the commanding officer, military judge, accused, etc.).

The rules were also reformatted, and the new format achieves a clearer presentation. This was accomplished by indenting paragraphs with headings and hanging indents to allow the practitioner to distinguish between different subsections of the rules. The restyled rules also reduce the use of inconsistent terms that are intended to mean the same thing but may, because of the inconsistent use, be misconstrued by the practitioner to mean something different.

While most of the changes avoid any style improvement that might result in a substantive change in the application of the rule, some of those changes to the rules were proposed with the express purpose of changing the substantive content of the rule in order to affect the application of the rule in practice. The analysis of each rule clearly indicates whether the drafters intended the changes to be substantive or merely stylistic. The reader is encouraged to consult the analysis of each rule if he or she has questions as to whether the drafters intended a change to the rule to have an effect on a ruling of admissibility.''

(c) The analysis following Mil. R. Evid. 101 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* In subsection (a), the phrase ''including summary courts-martial'' was removed. The drafters recommended removing this phrase because Rule 1101 already addresses the applicability of these rules to summary courts-martial. In subsection (b), the word ''shall'' was changed to ''will'' in accordance with the approach of the Advisory Committee on Evidence Rules to minimize the use of words such as ''shall'' and ''should'' because of the potential disparity in application and interpretation of whether the word is precatory or prescriptive. *See* Fed. R. Evid. 101, Restyled Rules Committee Note. The drafters did not intend this amendment to change any result in any ruling on evidence admissibility.

The discussion sections do not have the force of law and may be changed without an Executive Order, as warranted by changes in applicable case law. The discussion sections should be considered treatise material and are non-binding on the practitioner.

This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(d) The analysis following Mil. R. Evid. 103 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(e) The analysis following Mil. R. Evid. 104 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(f) The title of the analysis section of Mil. R. Evid. 105 is changed to ''Limiting evidence that is not admissible against other parties or for other purposes.''

(g) The analysis following Mil. R. Evid. 105 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(h) The analysis following Mil. R. Evid. 106 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(i) The analysis following Mil. R. Evid. 201 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. Former subsection (d) was subsumed into subsection (c) and the remaining subsections were renumbered accordingly. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(j) The numbering and title of the analysis section of Mil. R. Evid. 201A is

changed to ''Rule 202 Judicial notice of law.''

(k) The analysis following Mil. R. Evid. 202 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Former Rule 201A was renumbered so that it now appears as Rule 202. In previous editions, Rule 202 did not exist and therefore no other rules were renumbered as a result of this change. The phrase ''in accordance with Mil. R. Evid. 104'' was added to subsection (b). This amendment clarifies that Rule 104 controls the military judge's relevancy determination.

This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(l) The analysis following Mil. R. Evid. 301 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* In subsection (d), the word ''answer'' should be defined as ''a witness's . . . response to a question posed.'' *Black's Law Dictionary* 100 (8th ed. 2004). Subsection (d) only applies when the witness's response to the question posed may be incriminating. It does not apply when the witness desires to make a statement that is unresponsive to the question asked for the purpose of gaining protection from the privilege.

Former subsections (d) and (f)(2) were combined; this change makes the rule easier to use. The issues typically arise chronologically in the course of a trial, because a witness often testifies on direct without asserting the privilege and then, during the ensuing cross-examination, asserts the privilege.

Former subsection (b)(2) was moved to a discussion section; the drafters recommended this change because subsection (b)(2) addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis. The word ''should'' was changed to ''may;'' the drafters proposed this recommendation in light of CAAF's holding in *United States* v. *Bell,* 44 M.J. 403 (C.A.A.F. 1996). In that case, CAAF held that Congress did not intend for Article 31(b) warnings to apply at trial, and noted that courts have the discretion, but not an obligation, to warn witnesses on the stand. *Id.* at 405–06. If a member testifies at an Article 32 hearing or court-martial without receiving Article 31(b) warnings, his or her Fifth Amendment rights have not been violated and those statements can be used against him or her at subsequent proceedings. *Id.*

In subsection (e), the phrase ''concerning the issue of guilt or innocence'' was removed; the drafters recommended this change because this subsection applies to the presentencing phase of the trial as well as the merits phase. The use of the term ''concerning the issue of guilt or innocence'' incorrectly implied that the subsection only referred to the merits phase. The rule was renamed ''Limited Waiver,'' changed from ''Waiver by the accused''; the drafters recommended this change to indicate that when an accused who is on trial for two or more offenses testifies on direct as to only one of the offenses, he or she has only waived his or her rights with respect to that offense and no other. This subsection was moved earlier in the rule and renumbered; the drafters recommended this change to address the issue of limited waivers earlier because of the importance of preserving the accused's right against self-incrimination.

The remaining subsections were renumbered as appropriate. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(m) The analysis following Mil. R. Evid. 302 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(n) The analysis following Mil. R. Evid. 303 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(o) The analysis following Mil. R. Evid. 304 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Former subsection (c), which contains definitions of words used throughout the rule, was moved; it now immediately follows subsection (a) and is highly visible to the practitioner. Former subsection (h)(3), which discusses denials, was moved to subsection (a)(2); it is now included near the beginning of the rule and highlights the importance of an accused's right to remain silent. The remaining subsections were moved and renumbered; the rule now generally follows the chronology of how the issues might arise at trial. The drafters did not intend to change any result in any ruling on evidence admissibility.

In subsection (b), the term ''allegedly'' was added. The term references derivative evidence and clarifies that evidence is not derivative unless a military judge finds, by a preponderance of the evidence, that it is derivative.

In subsections (c)(5), (d), (f)(3)(A), and (f)(7), the word ''shall'' was replaced with ''will'' or ''must.'' The drafters agree with the approach of the Advisory Committee on Evidence Rules to minimize the use of words such as ''shall'' because of the potential disparity in application and interpretation of whether the word is precatory or prescriptive.

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(p) The analysis following Mil. R. Evid. 305 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The definition of ''person subject to the code'' was revised. The change clarifies that the rule includes a person acting as a knowing agent only in subsection (c). Subsection (c) covers the situation where a person subject to the code is interrogating an accused, and therefore an interrogator would include a knowing agent of a person subject to the code, such as local law enforcement acting at the behest of a military investigator. The term ''person subject to the code'' is also used in subsection (f), which discusses a situation in which a person subject to the code is being interrogated. If an agent of a person subject to the code is being interrogated, subsection (f) is inapplicable, unless that agent himself or herself is subject to the code and is suspected of an offense.

The definition of ''custodial interrogation'' was moved to subsection (b) from subsection (d) and the definitions are now co-located. The definition is derived from *Miranda* v. *Arizona*, 384 U.S. 436, 444–45 (1966), and *Berkemer* v. *McCarty*, 468 U.S. 420, 442 (1984).

''Accused'' is defined as ''[a] person against whom legal proceedings have been initiated.'' *Black's Law Dictionary* 23 (8th ed. 2004). ''Suspect'' is defined as ''[a] person believed to have committed a crime or offense.'' *Id.* at 1486. In subsection (c)(1), the drafters recommended using the word ''accused'' in the first sentence because the rule generally addresses the

admissibility of a statement at a court-martial at which legal proceedings have been initiated against the individual. Throughout the remainder of the rule, the drafters recommended using ''accused'' and ''suspect'' together to elucidate that an interrogation that triggers the need for Article 31 warnings will often take place before the individual has become an accused and is still considered only a suspect.

Although not specifically outlined in subsection (c), interrogators and investigators should fully comply with the requirements of *Miranda.* When a suspect is subjected to custodial interrogation, the prosecution may not use statements stemming from that custodial interrogation unless it demonstrates that the suspect was warned of his or her rights. 384 U.S. at 444. At a minimum, *Miranda* requires that ''the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.'' *Id.* A person subject to the code who is being interrogated may be entitled to both *Miranda* warnings and Article 31(b) warnings, depending on the circumstances.

The titles of subsections (c)(2) and (c)(3) were changed to ''Fifth Amendment Right to Counsel'' and ''Sixth Amendment Right to Counsel'' respectively; the drafters recommended this change because practitioners are more familiar with those terms. In previous editions, the subsections did not expressly state which right was implicated. Although the rights were clear from the text of the former rules, the new titles will allow practitioners to quickly find the desired rule.

Subsection (c)(3) is entitled ''Sixth Amendment Right to Counsel'' even though the protections of subsection (c)(3) exceed the constitutional minimal standard established by the Sixth Amendment as interpreted by the Supreme Court in *Montejo* v. *Louisiana,* 556 U.S. 778 (2009). In *Montejo,* the Court overruled its holding in *Michigan* v. *Jackson,* 475 U.S. 625 (1986), and held that a defendant's request for counsel at an arraignment or similar proceeding or an appointment of counsel by the court does not give rise to the presumption that a subsequent waiver by the defendant during a police-initiated interrogation is invalid. 556 U.S. at 797–98. In the military system, defense counsel is detailed to a court-martial. R.C.M. 501(b). The accused need not affirmatively request counsel. Under the Supreme Court's holding in *Montejo,* the detailing of defense counsel would not bar law enforcement from initiating an interrogation with the accused and seeking a waiver of the right to have counsel present. However, subsection (c)(3) provides more protection than the Supreme Court requires. Under this subsection, if an accused is represented by counsel, either detailed or retained, he or she may not be interrogated without the presence of counsel. This is true even if, during the interrogation, the accused waives his or her right to have counsel present. If charges have been preferred but counsel has not yet been detailed or retained, the accused may be interrogated if he or she voluntarily waives his or her right to have counsel present.

The words ''after such request'' were added to subsection (c)(2) and elucidate that any statements made prior to a request for counsel are admissible, assuming, of course, that Article 31(b) rights were given. Without that phrase, the rule could be read to indicate that all statements made during the interview, even those made prior to the request, were inadmissible. The drafters did not intend such a meaning, leading to this recommended change.

The drafters recommended changing the word ''shall'' to ''will'' in subsections (a), (d), and (f). The drafters agree with the approach of the Advisory Committee on Evidence Rules to minimize the use of ''shall'' because of the potential disparity in application and interpretation of whether the word is precatory or prescriptive.

In subsection (e)(1), the requirement that the accused's waiver of the privilege against self-incrimination and the waiver of the right to counsel must be affirmative was retained. This rule exceeds the minimal constitutional requirement. In *Berghuis* v. *Thompkins,* 560 U.S. 370 (2010), the defendant remained mostly silent during a three-hour interrogation and never verbally stated that he wanted to invoke his rights to counsel and to remain silent. The Supreme Court held that the prosecution did not need to show that the defendant expressly waived his rights, and that an implicit waiver is sufficient. *Id.* at 384. Despite the Supreme Court's holding, under this rule, in order for a waiver to be valid, the accused or suspect must actually take affirmative action to waive his or her rights. This rule places a greater burden on the government to show that the waiver is valid, and provides more protection to the accused or suspect than is required under the *Berghuis* holding.

In subsection (f)(2), the word ''abroad'' was replaced with ''outside of a state, district, commonwealth, territory, or possession of the United States.'' This change clearly defines where the rule regarding foreign interrogations applies.

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(q) The analysis following Mil. R. Evid. 311 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The definition of ''unlawful'' was moved from subsection (c) to subsection (b) and now immediately precedes the subsection in which the term is first used in the rule. Other subsections were moved and now generally follow the order in which the issues described in the subsections arise at trial. The subsections were renumbered and titled; this change makes it easier for the practitioner to find the relevant part of the rule. Former subsection (d)(2)(c), addressing a motion to suppress derivative evidence, was subsumed into subsection (d)(1). This change reflects how a motion to suppress seized evidence must follow the same procedural requirements as a motion to suppress derivative evidence.

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(r) The analysis following Mil. R. Evid. 312 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The last sentence of former subsection (b)(2) was moved to a discussion paragraph; the drafters recommended this change because it addresses the conduct of the examiner rather than the admissibility of evidence. *See supra,* General Provisions Analysis. Failure to comply with the requirement that a person of the same sex conduct the examination does not make the examination unlawful or the evidence inadmissible.

In subsection (c)(2)(a), the words ''clear indication'' were replaced with ''probable cause.'' ''Clear indication'' was not well-understood by practitioners nor properly defined in case law, whereas ''probable cause'' is a recognized Fourth Amendment term. The use of the phrase ''clear indication'' likely came from the Supreme Court's

holding in *Schmerber* v. *California,* 384 U.S. 757 (1966). In that case, the Court stated: ''In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search.'' *Id.* at 770. However, in *United States* v. *Montoya de Hernandez,* 473 U.S. 531 (1985), the Supreme Court clarified that it did not intend to create a separate Fourth Amendment standard when it used the words ''clear indication.'' *Id.* at 540 (''[W]e think that the words in *Schmerber* were used to indicate the necessity for particularized suspicion that the evidence sought might be found within the body of the individual, rather than as enunciating still a third Fourth Amendment threshold between 'reasonable suspicion' and 'probable cause.' ''). The appropriate standard for a search under subsection (c)(2)(a) is probable cause. The President's adoption of the probable cause standard raised the level of suspicion required to perform a search under this subsection beyond that which was required in previous versions of this rule. The same reasoning applies to the change in subsection (d), where the words ''clear indication'' were replaced with ''probable cause.'' This approach is consistent with the Court of Military Appeals' opinion in *United States* v. *Bickel,* 30 M.J. 277, 279 (C.M.A. 1990) (''We have no doubt as to the constitutionality of such searches and seizures based on probable cause'').

In subsection (d), the term ''involuntary'' was replaced with ''nonconsensual'' for the sake of consistency and uniformity throughout the subsection; the drafters did not intend to change the rule in any practical way by using ''nonconsensual'' in the place of ''involuntary.''

A discussion paragraph was added following subsection (e) to address a situation in which a person is compelled to ingest a substance in order to locate property within that person's body. This paragraph was previously found in subsection (e); the drafters recommended removing it from the rule itself because it addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis.

The last line of subsection (f) was added; this change conforms the rule with CAAF's holding in *United States* v. *Stevenson,* 66 M.J. 15 (C.A.A.F. 2008). In *Stevenson,* the court held that any additional intrusion, beyond what is necessary for medical treatment, is a search within the meaning of the Fourth Amendment. *Id.* at 19 (''the Supreme Court has not adopted a de minimis exception to the Fourth Amendment's warrant requirement''). The drafters recommended moving the first line of former subsection (f) to a discussion paragraph because it addresses conduct rather than the admissibility of evidence, and is therefore more appropriately addressed in a discussion paragraph. *See supra,* General Provisions Analysis.

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(s) The analysis following Mil. R. Evid. 313 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The definition of ''inventory was added to subsection (c) and further distinguishes inventories from inspections. This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(t) The analysis following Mil. R. Evid. 314 is amended by adding the following language after subparagraph (k):

''*2013 Amendment.* Language was added to subsection (a). This language elucidates that the rules as written afford at least the minimal amount of protection required under the Constitution as applied to service members. If new case law is developed after the publication of these rules which raises the minimal constitutional standards for the admissibility of evidence, that standard will apply to evidence admissibility, rather than the standard established under these rules.

Subsection (c) limits the ability of a commander to search persons or property upon entry to or exit from the installation alone, rather than anywhere on the installation, despite the indication of some courts in dicta that security personnel can search a personally owned vehicle anywhere on a military installation based on no suspicion at all. *See, e.g., United States* v. *Rogers,* 549 F.2d 490, 493–94 (8th Cir. 1976). Allowing suspicionless searches anywhere on a military installation too drastically narrows an individual's privacy interest. Although individuals certainly have a diminished expectation of privacy when they are on a military installation, they do not forgo their privacy interest completely.

A Discussion section was added below subsection (c) to address searches conducted contrary to a treaty or agreement. That material was previously located in subsection (c). The drafters recommended moving it to the Discussion because it addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis.

Although not explicitly stated in subsection (e)(2), the Supreme Court's holding in *Georgia* v. *Randolph,* 547 U.S. 103 (2006), applies to this subsection. *See id.* at 114–15 (holding that a warrantless search was unreasonable if a physically present co-tenant expressly refused to give consent to search, even if another co-tenant had given consent).

In subsection (f)(2), the phrase ''reasonably believed'' was changed to ''reasonably suspected.'' This change aligns the rule with recent case law and alleviates any confusion that ''reasonably believed'' established a higher level of suspicion required to conduct a stop-and-frisk than required by the Supreme Court in *Terry* v. *Ohio,* 392 U.S. 1 (1968). The ''reasonably suspected'' standard conforms to the language of the Supreme Court in *Arizona* v. *Johnson,* 555 U.S. 323, 326 (2009), in which the Court stated: ''To justify a pat down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.'' This standard, and not a higher one, is required before an individual can be stopped and frisked under this subsection. Additionally, a discussion paragraph was added following this subsection to further expound on the nature and scope of the search, based on case law. *See, e.g., Terry,* 392 U.S. at 30–31; *Pennsylvania* v. *Mimms,* 434 U.S. 106, 111–12 (1977).

In subsection (f)(3), the drafters recommended changing the phrase ''reasonable belief'' to ''reasonable suspicion'' for the same reasons discussed above. The discussion section was added to provide more guidance on the nature and scope of the search, based on case law. *See, e.g., Michigan* v. *Long,* 463 U.S. 1032, 1049 (1983) (''the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of

weapons''); *Mimms,* 434 U.S. at 111 (no Fourth Amendment violation when the driver was ordered out of the car after a valid traffic stop but without any suspicion that he was armed and dangerous because ''what is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety''); *Maryland* v. *Wilson,* 519 U.S. 408 (1997) (extending the holding in *Mimms* to passengers as well as drivers).

The language from former subsection (g)(2), describing the search of an automobile incident to a lawful arrest of an occupant, was moved to the discussion paragraph immediately following subsection (f)(3). The drafters recommended this change because it addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis. The discussion section is based on the Supreme Court's holding in *Arizona* v. *Gant,* 556 U.S. 332, 351 (2009) (''Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest'').

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(t) The analysis following Mil. R. Evid. 315 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Former subsection (h) was moved so that it immediately follows subsection (a). The drafters recommended changing this language to a discussion paragraph because it generally applies to the entire rule, rather than any particular subsection and also because it addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis.

In subsection (b), the term ''authorization to search'' was changed to ''search authorization.'' This amendment aligns the rule with the term more commonly used by practitioners and law enforcement. The drafters recommended moving former subsection (c)(4) to a discussion paragraph immediately following subsection (c) because it addresses conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis.

The second sentence in former subsection (d)(2) was moved to subsection (d). This change elucidates that its content applies to both commanders under subsection (d)(1) and military judges or magistrates under subsection (d)(2). The drafters made this recommendation in reliance on CAAF's decision in *United States* v. *Huntzinger,* 69 M.J. 1 (C.A.A.F. 2010), which held that a commander is not *per se* disqualified from authorizing a search under this rule even if he or she has participated in investigative activities in furtherance of his or her command responsibilities.

Former subsection (h)(4), entitled, ''Search warrants,'' was moved to subsection (e), now entitled ''Who May Search.'' This change co-locates it with the subsection discussing the execution of search authorizations.

In subsection (f)(2), the word ''shall'' was changed to ''will.'' This change brings the rule in conformance with the approach of the Advisory Committee on Evidence Rules to minimize the use of words such as ''shall'' and ''should'' because of the potential disparity in application and interpretation of whether the word is precatory or prescriptive. In recommending this amendment, the drafters did not intend to change any result in any ruling on evidence admissibility.

Subsection (g) was revised. The drafters' intent behind this revision was to include a definition of exigency rather than to provide examples that may not encompass the wide range of situations where exigency might apply. The definition is derived from Supreme Court jurisprudence. *See Kentucky* v. *King,* 563 U.S. 452 (2011). The drafters recommended retaining language concerning military operational necessity as an exigent circumstance because this rule may be applied to a unique military context where it might be difficult to communicate with a person authorized to issue a search authorization. *See, e.g., United States* v. *Rivera,* 10 M.J. 55 (C.M.A. 1980) (noting that exigency might exist because of difficulties in communicating with an authorizing official, although the facts of that case did not support such a conclusion). Nothing in this rule would prohibit a law enforcement officer from entering a private residence without a warrant to protect the individuals inside from harm, as that is not a search under the Fourth Amendment. *See, e.g., Brigham City* v. *Stuart,* 547 U.S. 398 (2006) (holding that, regardless of their subjective motives, police officers were justified in entering a home without a warrant, under exigent circumstances exception to warrant requirement, as they had an objectively reasonable basis for believing that an occupant was seriously injured or imminently threatened with injury).

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(u) The analysis following Mil. R. Evid. 316 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* In subsection (a), the word ''reasonable'' was added and aligns the rule with the language found in the Fourth Amendment of the U.S. Constitution and Mil. R. Evid. 314 and 315.

In subsection (c)(5)(C), the drafters intended the term ''reasonable fashion'' to include all action by law enforcement that the Supreme Court has established as lawful in its plain view doctrine. *See, e.g., Arizona* v. *Hicks,* 480 U.S. 321, 324–25 (1987) (holding that there was no search when an officer merely recorded serial numbers that he saw on a piece of stereo equipment, but that the officer did conduct a search when he moved the equipment to access serial numbers on the bottom of the turntable); *United States* v. *Lee,* 274 U.S. 559, 563 (1927) (use of a searchlight does not constitute a Fourth Amendment violation). The drafters did not intend to establish a stricter definition of plain view than that required by the Constitution, as interpreted by the Supreme Court. An officer may seize the item only if his or her conduct satisfies the three-part test prescribed by the Supreme Court: (1) He or she does not violate the Fourth Amendment by arriving at the place where the evidence could be plainly viewed; (2) its incriminating character is ''readily apparent''; and (3) he or she has a lawful right of access to the object itself. *Horton* v. *California,* 496 U.S. 128, 136–37 (1990).

This revision is stylistic and addresses admissibility rather than conduct. *See supra,* General Provisions Analysis. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(v) The analysis following Mil. R. Evid. 317 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Former subsections (b) and (c)(3) were moved to a discussion paragraph. The drafters recommended this change because they address conduct rather than the admissibility of evidence. *See supra,* General Provisions Analysis.

This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(w) The analysis following Mil. R. Evid. 321 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(x) The title of the analysis section of Mil. R. Evid. 401 is changed to ''Test for relevant evidence.''

(y) The analysis following Mil. R. Evid. 401 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(z) The title of the analysis section of Mil. R. Evid. 402 is changed to ''General admissibility of relevant evidence.''

(aa) The analysis following Mil. R. Evid. 402 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(bb) The analysis following Mil. R. Evid. 403 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(cc) The title of the analysis section of Mil. R. Evid. 404 is changed to ''Character evidence; crime or other acts.''

(dd) The analysis following Mil. R. Evid. 404 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The word ''alleged'' was added to references to the victim throughout this rule. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ee) The analysis following Mil. R. Evid. 405 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ff) The analysis following Mil. R. Evid. 406 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(gg) The analysis following Mil. R. Evid. 407 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(hh) The title of the analysis section of Mil. R. Evid. 408 is changed to ''Compromise offers and negotiations.''

(ii) The analysis following Mil. R. Evid. 408 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(jj) The title of the analysis section of Mil. R. Evid. 409 is changed to ''Offers to pay medical and similar expenses.''

(kk) The analysis following Mil. R. Evid. 409 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ll) The title of the analysis section of Mil. R. Evid. 410 is changed to ''Pleas, plea discussions, and related statements.''

(mm) The analysis following Mil. R. Evid. 410 is amended by adding the following language after the last paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(nn) The analysis following Mil. R. Evid. 411 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(oo) The title of the analysis section of Mil. R. Evid. 413 is changed to ''Similar crimes in sexual offense cases.''

(pp) The analysis following Mil. R. Evid. 413 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The time requirement in subsection (b) was changed and aligns with the time requirements in Mil. R. Evid. 412 and the Federal Rules of Evidence. This change is also in conformity with military practice in which the military judge may accept pleas shortly after referral and sufficiently in advance of trial. Additionally, subsection (d) was revised and aligns with the Federal Rules of Evidence.

This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(qq) The title of the analysis section of Mil. R. Evid. 414 is changed to ''Similar crimes in child-molestation cases.''

(rr) The analysis following Mil. R. Evid. 414 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The time requirement in subsection (b) was changed and aligns with the time requirements in Mil. R. Evid. 412 and the Federal Rules of Evidence. This change is also in conformity with military practice in which the military judge may accept pleas shortly after referral and sufficiently in advance of trial. Additionally, subsection (d) was revised and aligns with the Federal Rules of Evidence.

This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ss) The title of the analysis section of Mil. R. Evid. 501 is changed to ''Privilege in general.''

(tt) The analysis following Mil. R. Evid. 501 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(uu) The analysis following Mil. R. Evid. 502 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(vv) The analysis following Mil. R. Evid. 503 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ww) The analysis following Mil. R. Evid. 504 is amended by adding the following language after the final paragraph:

''*2011 Amendment.* Subsection (c)(2)(D) was added pursuant to Executive Order 13593 of December 13, 2011.

2013 Amendment. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(xx) The analysis following Mil. R. Evid. 505 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This rule was significantly restructured. These changes bring greater clarity and regularity to military practice. The changes focus primarily on expanding the military judge's explicit authority to conduct *ex parte* pretrial conferences in connection with classified information and detailing when the military judge is required to do so, limiting the disclosure of classified information per order of the military judge, specifically outlining the process by which the accused gains access to and may request disclosure of classified information, and the procedures for using classified material at trial. The drafters intended that the changes ensure classified information is not needlessly disclosed while at the same time ensure that the accused's right to a fair trial is maintained. The drafters adopted some of the language from the Military Commissions Rules of Evidence and the Classified Information Procedures Act.''

(yy) The analysis following Mil. R. Evid. 506 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This rule was significantly revised. These changes bring greater clarity to the rule and align it with changes made to Mil. R. Evid. 505.''

(zz) The title of the analysis section of Mil. R. Evid. 507 is changed to ''Identity of informants.''

(aaa) The analysis following Mil. R. Evid. 507 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Subsection (b) was added to define terms that are used throughout the rule and adding subsection (e)(1) to permit the military judge to hold an in camera review upon request by the prosecution. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(bbb) The analysis following Mil. R. Evid. 509 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* The language ''courts-martial, military judges'' was added to this rule, which now conforms to CAAF's holding in *United States* v. *Matthews,* 68 M.J. 29 (C.A.A.F. 2009). In that case, CAAF held that this rule as it was previously written created an implied privilege that protected the deliberative process of a military judge from disclosure and that testimony that revealed the deliberative thought process of the military judge is inadmissible. *Matthews,* 68 M.J. at 38–43. The changes simply express what the court found had previously been implied.''

(ccc) The analysis following Mil. R. Evid. 511 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Titles were added to the subsections of this rule, improving the rule's clarity and ease of use.''

(ddd) The analysis following Mil. R. Evid. 513 is amended by adding the following language after the final paragraph:

''*2011 Amendment.* In Executive Order 13593 of December 13, 2011, the President removed communications about spouse abuse as an exception to the spousal privilege by deleting the words ''spouse abuse'' and ''the person of the other spouse or'' from Mil. R. Evid. 513(d)(2), thus expanding the overall scope of the privilege. The privilege is now consistent with Mil. R. Evid. 514 in that spouse victim communications to a provider who qualifies as both a psychotherapist for purposes of Mil. R. Evid. 513 or as a victim advocate for purposes of Mil. R. Evid. 514 are covered.

2013 Amendment. The amendment to subsection (e)(3) further expands the military judge's authority and discretion to conduct in camera reviews. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(eee) The analysis following Mil. R. Evid. 514 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Like the psychotherapist-patient privilege created by Mil. R. Evid. 513, Mil. R. Evid. 514 establishes a victim advocate-victim privilege for investigations or proceedings authorized under the Uniform Code of Military Justice. Implemented as another approach to improving the military's overall effectiveness in addressing the crime of sexual assault, facilitating candor between victims and victim advocates, and mitigating the impact of the court-martial process on victims, the rule was developed in response to concerns raised by members of Congress, community groups, and the Defense Task Force on Sexual Assault in the Military Services (DTFSAMS). In its 2009 report, DTFSAMS noted that: 35 States had a privilege for communications between victim advocates and victims of sexual assault; victims did not believe they could communicate confidentially with medical and psychological support service personnel provided by DoD; there was interference with the victim-victim advocate relationship and continuing victim advocate services when the victim advocate was identified as a potential witness in a court-martial; and service members reported being ''re-victimized'' when their prior statements to victim advocates were used to cross-examine them in court-martial proceedings. *Report of the Defense Task Force on Sexual Assault in the Military Services,* at 69 (Dec. 2009). DTFSAMS recommended that Congress ''enact a comprehensive military justice privilege for communications between a Victim Advocate and a victim of sexual assault.'' *Id.* at ES–4. The JSC chose to model a proposed Mil. R. Evid. 514 on Mil. R. Evid. 513, including its various exceptions, in an effort to balance the privacy of the victim's communications with a victim advocate against the accused's legitimate needs.

Under subsection (a) of Mil. R. Evid. 514, the words ''under the Uniform Code of Military Justice'' mean that the privilege only applies to alleged misconduct that could result in UCMJ proceedings. It does not apply in situations in which the alleged offender is not subject to UCMJ jurisdiction. The drafters did not intend Mil. R. Evid. 514 to apply in any proceeding other than those authorized under the UCMJ. However, service regulations dictate how the privilege is applied to non-UCMJ proceedings. Furthermore, this rule only applies to communications between a victim advocate and the victim of an alleged sexual or violent offense.

Under subsection (b), the definition of ''victim advocate'' includes, but is not limited to, personnel performing victim advocate duties within the DoD Sexual Assault Prevention and Response Office (such as a Sexual Assault Response Coordinator), and the DoD Family Advocacy Program (such as a domestic abuse victim advocate). To determine whether an official's duties encompass victim advocate responsibilities, DoD and military service regulations should be consulted. A victim liaison

appointed pursuant to the Victim and Witness Assistance Program is not a ''victim advocate'' for purposes of this rule, nor are personnel working within an Equal Opportunity or Inspector General office. For purposes of this rule, ''violent offense'' means an actual or attempted murder, manslaughter, rape, sexual assault, aggravated assault, robbery, assault consummated by a battery, or similar offense. A simple assault may be a violent offense where violence has been physically attempted or menaced. A mere threatening in words is not a violent offense. This rule will apply in situations where there is a factual dispute as to whether a sexual or violent offense occurred and whether a person actually suffered direct physical or emotional harm from such an offense. The fact that such findings have not been judicially established shall not prevent application of this rule to alleged victims reasonably intended to be covered by this rule.

Under subsection (d), the exceptions to Mil. R. Evid. 514 are similar to the exceptions found in Mil. R. Evid. 513, and the drafters intended them to be applied in the same manner. Mil. R. Evid. 514 does not include comparable exceptions found within Mil. R. Evid. 513(d)(2) and 513(d)(7). Under the ''constitutionally required'' exception, communications covered by the privilege would be released only in the narrow circumstances where the accused could show harm of constitutional magnitude if such communication was not disclosed. The drafters intended this relatively high standard of release to preclude fishing expeditions for possible statements made by the victim; the drafters did not intend it to be an exception that effectively renders the privilege meaningless. If a military judge finds that an exception to this privilege applies, special care should be taken to narrowly tailor the release of privileged communications to only those statements that are relevant and whose probative value outweighs unfair prejudice. The fact that otherwise privileged communications are admissible pursuant to an exception of Mil. R. Evid. 514 does not prohibit a military judge from imposing reasonable limitations on cross-examination. *See Delaware* v. *Van Arsdall,* 475 U.S. 673, 679 (1986); *United States* v. *Gaddis,* 70 M.J. 248, 256–57 (C.A.A.F. 2011); *United States* v. *Ellerbrock,* 70 M.J. 314, 318 (C.A.A.F. 2011).''

(fff) The title of the analysis section of Mil. R. Evid. 601 is changed to ''Competency to testify in general.''

(ggg) The analysis following Mil. R. Evid. 601 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(hhh) The title of the analysis section of Mil. R. Evid. 602 is changed to ''Need for personal knowledge.''

(iii) The analysis following Mil. R. Evid. 602 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(jjj) The title of the analysis section of Mil. R. Evid. 603 is changed to ''Oath or affirmation to testify truthfully.''

(kkk) The analysis following Mil. R. Evid. 603 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(lll) The title of the analysis section of Mil. R. Evid. 604 is changed to ''Interpreter.''

(mmm) The analysis following Mil. R. Evid. 604 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This rule was revised to match the Federal Rules of Evidence. However, the word ''qualified'' is undefined both in these rules and in the Federal Rules of Evidence. R.C.M. 502(e)(1) states that the Secretary concerned may prescribe qualifications for interpreters. Practitioners should therefore refer to the Secretary's guidance to determine if an interpreter is qualified under this rule. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(nnn) The title of the analysis section of Mil. R. Evid. 605 is changed to ''Military judge's competency as a witness.''

(ooo) The analysis following Mil. R. Evid. 605 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ppp) The title of the analysis section of Mil. R. Evid. 606 is changed to ''Member's competency as a witness.''

(qqq) The analysis following Mil. R. Evid. 606 is amended by adding the following language:

''*2013 Amendment.* The amendment to subsection (b) aligns this rule with the Federal Rules of Evidence. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(rrr) The title of the analysis section of Mil. R. Evid. 607 is changed to ''Who may impeach a witness.''

(sss) The analysis following Mil. R. Evid. 607 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ttt) The title of the analysis section of Mil. R. Evid. 608 is changed to ''A witness's character for truthfulness or untruthfulness.''

(uuu) The analysis following Mil. R. Evid. 608 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(vvv) The title of the analysis section of Mil. R. Evid. 609 is changed to ''Impeachment by evidence of a criminal conviction.''

(www) The analysis following Mil. R. Evid. 609 is amended by adding the following language after the final paragraph:

''*2011 Amendment.* Executive Order 13593 of December 13, 2011, amended this rule to conform the rule with the Federal Rules of Evidence.

2013 Amendment. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(xxx) The analysis following Mil. R. Evid. 610 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(yyy) The title of the analysis section of Mil. R. Evid. 611 is changed to ''Mode and order of examining witnesses and presenting evidence.''

(zzz) The analysis following Mil. R. Evid. 611 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The amendment to subsection (d)(3) conforms the rule with the United States Supreme Court's holding in *Maryland* v. *Craig,* 497 U.S. 836 (1990), and the Court of Appeals for the Armed Forces' holding in *United States* v. *Pack,* 65 M.J. 381 (C.A.A.F. 2007). In *Craig,* the Supreme Court held that, in order for a child witness to be permitted to testify via closed-circuit one-way video, three factors must be met: (1) The trial court must determine that it ''is necessary to protect the welfare of the particular child witness''; (2) the trial court must find ''that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant''; and (3) the trial court must find ''that the emotional distress suffered by the child witness in the presence of the defendant is more than *de minimis.*'' *Craig,* 497 U.S. at 855–56. In *Pack,* CAAF held that, despite the Supreme Court's decision in *Crawford* v. *Washington,* the Supreme Court did not implicitly overrule *Craig* and that all three factors must be present in order to permit a child witness to testify remotely. *Pack,* 65 M.J. at 384–85. This rule as previously written contradicted these cases because it stated that any one of four factors, rather than all three of those identified in *Craig,* would be sufficient to allow a child to testify remotely. The changes ensured that this subsection aligned with the relevant case law.

The drafters took the language for the change to subsection (5) from 18 U.S.C. 3509(b)(1)(C), which covers child victims' and child witnesses' rights. There is no comparable Federal Rule of Evidence but a military judge may find that an Article 39(a) session outside the presence of the accused is necessary to make a decision regarding remote testimony. The drafters of the change intended to limit the number of people present at the Article 39(a) session in order to make the child feel more at ease, which is why they recommended adding language limiting those present to ''a representative'' of the defense and prosecution, rather than multiple representatives.

This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(aaaa) The title of the analysis section of Mil. R. Evid. 612 is changed to ''Writing used to refresh a witness's memory.''

(bbbb) The analysis following Mil. R. Evid. 612 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The revision to Subsection (b) of this rule is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(cccc) The title of the analysis section of Mil. R. Evid. 613 is changed to ''Witness's prior statement.''

(dddd) The analysis following Mil. R. Evid. 613 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(eeee) The title of the analysis section of Mil. R. Evid. 614 is changed to ''Court-martial's calling or examining a witness.''

(ffff) The analysis following Mil. R. Evid. 614 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* In subsection (a), the word ''relevant'' was substituted for ''appropriate.'' Relevance is the most accurate threshold for admissibility throughout these rules. Additionally, the phrase ''Following the opportunity for review by both parties'' was added to subsection (b); this change aligns it with the standard military practice to allow the counsel for both sides to review a question posed by the members and to voice objections before the military judge rules on the propriety of the question. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(gggg) The title of the analysis section of Mil. R. Evid. 615 is changed to ''Excluding witnesses.''

(hhhh) The analysis following Mil. R. Evid. 615 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(iiii) The analysis following Mil. R. Evid. 701 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(jjjj) The title of the analysis section of Mil. R. Evid. 702 is changed to ''Testimony by expert witnesses.''

(kkkk) The analysis following Mil. R. Evid. 702 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(llll) The title of the analysis section of Mil. R. Evid. 703 is changed to ''Bases of an expert's opinion testimony.''

(mmmm) The analysis following Mil. R. Evid. 703 is amended by adding the following language:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(nnnn) The analysis following Mil. R. Evid. 704 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(oooo) The title of the analysis section of Mil. R. Evid. 705 is changed to ''Disclosing the facts or data underlying an expert's opinion.''

(pppp) The analysis following Mil. R. Evid. 705 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(qqqq) The title of the analysis section of Mil. R. Evid. 706 is changed to ''Court-appointed expert witnesses.''

(rrrr) The analysis following Mil. R. Evid. 706 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Former subsection (b) was removed. The authority of the military judge to tell members that he or she has called an expert witness is implicit in his or her authority to obtain the expert, and therefore the language was unnecessary. Although the language has been removed, the military judge may, in the exercise of discretion, notify the members that he or she called the expert. This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(ssss) The analysis following Mil. R. Evid. 707 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(tttt) The title of the analysis section to Mil. R. Evid. 801 is changed to

''Definitions that apply to this section; exclusions from hearsay.''

(uuuu) The analysis following Mil. R. Evid. 801 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* The title of subsection (d)(2) was changed from ''Admission by party-opponent'' to ''An Opposing Party's Statement.'' This change conforms the rule with the Federal Rules of Evidence. The term ''admission'' is misleading because a statement falling under this exception need not be an admission and also need not be against the party's interest when spoken. In recommending this change, the drafters did not intend to change any result in any ruling on evidence admissibility.''

(vvvv) The title of the analysis section of Mil. R. Evid. 802 is changed to ''The rule against hearsay.''

(wwww) The analysis following Mil. R. Evid. 802 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(xxxx) The title of the analysis section of Mil. R. Evid. 803 is changed to ''Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness.''

(yyyy) The analysis following Mil. R. Evid. 803 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Subsection (24), which stated: ''Other Exceptions: [Transferred to Mil. R. Evid. 807]'' was removed. Practitioners are generally aware that Mil. R. Evid. 807 covers statements not specifically covered in this rule, and therefore the subsection was unnecessary. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters had no intent to change any result in any ruling on evidence admissibility.''

(zzzz) The title of the analysis section of Mil. R. Evid. 804 is changed to ''Exceptions to the rule against hearsay—when the declarant is unavailable as a witness.''

(aaaaa) The analysis following Mil. R. Evid. 804 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* In subsection (b)(3)(B), the phrase ''and is offered to exculpate the accused,'' was left despite the fact that it is not included in the current or former versions of the Federal Rules of Evidence. While subsection (24) in Mil. R. Evid. 803 was not removed, subsection (5) of Mil. R. Evid. 804, which directs practitioners to the residual exception in Mil. R. Evid. 807, was not removed. Leaving subsection (5) in place avoids having to renumber the remaining subsections. Although subsection (5) is not necessary, renumbering the subsections within this rule would have a detrimental effect on legal research and also would lead to inconsistencies in numbering between these rules and the Federal Rules. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(bbbbb) The analysis following Mil. R. Evid. 805 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(ccccc) The title of the analysis section of Mil. R. Evid. 806 is changed to ''Attacking and supporting the declarant's credibility.''

(ddddd) The analysis following Mil. R. Evid. 806 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(eeeee) The analysis following Mil. R. Evid. 807 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(fffff) The title of the analysis section of Mil. R. Evid. 901 is changed to ''Authenticating or identifying evidence.''

(ggggg) The analysis following Mil. R. Evid. 901 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(hhhhh) The title of the analysis section of Mil. R. Evid. 902 is changed to ''Evidence that is self-authenticating.''

(iiiii) The analysis following Mil. R. Evid. 902 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* Language was added to subsection (11) and permits the military judge to admit non-noticed documents even after the trial has commenced if the offering party shows good cause to do so. This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(jjjjj) The title of the analysis section of Mil. R. Evid. 903 is changed to ''Subscribing witness's testimony.''

(kkkkk) The analysis following Mil. R. Evid. 903 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(lllll) The title of the analysis section of Mil. R. Evid. 1001 is changed to ''Definitions that apply to this section.''

(mmmmm) The analysis following Mil. R. Evid. 1001 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(nnnnn) The analysis following Mil. R. Evid. 1002 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(ooooo) The analysis following Mil. R. Evid. 1003 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(ppppp) The title of the analysis section of Mil. R. Evid. 1004 is changed to ''Admissibility of other evidence of content.''

(qqqqq) The analysis following Mil. R. Evid. 1004 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. ''

(rrrrr) The title of the analysis section of Mil. R. Evid. 1005 is changed to ''Copies of public records to prove content.''

(sssss) The analysis following Mil. R. Evid. 1005 is amended by adding the

following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(ttttt) The title of the analysis section of Mil. R. Evid. 1006 is changed to ''Summaries to prove content.''

(uuuuu) The analysis following Mil. R. Evid. 1006 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(vvvvv) The title of the analysis section of Mil. R. Evid. 1007 is changed to ''Testimony or statement of a party to prove content.''

(wwwww) The analysis following Mil. R. Evid. 1007 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(xxxxx) The title of the analysis section of Mil. R. Evid. 1008 is changed to ''Functions of the military judge and the members.''

(yyyyy) The analysis following Mil. R. Evid. 1008 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(zzzzz) The title of the analysis section of Mil. R. Evid. 1101 is changed to ''Applicability of these rules.''

(aaaaaa) The analysis following Mil. R. Evid. 1101 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(bbbbbb) The analysis following Mil. R. Evid. 1102 is amended by adding the following language after the final paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

(cccccc) The analysis following Mil. R. Evid. 1103 is amended by adding the following language in a new paragraph following the current paragraph:

''*2013 Amendment.* This revision is stylistic and aligns this rule with the Federal Rules of Evidence. The drafters did not intend to change any result in any ruling on evidence admissibility.''

Dated: March 17, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–06403 Filed 3–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Longitudinal Transition Study 2012 Phase II

AGENCY: Institute of Education Sciences (IES), 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 a reinstatement with change of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 21, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0145. 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–105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Yumiko Sekino, 202–219–2046.

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: National Longitudinal Transition Study 2012 Phase II.

OMB Control Number: 1850–0882.

Type of Review: A reinstatement with change of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,252.

Total Estimated Number of Annual Burden Hours: 4,448.

Abstract: The National Longitudinal Transition Study 2012 (NLTS 2012) is the third in a series of studies being conducted by the U.S. Department of Education (ED), with the goal of describing the characteristics, secondary school experiences, transition, and outcomes of youth who receive special education services under IDEA. Phase II of NLTS 2012 will utilize high school and post-high school administrative records data to collect information in three broad areas important to understanding outcomes for youth with disabilities: (1) High school course-taking and outcomes, (2) post-secondary outcomes, and (3) employment and earnings outcomes. Phase II collected information will build on a survey of a nationally representative set of students with and without IEPs from Phase I of

the study to address the following questions:

- To what extent do youth with disabilities who receive special education services under IDEA make progress through high school compared with other youth, including those identified for services under Section 504 of the Rehabilitation Act? For students with disabilities, has high school course taking and completion rates changed over the past few decades?
- Are youth with disabilities achieving the post-high school outcomes envisioned by IDEA, and how do their college, training, and employment rates compare with those of other youth?
- How do these high school and postsecondary experiences and outcomes vary by student characteristics, including their disability category, age, sex, race/ethnicity, English Learner status, income status, and type of high school attended (including regular public school, charter school, career/technical school, special education school, or other State or Federally-operated institution)?

The NLTS 2012 sample includes 21,959 students ranging in age from 13 to 21 in December 2011. The sample was selected to include sufficient number of students in each of the 12 federally defined disability categories, and adequate number of students without disabilities, including both students with a Section 504 plan and students with neither an IEP nor a Section 504 plan. To meet the study's objective, data will be collected from the following sources: (1) School district administrative records, including transcripts, from districts that participated in NLTS 2012; (2) postsecondary enrollment information through the National Student Clearinghouse, (3) employment and earnings data from the Social Security Administration (SSA); and (4) information about vocational rehabilitative services and supports youth received from the Department's Rehabilitative Services Administration (RSA). Data collection activities expected to result in public burden are the collection of administrative data from school districts and requests for consent from sample members and their parents.

Dated: March 16, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–06316 Filed 3–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

Dates:

Applications Available: March 22, 2016.

Deadline for Transmittal of Applications: May 6, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays DDRA Fellowship Program provides opportunities to doctoral candidates to engage in full-time dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute and competitive preference priorities are from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2016, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific Geographic Regions of the World.

A research project that focuses on one or more of the following geographic areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, Central and Eastern Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on the following countries are not eligible: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, United Kingdom, or Vatican City.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address one or both of the following priorities.

Under 34 CFR 75.105(c)(2)(i), for FY 2016, we award an additional three points to an application that meets Competitive Preference Priority 1 and two points for an application that meets Competitive Preference Priority 2 (up to 5 additional points possible).

These priorities are:

Competitive Preference Priority 1: Focus on Priority Languages (3 points).

A research project that makes use of any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs), as follows:

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2: Thematic Focus on Academic Fields (2 points).

A research project conducted in the field of economics, engineering, international development, mathematics, political science, public health, science, comparative or international education, or technology.

Invitational Priority: For FY 2016, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Applications from Minority-Serving Institutions. For purposes of this invitational priority, Minority-Serving Institution means an institution that is

eligible to receive assistance under part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: $3,011,504.

Estimated Range of Awards: $15,000 to $60,000.

Estimated Average Size of Awards: $33,461.

Estimated Number of Awards: 90.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months, beginning October 1, 2016. Students may request funding for a period of no less than six months and no more than 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

Note: As part of its FY 2016 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan both to utilize their language skills in world areas vital to United States national security and to apply their language skills and knowledge of these countries in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields and those planning teaching careers are eligible to apply to IHEs for funds from this program.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants can obtain an application package via the Internet or from the Education Publications Center (ED PUBS). To obtain a copy via the Internet, use the following address: *www.G5.gov*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program as follows: CFDA number 84.022A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms the applicant must submit, are in the application package for this program.

Page Limits: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the application narrative to no more than 10 pages and the bibliography to no more than two pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, both sides, and portrait orientation.

Note: For purposes of determining compliance with the page limits, each page on which there are words will be counted as one full page.

- Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). Student applicants may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. The page limits do not apply to the Application for Federal Assistance face sheet (SF 424), the supplemental information form required by the Department of Education, or the assurances and certification. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if the application exceeds the page limits.

3. *Submission Dates and Times:*

Applications Available: March 22, 2016.

Deadline for Transmittal of Applications: May 6, 2016.

Applications for grants under this program must be submitted electronically using G5, the Department's grant management system, accessible through the Department's G5 site. For information (including dates and times) about how to submit an IHE's application electronically, or in paper format by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification*

Number, and System for Award Management:

To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can submit an application through G5.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/sam-faqs.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays DDRA Fellowship Program, CFDA number 84.022A, must be submitted electronically using the G5 system, accessible through the Department's G5 site at: *www.G5.gov.* While completing your electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may email an electronic copy of a grant application to us.

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays DDRA Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major steps are:

(1) IHEs must email the following information to *ddra@ed.gov:* Name of university and full name and email address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that they obtain access to G5 well before the application deadline date. We suggest that IHEs send this information no later than two weeks prior to the closing date in order to facilitate timely submission of their applications;

(2) Students must complete their individual applications and submit them to their IHE's project director using G5;

(3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using G5; and

(4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using G5.

- The IHE must complete the electronic submission of the grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. G5 will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.
- The hours of operation of the G5 Web site are 6:00 a.m. Monday until 7:00 p.m., Wednesday; and 6:00 a.m. Thursday until 8:00 p.m., Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the G5 Web site.
- Student applicants will not receive additional point value because the student submits his or her application in electronic format, nor will we penalize the IHE or student applicant if the applicant qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.
- IHEs must submit all documents electronically, including all information typically provided on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If the application is submitted electronically, both IHEs and student applicants must upload any narrative sections and all other attachments to their application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a

meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

• Student transcripts must be submitted electronically through the G5 system.

• Both the IHE's and the student applicant's electronic applications must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his or her application to the student's IHE, the student will receive an automatic acknowledgment. After a person submits a reference electronically, he or she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment that will include a unique PR/Award number for the IHE's application.

• Within three working days after submitting its electronic application—

(1) Print SF 424 from G5;

(2) The applicant IHE's Authorizing Representative must sign this form;

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424; and

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If an IHE is prevented from electronically submitting its application on the application deadline date because the G5 system is unavailable, we will grant the IHE an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable the IHE to transmit its application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of the G5 system and the IHE has initiated an electronic application for this competition; and

(2) (a) The G5 system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) G5 is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgment of any system unavailability, an IHE may contact either (1) the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice or (2) the e-Grants help desk at 1–888–336–8930. If G5 is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an email will be sent to all registered users who have initiated a G5 application. Extensions referred to in this section apply only to the unavailability of the G5 system.

Exception to Electronic Submission Requirement: An IHE qualifies for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through G5 because—

• The IHE or a student applicant does not have access to the Internet; or

• The IHE or a student applicant does not have the capacity to upload large documents to G5; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevents the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Pamela J. Maimer, Ph.D., U.S. Department of Education, 400 Maryland Ave. SW., Room 3E207, Washington, DC 20202. Telephone: (202) 502–7675 or by email: *ddra@ed.gov.*

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department—

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which the IHE is submitting its application; and

(2) The Application Control Center will mail a notification of receipt of the IHE's grant application. If the IHE does

not receive this grant notification within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2016, student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in discrete world area-based panels will review the student applications. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked together from the highest to lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this competition are from the regulations for this program in 34 CFR 662.21 and are listed in the application package.

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Under 34 CFR 662.22(b), no applicant may receive grants from the Fulbright US Student Program (FUSP) and the Fulbright-Hays DDRA Fellowship Program concurrently. Once a candidate has accepted an award from FUSP and FUSP has expended funds on the student, the student is then ineligible for a grant under the Fulbright-Hays DDRA Fellowship Program. A student applying for a grant under the Fulbright-Hays DDRA Fellowship Program must indicate on the application if the student has currently applied for a FUSP grant. If, at any point, the candidate accepts a FUSP award prior to being notified of the candidate's status with the Fulbright-Hays DDRA Fellowship Program, the candidate should immediately notify the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If, after consultation with FUSP, we determine that FUSP has expended funds on the student (*e.g.,* the candidate has attended the pre-departure orientation or was issued grant funds), the candidate will be deemed ineligible for an award under the Fulbright-Hays DDRA Fellowship Program at that time.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN); or we may send the IHE an email containing a link to access an electronic version of the GAN. We may notify the IHE informally, also.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved application as part of the binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument *International Resource Information System* (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the objective for the Fulbright-Hays DDRA Fellowship Program is to provide grants to colleges and universities to fund individual doctoral students to conduct research in other countries in modern foreign languages and area studies for periods of 6 to 12 months.

The Department will use the following measures to evaluate its success in meeting this objective:

DDRA GPRA Measure 1: The percentage of DDRA fellows who increased their foreign language scores in speaking, reading, and/or writing by at least one proficiency level.

DDRA GPRA Measure 2: The percentage of DDRA fellows who complete their degree in their program of study within four years of receipt of the fellowship.

DDRA GPRA Measure 3: The percentage of DDRA fellows who found employment that utilized their language and area studies skills within eight years of receiving their award.

DDRA GPRA Measure 4: Efficiency Measure—The cost per DDRA fellow who found employment that utilized their language and area studies skills within eight years.

The information provided by grantees in their performance report submitted via IRIS will be the source of data for this measure. Reporting screens for institutions and fellows may be viewed at:

http://iris.ed.gov/iris/pdfs/DDRA_director.pdf.

http://iris.ed.gov/iris/pdfs/DDRA_fellow.pdf.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pamela J. Maimer, Ph.D., International and Foreign Language Education, U.S. Department of Education, 400 Maryland

Ave. SW., Room 3E207, Washington, DC 20202. Telephone: (202) 453–6891 or by email: *ddra@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.022A.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 17, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the Duties of Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–06485 Filed 3–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–417]

Application to Export Electric Energy; Tenaska Energía de Mexico, S. de R.L. de C.V.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Tenaska Energía de Mexico, S. de R.L. de C.V. (Applicant or TEM) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 21, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 10, 2016, DOE received an application from TEM for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. TEM will be submitting an application requesting the Federal Energy Regulatory Commission (FERC) authorization to make wholesale power sales at market-based rates. TEM will also register with the Public Utility Commission of Texas (the PUCT).

In its application, TEM states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that TEM proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning TEM's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–417. An additional copy is to be provided to Norma Iacovo, Tenaska Power Services Co., 1701 E. Lamar Blvd., Suite 100, Arlington, TX 76006 and Neil Levy, 1700 Pennsylvania Ave. NW., Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on March 14, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–06400 Filed 3–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Extension of Comment Period; Invitation for Public Comment To Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities

AGENCY: Fuel Cycle Technologies, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of extension of comment period.

SUMMARY: The U.S Department of Energy (DOE) is extending the comment period provided in the notice entitled ''Invitation for Public Comment to Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities'' that appeared in the **Federal Register** of December 23, 2015. That notice announced that DOE is planning to design a consent-based siting process to establish an integrated waste management system to transport, store, and dispose of spent nuclear fuel

and high-level radioactive waste and requested comments by June 15, 2016. DOE is extending the comment period to July 31, 2016.

DATES: DOE is extending the comment period for the ''Invitation for Public Comment to Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities'' to July 31, 2016.

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

Email: Responses may be provided by email to *consentbasedsiting@hq.doe.gov.* Please include ''Response to IPC'' in the subject line.

Mail: Responses may be provided by mail to the following address: U.S. Department of Energy, Office of Nuclear Energy, Response to IPC, 1000 Independence Ave. SW., Washington, DC 20585.

Fax: Responses may be faxed to 202–586–0544. Please include ''Response to IPC'' on the fax cover page.

Online: Responses will be accepted online at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *consentbasedsiting@hq.doe.gov.* Please include ''Question on IPC'' in the subject line.

SUPPLEMENTARY INFORMATION:

Submitting Comments

Instructions: Submit comments via any of the mechanisms set forth in the **ADDRESSES** section above. Respondents are requested to provide the following information at the beginning of their response to this IPC:

State, tribal, community, organization, public or individual name;

State, tribal, community, organization, public or individual point of contact; and

Point of contact's address, phone number, and email address.

If an email or phone number is included, it will allow the DOE to contact the commenter if questions or clarifications arise. No responses will be provided to commenters in regards to the disposition of their comments. All comments will be officially recorded without change or edit, including any personal information provided. Personal information (other than name) will be protected from public disclosure upon request.

Please identify your comments as responding to a specific question posed in the Invitation for Public Comment, if possible. Respondents may answer as many or as few questions as they wish. Any additional comments that do not address a particular question should be included at the end of your response to this IPC as ''Additional Comments.''

DOE would appreciate early input in order to identify initial interest and concerns, as well as any early opportunities. Amended or revised inputs from commenters are also welcome throughout the comment period to help DOE develop this process. Comments received after the closing date will be considered as the planning process progresses; however, the DOE is only able to ensure consideration of comments received on or before the closing date as the initial phase of the consent based siting process is developed. Subsequent comments and input will also be welcome as DOE views this as a core component of a phased and adaptive consent-based siting process.

Privacy Act: Data collected via the mechanisms listed above will not be protected from the public view in any way.

Issued in Washington, DC, on March 9, 2016.

Andrew Richards,

Chief of Staff, Office of Nuclear Energy, Department of Energy.

[FR Doc. 2016–05797 Filed 3–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–433]

Grand River Dam Authority; Notice of Request To Reduce Comment Period From 60 to 30 Days on Draft Amendment Application and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to reduce the comment period from 60 to 30 days for a draft amendment application to permanently modify the reservoir elevation rule curve under Article 401 of the project license.

b. *Project No:* 1494–433.

c. *Date Filed:* March 15, 2016.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The project is located on the Grand River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tamara Jahnke, Grand River Dam Authority, 226 West Dwain Willis Ave, P.O. Box 409, Vinita, OK 74301; telephone (918) 256–5545.

i. *FERC Contact:* B. Peter Yarrington, telephone (202) 502–6129 and email *peter.yarrington@ferc.gov;* or Linda Stewart, telephone (202) 502–6680 and email *linda.stewart@ferc.*

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include the project number (P–1494–433).

k. *Description of Request:* On March 15, 2016, GRDA filed with the Commission: (1) A draft amendment application to permanently modify the reservoir elevation rule curve under Article 401 of the Pensacola Project for Grand Lake O' the Cherokees, (2) a request for a temporary variance contained in the draft amendment application, and (3) a waiver request to reduce from 60 to 30 days the comment period for resource agencies, Indian tribes, and other stakeholders to provide comments on the draft amendment application mentioned above. The Commission's regulations at 4.38(a)(7) require GRDA to provide resource agencies, Indian tribes, and other stakeholders 60 days to provide comments on the above draft amendment application. GRDA requests Commission approval of a 30-day comment period instead to expedite the Commission's review of any final application filed with the Commission.

This notice solicits comments, motions to intervene, and protests on GRDA's request to reduce the comment period from 60 to 30 days as discussed above. Comments on the draft application and temporary variance request contained in the draft application should be filed directly with

GRDA in accordance with instructions in the draft application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the proposed amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–06370 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–70–000.
Applicants: Portsmouth Genco, LLC, Virginia Renewable Power—Portsmouth, LLC.
Description: Supplement to February 12, 2016 Application for Authorization for Disposition of Jurisdictional Facilities of Portsmouth Genco, LLC, et al.
Filed Date: 3/16/16.
Accession Number: 20160316–5133.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: EC16–84–000.
Applicants: Kingbird Solar A, LLC, Kingbird Solar B, LLC.
Description: Supplement to March 1, 2016 Application for Authorization Under Section 203 of the Federal Power Act of Kingbird Solar A, LLC, et al.
Filed Date: 3/16/16.
Accession Number: 20160316–5135.
Comments Due: 5 p.m. ET 3/28/16.

Docket Numbers: EC16–87–000.
Applicants: Judith Gap Energy LLC, Spring Canyon Energy LLC, Wolverine Creek Energy LLC, Wolverine Creek Goshen Interconnection LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Judith Gap Energy LLC, et al.
Filed Date: 3/16/16.
Accession Number: 20160316–5063.
Comments Due: 5 p.m. ET 4/6/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–74–000.
Applicants: Ninnescah Wind Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Ninnescah Wind Energy, LLC.
Filed Date: 3/15/16.
Accession Number: 20160315–5140.
Comments Due: 5 p.m. ET 4/5/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–474–006.
Applicants: Sempra Generation, LLC.
Description: Notice of Non-Material Change in Status of Sempra Generation, LLC.
Filed Date: 3/15/16.
Accession Number: 20160315–5159.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER15–1905–003.
Applicants: Amazon Energy, LLC.
Description: Compliance filing: Amazon Energy, LLC Tariff Amendment to be effective 3/16/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5000.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–207–002.
Applicants: Dynegy Oakland, LLC.
Description: Tariff Amendment: Settlement Agreement and Request for Expedited Treatment to be effective 1/1/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5227.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–895–001.
Applicants: RDAF Energy Solutions, LLC.
Description: Tariff Amendment: Amendment of RDAF Baseline Filing For MBR Authority and Granting Waivers to be effective 3/15/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5073.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–904–001.
Applicants: Smith Creek Hydro, LLC.
Description: Amendment to February 5, 2016 and March 4, 2016 Smith Creek Hydro, LLC tariff filings.
Filed Date: 3/16/16.
Accession Number: 20160316–5076.
Comments Due: 5 p.m. ET 3/23/16.

Docket Numbers: ER16–1129–001.
Applicants: VPI Enterprises, Inc.
Description: Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 3/11/2016.

Filed Date: 3/16/16.
Accession Number: 20160316–5098.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1130–001.
Applicants: DifWind Farms Limited I.
Description: Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 3/11/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5097.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1131–001.
Applicants: DifWind Farms Limited II.
Description: Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 3/11/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5096.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1132–001.
Applicants: DifWind Farms Limited V.
Description: Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 3/11/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5094.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1189–000.
Applicants: RE Mustang 3 LLC.
Description: § 205(d) Rate Filing: RE Mustang 3 LLC Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 4/26/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5116.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–1190–000.
Applicants: RE Mustang 3 LLC.
Description: § 205(d) Rate Filing: RE Mustang 3 LLC Certificate of Concurrence for Shared Facilities Agreement to be effective 4/26/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5117.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–1191–000.
Applicants: RE Mustang 4 LLC.
Description: § 205(d) Rate Filing: RE Mustang 4 LLC Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 4/26/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5118.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–1192–000.
Applicants: RE Mustang 4 LLC.
Description: § 205(d) Rate Filing: RE Mustang 4 LLC Certificate of Concurrence for Shared Facilities Agreement to be effective 4/26/2016.
Filed Date: 3/15/16.
Accession Number: 20160315–5119.
Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: ER16–1193–000.
Applicants: Western Antelope Blue Sky Ranch A LLC.
Description: § 205(d) Rate Filing: Western Antelope Blue Sky Ranch A LLC Amended SFA to be effective 3/17/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5000.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1194–000.
Applicants: Sierra Solar Greenworks LLC.
Description: § 205(d) Rate Filing: Sierra Solar Greenworks LLC SFA to be effective 3/17/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5001.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1195–000.
Applicants: Central Antelope Dry Ranch C LLC.
Description: Baseline eTariff Filing: Central Antelope Dry Ranch C LLC SFA to be effective 3/17/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5002.

Docket Numbers: ER16–1201–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3179 Transource Missouri & OPPD Interconnection Agreement to be effective 2/18/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5100.
Comments Due: 5 p.m. ET 4/6/16.
Docket Numbers: ER16–1202–000.
Applicants: The Energy Group of America, Inc.
Description: Baseline eTariff Filing: MBR Application to be effective 5/15/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5102.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1203–000.
Applicants: RE Astoria LLC.
Description: § 205(d) Rate Filing: Astoria-Willow Springs Shared Facilities Agreement to be effective 3/27/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5138.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1204–000.
Applicants: Wisconsin Public Service Corporation.
Description: § 205(d) Rate Filing: Wisconsin Public Service Corporation's Annual PEB/PBOP Filing to be effective 4/1/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5142.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1205–000.
Applicants: AEP Texas North Company.
Description: § 205(d) Rate Filing: TNC-Southwest Texas EC-Golden Spread EC IA Fourth Amend & Restated to be effective 3/1/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5144.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1206–000.
Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 20160316_IA_Annual to be effective 1/1/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5145.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1207–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Filing of Third Amended and Restated Service Agreement to be effective 6/1/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5149.
Comments Due: 5 p.m. ET 4/6/16.

Docket Numbers: ER16–1208–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: Attachment K Version Correction to be effective 1/1/2016.
Filed Date: 3/16/16.
Accession Number: 20160316–5151.
Comments Due: 5 p.m. ET 4/6/16.

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: March 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–06369 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–53–000.
Applicants: South Central MCN LLC.
Description: Amendment to December 22, 2015 Application for Authorization Under Section 203 of the Federal Power Act of South Central MCN LLC.
Filed Date: 3/11/16.
Accession Number: 20160311–5232.
Comments Due: 5 p.m. ET 4/1/16.

Docket Numbers: EC16–86–000.
Applicants: Passadumkeag Windpark, LLC.
Description: Application for Authorization of Disposition of Jurisdictional Facilities Under Section 203 of the FPA and Requests for Waivers, Expedited Action, and Privileged Treatment of Passadumkeag Windpark, LLC.
Filed Date: 3/11/16.
Accession Number: 20160311–5239.
Comments Due: 5 p.m. ET 4/1/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–71–000.
Applicants: Hidalgo Wind Farm LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Hidalgo Wind Farm LLC.
Filed Date: 3/14/16.
Accession Number: 20160314–5049.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: EG16–72–000.
Applicants: Jericho Rise Wind Farm LLC.
Description: Notice Self-Certification of Exempt Wholesale Generator Status of Jericho Rise Wind Farm LLC.
Filed Date: 3/14/16.
Accession Number: 20160314–5050.
Comments Due: 5 p.m. ET 4/4/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–712–011; ER12–1504–003.
Applicants: Duke Energy Corporation, Cimarron Windpower II, LLC, Cimarron Wind Energy, LLC.
Description: Errata to January 15, 2016 Notification of Non-Material Change in Status of Duke Energy Corporation MBR Sellers.
Filed Date: 3/11/16.
Accession Number: 20160311–5258.
Comments Due: 5 p.m. ET 4/1/16.

Docket Numbers: ER13–826–001; ER14–722–001.
Applicants: RPA Energy, Inc., Utility Expense Reduction, LLC.
Description: Notice of Non-Material Change of RPA Energy, Inc. and Utility Expense Reduction, LLC.
Filed Date: 3/11/16.
Accession Number: 20160311–5230.
Comments Due: 5 p.m. ET 4/1/16.

Docket Numbers: ER15–1344–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing per 2/12/16 order RE: OATT Schedule 12-Appendix A to be effective 2/16/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5074.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1147–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: GIA & DSA San Gorgonio Westwinds II et al. Altwind Project to be effective 3/11/2016.
Filed Date: 3/11/16.
Accession Number: 20160311–5227.
Comments Due: 5 p.m. ET 4/1/16.

Docket Numbers: ER16–1148–000.
Applicants: Tenaska Energía de Mexico, S. de R. L. d.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 3/12/2016.
Filed Date: 3/11/16.
Accession Number: 20160311–5228.
Comments Due: 5 p.m. ET 4/1/16.

Docket Numbers: ER16–1150–000.
Applicants: Duke Energy Ohio, Inc., PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Duke Energy submits proposed revisions to OATT to add a new Attachment M–2 to be effective 5/13/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5042.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1152–000.
Applicants: Jericho Rise Wind Farm LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 5/14/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5073.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1153–000.
Applicants: Breadbasket LLC.
Description: Baseline eTariff Filing: Breadbasket LLC MBR Tariff Application to be effective 5/12/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5099.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1154–000.
Applicants: Parrey, LLC.
Description: Initial rate filing: Market-Based Rate Tariff to be effective 4/1/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5125.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1156–000.
Applicants: Kingbird Solar A, LLC.
Description: Compliance filing: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 1/12/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5145.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1157–000.
Applicants: Kingbird Solar B, LLC.
Description: Compliance filing: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 1/12/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5147.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1161–000.
Applicants: NorthWestern Corporation.
Description: Section 205(d) Rate Filing: SA 776—Montana DOT Utilities Agreement—Bonner 161kV Relocate to be effective 3/15/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5178.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1162–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–03–14_SA 2904 MS SOLAR 3–SMEPA GIA (J473) to be effective 3/15/2016.
Filed Date: 3/14/16.
Accession Number: 20160314–5222.
Comments Due: 5 p.m. ET 4/4/16.

Docket Numbers: ER16–1173–000.
Applicants: California Power Exchange Corporation.
Description: Petition to Extend Existing Wind-Up Charge Settlement of California Power Exchange Corporation.
Filed Date: 3/14/16.
Accession Number: 20160314–5292.
Comments Due: 5 p.m. ET 4/4/16.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD16–4–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard FAC–003–4 Project.
Filed Date: 3/14/16.

Accession Number: 20160314–5293.

Comments Due: 5 p.m. ET 4/14/16.

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: March 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–06367 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–4–000]

Commission Information Collection Activities (FERC–500 and FERC–542); Consolidated Comment Request

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is submitting two information collections (FERC–500, Application for License/Relicense and Exemption for Water Projects with More than 5 Megawatt Capacity, and FERC–542, Gas Pipeline Rates: Rate Tracking) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (80 FR 79322, 12/21/2015) and Errata Notice (81 FR 6844, 2/9/2016) requesting public comments. The Commission received no public comments and is making this notation in its submittals to OMB.

DATES: Comments on the collections of information are due April 21, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control Nos. 1902–0058 (FERC–500) and 1902–0070 (FERC–542), should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–4–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for the collections described below with no changes to the current reporting or recordkeeping requirements. Please note that each collection is distinct.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden [1] and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–500, Application for License/Relicense and Exemption for Water Projects With More Than 5 Megawatt [2] Capacity

OMB Control No.: 1902–0058

Abstract: Pursuant to the Federal Power Act, the Commission is authorized to issue licenses and exemptions to citizens of the United States, or to any corporation organized under the laws of United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States.

FERC–500 includes an application (for water projects with more than 5 megawatt capacity) for a hydropower license/re-license or exemption, annual conveyance report,[3] and comprehensive plans. FERC–500 includes certain reporting requirements in 18 CFR 4,[4] 5, 8, 16, 141, 154.15, and 292. Depending on the type of application or filing, it may include project description, schedule, resource allocation, project operation, construction schedule, cost, and financing; and an environmental report.

After an application is filed, the Federal agencies with responsibilities under the Federal Power Act (FPA) and other statutes,[5] the States, Indian tribes,

[1] The Commission defines ''burden'' as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[2] Megawatt = MW.

[3] Annual conveyance reports are filed for both major and minor licenses. 80% of the reports are related to major licenses.

[4] FERC staff has not received any application filings pertaining to the regulations described under 18 CFR 4.303 in over 20 years. It remains in 18 CFR and is included in FERC–500.

[5] Statutes include the Electric Consumers Protection Act (ECPA), the National Environmental Policy Act (NEPA), the Endangered Species Act, the Federal Water Pollution Control Amendments of

and other participants have opportunities to request additional studies and provide comments and recommendations.

Submittal of the FERC–500 application is necessary to fulfill the requirements of the FPA in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to a comprehensive plan for improving/developing a waterway or waterways.

In the 60-day Notice, we inadvertently included under FERC–500 only the responses and burden associated with major license/re-license applications or modifications for projects over 5 MW. In this Notice, we are including the annual conveyance reports (filed by industry) and comprehensive plans (filed by federal and state agencies which have comprehensive plan status pursuant to 18 CFR 2.19).

Type of Respondent: Applicants for major hydropower licenses or exemptions greater than 5 MW, and Federal and State agencies which have comprehensive plan status.

Estimate of Annual Burden: Applicants for licenses are required to include an estimate of their cost to prepare the license application, which would include nearly all of the reporting requirements in FERC–500.[6] Because the requirements for an exemption application are largely the same as that of a license application, the license application costs are a good estimate of the exemption application costs and of the overall burden of preparing license and exemption applications for projects greater than 5 MW. To estimate the total annual burden, we averaged the reported license application costs for proposed projects greater than 5 MW filed in fiscal years (FY) 2012 through 2015. The results are presented in the table below:

FERC–500 (Application for License/Relicense and Exemption for Water Projects With More Than 5 MW Capacity)

Fiscal year	2012	2013	2014	2015
Number of Applications (Responses)	9	7	15	2
Average Cost per Response	$2,059,828	$1,234,987	$3,776,864	$500,000
Total Burden Cost	18,538,451	8,644,909	56,652,960	1,000,000

The average burden cost per application over the period FY 2012 through FY 2015 was approximately $2,570,797.[7] We estimate a cost (salary plus benefits) of $72/hour.[8] Using this hourly cost estimate, the average burden for each application filed from FY 2012 to FY 2015 is 35,706 hours.

The average annual burden and cost (including estimates for annual conveyance reports and comprehensive plans) follow.[9]

Type of filing	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
License/Re-license (application or modification).	9	1	9	35,705.52 hrs.; $2,570,797.42.	321,349.68 hrs.; $23,137,176.82.	$2,570,797.42
Annual Conveyance Reports (under 18 CFR 141.15).	[10] 41	1	41	3 hrs.; $216	123 hrs.; $8,856	216
Comprehensive Plans (under 18 CFR 2.19) [11].	33	1	33	1 hr.; $72	33 hrs.; $2,376	72
Total	83		83		321,505.68 hrs.; $23,148,408.82.	

FERC–542, Gas Pipeline Rates: Rate Tracking

OMB Control No.: 1902–0070

Abstract: The Natural Gas Act (NGA) requires FERC to regulate the transmission and sale of natural gas for resale in interstate commerce and to ensure the rates jurisdictional natural gas pipelines charge are just and reasonable. It provides FERC with authority to implement NGA mandates through its rules and regulations. FERC allows jurisdictional pipelines to flow through to their customers such costs as fuel or electric power costs necessary to operate compressor stations as well as the costs of storage services; research,

1972 (the Clean Water Act), and the Coastal Zone Management Act.

[6] FERC–500 also includes requirements in 18 CFR 2.19, 4.201, 4.202, 4.303, 4.35, 8.1, 8.2, 16.19, 141.15, and 292.208, which do not directly relate to preparation of a license/re-license or exemption application for a project greater than 5 MW.

[7] $84,836,320 (Total burden cost from FY2012–2015) ÷ 33 (total number of applications received from FY2012–2015) = $2,570,797.

[8] FERC staff estimates that industry is similarly situated in terms of the hourly cost for salary plus benefits. Therefore, we are using the FERC FY 2015 hourly cost (salary plus benefits) of $72/hour.

[9] The hourly cost (wages plus benefits) for annual conveyance reports and comprehensive reports is similarly estimated to be $72/hour.

[10] Order 540 changed the reporting requirement to state that licensees are only to report if they convey lands/waters under the standard land use article. Over the last 4 years, the number of filings averaged 26. Based on filings in 2016, the number of filings is expected to increase and is estimated at 41 per year. 80% of the conveyance reports are for major projects.

[11] The comprehensive plans apply to all projects, minor and major. These plans are not capacity-specific, so the complete estimated number of filings is included here under FERC–500, however some plans would also apply to FERC–505.

development, and demonstration (RD&D) expenditures and FERC annual charge adjustment assessments. To ensure these charges result in just and reasonable rates, FERC requires jurisdictional pipelines to file detailed and summary information on these flowed costs in the FERC–542. Analyses of FERC–542 data helps the Commission evaluate the charges to ensure compliance with NGA rate requirements.

The FERC–542 contains the following information collection requirements: (1) Research, development, and deployment (RD&D) expenditures [18 CFR 154.401]; (2) annual charge adjustments (ACA) [18 CFR 154.402]; and (3) periodic rate adjustments [18 CFR 154.403]. The general requirements for tariff filings that are specified in the following regulations apply to all FERC–542 filings: 18 CFR 154.4, 18 CFR 154.7, 18 CFR 154.107, and 18 CFR 154.201.

Type of Respondent: Natural Gas Pipelines

Estimate of Annual Burden: The Commission estimates the annual public reporting burden and cost [12] for the information collection as:

FERC–542 (GAS PIPELINE RATES: RATE TRACKING)

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost ($) per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
87	2.13	185	2 hrs.; $144	370 hrs.; $26,640	$306

Dated: March 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–06368 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

[12] FERC staff estimates that industry is similarly situated in terms of the hourly cost for salary plus benefits. Therefore, we are using the FERC FY 2015 hourly cost (salary plus benefits) of $72/hour.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Boscobel Bancorp, Inc.,* Boscobel, Wisconsin; to merge with Rural Bancshares of Wisconsin, Inc., and thereby indirectly acquire Livingston State Bank, both in Livingston, Wisconsin.

2. *Minier Financial, Inc. Employee Stock Ownership Plan with 401(k) Provisions,* Minier, Illinois; to acquire additional voting shares, for a total of 51 percent of voting shares of Minier Financial, Inc., and thereby indirectly acquire additional voting shares of First Farmers State Bank, both in Minier, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Ameri Financial Group, Inc.,* Stillwater, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Valley Bank, National Association, Saint Croix Falls, Wisconsin.

C. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *BBCN Bancorp, Inc.,* Los Angeles, California; to merge with Wilshire Bancorp, Inc., and thereby indirectly acquire Wilshire Bank, both in Los Angeles, California.

Board of Governors of the Federal Reserve System, March 17, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–06398 Filed 3–21–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Thomas G. Kenney,* Fennimore, Wisconsin; to acquire voting shares of Boscobel Bancorp, Inc., and thereby indirectly acquire voting shares of

Community First Bank, both in Boscobel, Wisconsin, and Livingston State Bank, Livingston, Wisconsin.

Board of Governors of the Federal Reserve System, March 17, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–06399 Filed 3–21–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0101; Docket 2015–0055; Sequence 32]

Submission for OMB Review; Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning drug-free workplace. A notice was published in the **Federal Register** at 80 FR 78232 on December 16, 2015. No comments were received.

DATES: Submit comments on or before April 21, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0101, Drug-Free Workplace''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0101, Drug-Free Workplace'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0101, Drug-Free Workplace.

Instructions: Please submit comments only and cite Information Collection 9000–0101, Drug-Free Workplace, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Office of Acquisition Policy, GSA 703–795–6328 or email *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.223–6, Drug-Free Workplace, requires (1) contractor employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer. The clause is not applicable to commercial items, contracts at or below simplified acquisition threshold (unless awarded to an individual), and contracts performed outside the United States or by law enforcement agencies. The clause implements the Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Respondents: 598.
Responses per Respondent: 1.
Annual Responses: 598.
Hours per Response: .5.
Total Burden Hours: 299.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: March 17, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–06357 Filed 3–21–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0184; Docket 2015–0055, Sequence 33]

Submission for OMB Review; Contractors Performing Private Security Functions Outside the United States

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Contractors Performing Private Security Functions Outside the United States. A notice was published in the **Federal Register** at 80 FR 81549 on December 30, 2015. No comments were received.

DATES: Submit comments on or before April 21, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for Information Collection 9000–0184, Contractors Performing Private Security Functions Outside the United States. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0184, Contractors Performing Private Security Functions Outside the United States''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0184, Contractors Performing Private Security Functions Outside the United States'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., Washington, DC 20405.

Instructions: Please submit comments only and cite Information Collection 9000–0184, Contractors Performing Private Security Functions Outside the United States in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Governmentwide Acquisition Policy, at 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009 and sections 831 and 832 of the NDAA for FY 2011, together with the required Governmentwide implementing regulations (32 CFR part 159, published at 76 FR 49650 on August 11, 2011), as amended, adds requirements and limitations for contractors performing private security functions in areas of combat operations, or other military operations as designated by the Secretary of Defense, upon agreement of the Secretaries of Defense and State.

These requirements, implemented in FAR clause 52.225–26 entitled ''Contractors Performing Private Security Functions Outside the United States,'' are that contractors performing in areas such as Iraq and Afghanistan ensure that their personnel performing private security functions comply with 32 CFR part 159, including (1) accounting for Government-acquired and contractor-furnished property and (2) reporting incidents in which a weapon is discharged, personnel are attacked or killed or property is destroyed, or active, lethal countermeasures are employed.

B. Annual Reporting Burden

Respondents: 920.
Responses per Respondent: 5.
Total Response: 4,600.
Hours per Response: 0.167.
Total Burden Hours: 768.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit institutions.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0184, Contractors Performing Private Security Functions Outside the United States, in all correspondence.

Dated: March 17, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–06358 Filed 3–21–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045; Docket 2016–0053; Sequence 19]

Information Collection; Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension of an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning bid guarantees, performance and payment bonds, and alternative payment protections.

DATES: Submit comments on or before May 23, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0045, Bid, Performance, and Payment Bonds''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections.

Instructions: Please submit comments only and cite Information Collection 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkins, Procurement Analyst,

Contract Policy Division, at 202–969–7226 or email *kathlyn.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subparts 28.1 and 28.2; FAR clauses at 52.228–1, 52.228–2, 52.228–13, 52.228–15, 52.228–16; and associated FAR standard forms implement the statutory requirements of the Miller Act (40 U.S.C. 3131 *et seq.*), which requires performance and payment bonds for any construction contract exceeding $150,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the note to 40 U.S.C. 3132, entitled ''Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation,'' is implemented in the FAR, which requires alternative payment protection for construction contracts that exceed $30,000 but do not exceed $150,000.

Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts. In addition to the contract clauses at FAR 52.228–1, 52.228–2, 52.228–13, 52.228–15, 52.228–16, this information collection covers the following FAR standard forms (SF) as prescribed at FAR Subparts 28.1 and 28.2: SF 25, Performance Bond; SF 25A, Payment Bond; SF 273, Reinsurance Agreement for a Miller Act Performance Bond; SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond; SF 24, Bid Bond; SF 25B, Continuation Sheet (For Standard Forms 24, 25, and 25A); Standard Form 34, Annual Bid Bond; Standard Form 275, Reinsurance Agreement in Favor of the United States; Standard Form 1416, Payment Bond for Other Than Construction Contracts; Standard Form 1418, Performance Bond for Other Than Construction Contracts; and Standard Form 35, Annual Performance Bond. The information collected under this clearance provides the Government with a form of security that the contractor will not withdraw a bid or assures that the contractor will perform its obligations under a contract.

B. Annual Reporting Burden

Respondents: 974.
Responses per Respondent: 1.
Total Responses: 974.
Hours per Response: 1.
Total Burden Hours: 974.

C. Public comments

Public Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections, in all correspondence.

Dated: March 17, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–06356 Filed 3–21–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Special Interest Project (SIP) 16–004, State Quitline Reimbursement for Smoking Cessation Services Provided to Current Smokers Eligible for Lung Cancer Screening.

Time and Date: 11:00 a.m.–6:00 p.m., EDT, April 26, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''State Quitline Reimbursement for Smoking Cessation Services Provided to Current Smokers Eligible for Lung Cancer Screening'' SIP 16–004.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06353 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 10:00 a.m.–3:30 p.m., EDT, April 26, 2016.

Place: This meeting is accessible by Web conference. Toll free number +1 877–951–7311, Participant Code: 6816256.

For Participants:

URL: *https://www.mymeetings.com/nc/join/*
Conference number: PW7364589
Audience passcode: 6816256
Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW7364589&p=6816256&t=c.*

Status: Open to the public, limited only by the number of ports available for the web conference. The meeting accommodates 100 ports.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis.

Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters for Discussion: Agenda items include the following topics: (1) Discussion on U.S. Preventive Services Task Force (USPSTF) Recommendations; (2) Draft of TB Treatment Guidelines; (3) Updates from Workgroups; and (4) other tuberculosis-related issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317; Email: *zkr7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06346 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcements (FOA) CK16–002, Spatially Scalable Integrated Tick Vector/Rodent Reservoir Management to Reduce Human Risk of Exposure to Ixodes Scapularis Ticks Infected with Lyme Disease Spirochetes and CK16–003, Pre-travel Health Preparation of International Travelers: Expanding and Improving Data Collection, Guidance, and Outreach.

Time and Date: 10:00 a.m.–5:00 p.m., April 14, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Spatially Scalable Integrated Tick Vector/Rodent Reservoir Management to Reduce Human Risk of Exposure to Ixodes Scapularis Ticks Infected with Lyme Disease Spirochetes'', CK16–002 and ''Pre-travel Health Preparation of International Travelers: Expanding and Improving Data Collection, Guidance, and Outreach'', CK16–003.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06345 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Special Interest Project (SIP) 16–001, Evaluating the Adoption and Implementation of an Evidence-based Patient Navigation Intervention for Colonoscopy Screening, SIP 16–002, Formative Development of an Instrument to Predict Adherence to Active Surveillance (AS) for Localized Prostate Cancer, and SIP 16–003, Implementation of Community-based, Small Media Interventions to Promote Colorectal Cancer Screening Among Chinese Americans.

Time and Date: 11:00 a.m.–6:00 p.m., EDT, April 21, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Evaluating the Adoption and Implementation of an Evidence-based Patient Navigation Intervention for Colonoscopy Screening'', SIP 16–001, ''Formative Development of an Instrument to Predict Adherence to Active Surveillance (AS) for Localized Prostate Cancer'', SIP 16–002 and, ''Implementation of Community-based, Small Media Interventions to Promote Colorectal Cancer'', SIP 16–003.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06354 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial

review of applications in response to Special Interest Project (SIP) 16–005, Multi-Level Communication Strategies to Promote Human Papilloma Virus (HPV) Vaccination Uptake.

Time and Date: 10:00 a.m.–6:00 p.m., EDT, April 19, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Multi-Level Communication Strategies to Promote Human Papilloma Virus (HPV) Vaccination Uptake'', SIP 16–005.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06349 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–15–002, The CDC National Centers for Excellence in Youth Violence Prevention: Building the Evidence for Community- and Policy-Level Prevention.

Times and Date: 8:30 a.m.–5:00 p.m., EDT, April 20–21, 2016 (Closed).

Place: The Georgian Terrace, 659 Peachtree Street NE., Atlanta, GA 30308.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''The CDC National Centers for Excellence in Youth Violence Prevention: Building the Evidence for Community- and Policy-Level Prevention'', RFA–CE–15–002.

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, email: *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06350 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) GH16–005, Operations Research (Implementation Science) for Strengthening Program Implementation through the Presidents Emergency Plan for AIDS Relief (PEPFAR).

Times and Dates

9:00 a.m.–2:00 p.m., EDT, Panel 1, April 20, 2016 (Closed).

9:00 a.m.–2:00 p.m., EDT, Panel 2, April 26, 2016 (Closed).

9:00 a.m.–2:00 p.m., EDT, Panel 3, April 27, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Operations Research (Implementation Science) for Strengthening Program Implementation through the Presidents Emergency Plan for AIDS Relief (PEPFAR)'', FOA GH16–005.

Contact Person for More Information: Hylan Shoob, Scientific Review Officer, Center for Global Health (CGH) Science Office, CGH, CDC, 1600 Clifton Road NE., Mailstop D–69, Atlanta, Georgia 30033, Telephone: (404) 639–4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06352 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) DP 16–005, Study to Assess the Incidence of Type 1 Diabetes in Young Adults.

Time and Date

12:00 p.m.–3:00 p.m., EDT, April 14, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Study to Assess the Incidence of Type 1 Diabetes in Young Adults'', DP16–005.

Contact Person for More Information: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06351 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on the BSC, NCEH/ATSDR.

The BSC, NCEH/ATSDR consists of 16 experts knowledgeable in the field of environmental public health or in related disciplines, who are selected by the Secretary of the U.S. Department of Health and Human Services (HHS). The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The Board provides advice and guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected from experts knowledgeable in the field of environmental public health or related disciplines (*e.g.*, environmental law, preventive medicine, epidemiology, occupational and environmental health, environmental toxicology, environmental justice, laboratory sciences, risk assessment, public policy, behavioral social science, and health economics). Members may be invited to serve up to four-year terms.

The HHS policy stipulates that committee membership be balanced in terms of points of view represented and the board's function. Consideration is given to a broad representation of geographic areas within the U.S., as well as gender, all ethnic and racial groups, persons with disabilities, and several factors including: (1) The committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, for example, those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and current curriculum vitae and area(s) of expertise. Email addresses are requested if available. Nominations should be sent, in writing, and postmarked by April 29, 2016 to: Amanda Malasky and Sandra Malcom, Committee Management Specialists, NCEH/ATSDR, CDC, 4770 Buford Highway (MS–F45), Atlanta, Georgia 30341, Email addresses: *amalasky@cdc.gov* and *sym6@cdc.gov*. Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06347 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement, RFA–CE–16–002, Research to Advance Primary Care-Pharmacy Linkage for Medication Review to Reduce Older Adult Falls.

Time and Date: 11:30 a.m.–5:00 p.m., EDT, April 21, 2016 (CLOSED).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research to Advance Primary Care-Pharmacy Linkage for Medication Review to Reduce Older Adult Falls'' FOA Number RFA–EC–16–002.

Contact Person for More Information: Jane Suen, Dr. P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone: (770) 488–4281.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–06348 Filed 3–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; the National Maltreatment Reporting System

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the National Maltreatment Reporting System (NAMRS). The proposed collection of information tools may be found in the NAMRS section of the ACL Web site.

DATES: Submit written or electronic comments on the collection of information by: May 23, 2016.

ADDRESSES: Submit electronic comments on the collection of information to Stephanie Whittier Eliason at *stephanie.whittiereliason@acl.hhs.gov.*

Submit written comments on the collection of information to: Administration for Community Living, Attention: Stephanie Whittier Eliason, 330 C St SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason at 202.795.7467.

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 request 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, ACL is publishing notice of the proposed collection of information set forth in this document.

Authority

This data collection effort is in response to the Elder Justice Act of 2009, which amended title XX of the Social Security Act (42.U.S.C. 13976 *et seq.*). These provisions require that the Secretary of HHS ''collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders in coordination with the Department of Justice'' (Sec. 2041(a)(1)(B)), and ''conducts research related to the provision of adult protective services'' (Sec. 2041(a)(1)(D)). Furthermore, the Elder Justice Coordinating Council (EJCC) included as its third recommendation for increasing federal involvement in addressing elder abuse, neglect, and exploitation: Develop a national adult protective services (APS) system based upon standardized data collection and a core set of service provision standards and best practices.

Background

From 2013–2015, ACL, in partnership with the U.S. Department of Health & Human Services' Office of the Assistant Secretary for Planning and Evaluation (ASPE), developed and pilot tested NAMRS. When implemented, NAMRS will be the first comprehensive, national reporting system for APS programs. NAMRS is intended to collect quantitative and qualitative data on the practices and policies of adult protective services (APS) agencies, as well as the outcomes of investigations into the maltreatment of older adults and adults with disabilities.

In developing NAMRS, ACL and ASPE convened key stakeholders to identify data elements that are the most critical for a national system. More than 40 state administrators, researchers, service providers, and other stakeholders provided input in focus group conference calls. Additionally, more than 30 state representatives from 25 different states met in three in-person working sessions to discuss the uses of collected data and the key functionalities.

A pilot version of NAMRS was tested in nine (9) diverse states, and refined based on feedback from the pilot and additional stakeholder engagement. A full discussion on the background of NAMRS, including the development of the system, the public engagement process, and the pilot testing can be found in the NAMRS section of the ACL Web site.

Proposed Collection Effort

NAMRS has been developed as a voluntary system to collect annually both summary and de-identified case-level data on APS investigations. NAMRS consists of three components:

(1) ACL proposes to collect descriptive data on state agency policies and practices from all states through the ''Agency Component,'' and

(2) Case-level, non-identifiable data on persons who receive an investigation by APS in response to an allegation of abuse, neglect, or exploitation through the ''Case Component.''

(3) For states that are unable to submit a case-level file through the ''Case Component,'' a ''Key Indicators Component'' will be available for them to submit data on a smaller set of core items.

ACL will provide technical assistance to states to assist in the preparation of their data submissions. Respondents will be state APS agencies and APS agencies in the District of Columbia, Puerto Rico, Guam, Northern Marianas Islands, Virgin Islands, and American Samoa. No personally identifiable information will be collected. ACL has calculated the following burden estimates (information on how the estimates were calculated is available in the NAMRS section of the ACL Web site):

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Agency Component	56	1	13	728
Key Indicators Component	31	1	40	1,240

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case Component	25	1	150	3,750
Estimated Total Annual Burden Hours				5,718

With respect to the collection of information via NAMRS, ACL specifically requests comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication. The proposed collection of information tools may be found in the NAMRS section of the ACL Web site.

Dated: March 16, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–06342 Filed 3–21–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2104]

Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance Environment for Multi-Configuration Passive Medical Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices.'' FDA is confronted with an increasing number of premarket submissions that include an MR Conditional labeling claim for multiconfiguration passive medical devices. The assessment of radiofrequency (RF)-induced heating of such devices, typically comprised of many parts, strongly depends on the specific device geometry and can therefore lead to a prohibitively large number of test cases. This guidance provides an approach to reduce the number of possible device configurations to a manageable number, and it provides guidance on how to assess the RF-induced device heating for an individual configuration.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions)*: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–2104 for ''Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/*

regulatoryinformation/dockets/default.htm.

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

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Wolfgang Kainz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 1115, Silver Spring, MD 20993–0002, 301–661–7595.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance to provide an assessment paradigm for RF-induced heating on or near multicomponent or multiconfiguration passive medical devices in the MR environment. During MR scanning, applied RF excitation pulses induce currents that can cause heating of electrically conductive materials. RF-induced heating of medical devices made with conductive materials may lead to patient burns. To minimize the risk of patient burns during MR scanning, sponsors should comprehensively assess devices in all configurations and combinations. However, multicomponent passive devices, such as orthopedic fixation devices, may permit a very large number of possible device configurations and combinations of individual components. Testing all possibilities may be impractical and unnecessary. This guidance provides an approach to identify a manageable number of device configurations or combinations for the testing of RF-induced heating in the MR environment. Additionally, this guidance provides recommendations on how to assess the RF-induced device heating for multiconfiguration passive medical devices.

In the **Federal Register** of June 29, 2015 (80 FR 36996), the Agency announced the issuance of the draft guidance entitled ''Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices.'' Interested persons were invited to comment by August 28, 2015.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the assessment of RF-induced heating of multicomponent, or multiconfiguration, passive medical devices in the MR environment. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Assessment of Radiofrequency-Induced Heating in the Magnetic Resonance (MR) Environment for Multi-Configuration Passive Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500001 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814, subparts B and E, are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H, are approved under OMB control number 0910–0332; the collections of information in 21 CFR part 807, subpart E, are approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR parts 801 and 809 are approved under OMB control number 0910–0485; and the collections of information in the guidance document entitled ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' are approved under OMB control number 0910–0756.

Dated: March 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06361 Filed 3–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

2016 Parenteral Drug Association/Food and Drug Administration Joint Conference: Aligning Manufacturing Goals With Patient Needs Through Successful Innovation and Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public conference, to be held in cosponsorship with the Parenteral Drug Association (PDA), entitled ''Aligning Manufacturing Goals with Patient Needs through Successful Innovation and Compliance.'' The conference will cover current issues affecting the industry as well as explore strategies to facilitate the development and continuous improvement of safe and effective medical products. The conference establishes a unique forum to discuss the foundations, emerging technologies, and innovations in regulatory science, as well as the current quality and compliance areas of concerns. Meeting participants will hear from FDA and industry speakers about the requirements and best practices to consider while implementing robust quality systems in order to deliver the best quality product.

DATES: The public conference will be held on September 12, 2016, from 7 a.m. to 7:30 p.m.; September 13, 2016, from

7 a.m. to 9:30 p.m.; and September 14, 2016, from 7 a.m. to 12:30 p.m.

ADDRESSES: The public conference will be held at the Renaissance Washington, DC Downtown Hotel, 999 Ninth Street NW., Washington, DC 20001, 202–898–9000, FAX: 202–289–0947.

FOR FURTHER INFORMATION CONTACT: Wanda Neal, Parenteral Drug Association, PDA Global Headquarters, Bethesda Towers, 4350 East West Hwy., Suite 150, Bethesda, MD 20814, 301–656–5900, ext. 111, FAX: 301–986–1093, email: *info@pda.org;* or Ken Nolan, Office of Communications, Food and Drug Administration 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8629, email: *kenneth.nolan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The PDA/FDA Joint Regulatory Conference offers the unique opportunity for participants to join FDA representatives and industry experts in face-to-face dialogues. Each year, FDA speakers provide updates on current efforts affecting the development of global regulatory strategies, while industry professionals from pharmaceutical companies present case studies on how they employ global strategies in their daily processes.

Through a series of sessions and meetings, the conference will provide participants with the opportunity to hear directly from FDA experts and representatives of global regulatory authorities on best practices, including:

- Product Quality
- Data Integrity
- Breakthrough Therapies
- Regulatory Challenges and Opportunities
- Lifecycle Management
- Clinically Relevant Specifications
- Food and Drug Administration Safety and Innovation Act
- Quality Metrics/Quality Culture
- Manufacturing of the Future With Submissions
- Continuous Verification and Validation
- Continuous Manufacturing
- ''Fishbowl'' Role Play
- Quality Systems
- Contract Manufacturing Organizations
- Maturity of Quality Systems
- Investigations
- Case Studies for Quality
- Quality Submissions
- Prescription Drug User Fee Act
- Risk-Based Control Strategies
- Supply Chain
- Quality Risk Management Systems
- Drug Shortages
- Customer Complaint Reviews and Trending
- Human Factors
- Office of Pharmaceutical Quality and Program Alignment Group
- Patient Perspective
- Compliance Update
- Center Initiatives—Regulatory Submission Update

To help ensure the quality of FDA-regulated products, the workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government agencies to small businesses.

II. Registration and Accommodations

A. Registration

Attendees are encouraged to register at their earliest convenience. The PDA registration fees cover the cost of facilities, materials, and refreshments. Seats are limited; please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration. Those accepted for the conference will receive confirmation. Registration will close after the conference is filled. Onsite registration will be available on a space available basis beginning at 1 p.m. on September 11, 2016, and at 7 a.m. from September 12 through 14, 2016. The cost of registration is as follows:

COST OF REGISTRATION

Affiliation	Before July 1, 2016	July 1–August 2, 2016	After August 2, 2016
Premier Package (Includes Conference and Workshop Registration)			
Member	$3,740	$4,190	$4,640
Nonmember	4,199	4,649	5,099
Conference Only			
Member	2,395	2,795	2,995
Nonmember	2,654	3,054	3,254
Government/Health Authority Member	700	700	700
Government/Health Authority Nonmember [1]	800	800	800
Academic Member	700	700	700
Academic Nonmember [1]	800	800	800
Student Member	280	280	280
Student Nonmember [1]	310	310	310

[1]For this member type, online registration is not available and must be faxed in.

Please visit PDA's Web site: *www.pda.org/pdafda2016* to confirm the prevailing registration fees. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

If you need special accommodations due to a disability, please contact Wanda Neal (see **FOR FURTHER INFORMATION CONTACT**), at least 7 days in advance of the conference.

Registration Instructions: To register, please submit your name, affiliation, mailing address, telephone, fax number, and email address, along with a check or money order payable to ''PDA.'' Mail to: PDA, Global Headquarters, Bethesda Towers, 4350 East West Hwy., Suite 150, Bethesda, MD 20814. To register via the Internet, go to PDA's Web site: *www.pda.org/pdafda2016.*

The registrar will also accept payment by major credit cards (VISA/American Express/MasterCard only). For more information on the meeting, or for questions on registration, contact PDA (see **FOR FURTHER INFORMATION CONTACT**).

B. Accommodations

Attendees are responsible for their own accommodations. To make reservations, contact the Renaissance Washington Hotel (see **ADDRESSES**) and reference ''the 2016 PDA/FDA Joint Regulatory Conference'' to receive the PDA group rate. Room rates are: Single: $305 plus 14.5 percent State and local taxes. Requests will be processed on a first-come, first-served basis.

Transcripts: As soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: March 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–06366 Filed 3–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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: National Institute of Environmental Health Sciences Special Emphasis Panel; Evaluation of the U01 Engineered Nanomaterials (ENMs) Grant Applications.

Date: April 4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, 1 Europa Drive, Chapel Hill, NC 27517.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Small Business Innovation Research (SBIR) Applications Teleconference Review.

Date: April 7, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Building, 530 Davis Drive, Suite 3118, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 15, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06337 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development and Commercialization of Cancer Immunotherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Midissia Therapeutics (''MIDISSIA'') located in San Francisco, California, USA.

Intellectual Property

United States Provisional Patent Application No. 60/476,467, filed June 5, 2003, entitled ''Immunogenic Peptides and Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment'' [HHS Reference No. E–116–2003/0–US–01]; International Patent Application No. PCT/US2004/17574 filed June 2, 2004 entitled ''Immunogenic Peptides and Peptide Derivatives or The Treatment of Prostate And Breast Cancer Treatment'' [HHS Reference No. E–116–2003/0–PCT–02]; United States Patent No.7,541,035, issued June 2, 2009, entitled ''Immunogenic Peptides and Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment'' [HHS Reference No. E–116–2003/0–US–03]; United States Patent No. 8,043,623, issued 25 Oct 2011, entitled ''Immunogenic Peptides and Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment'' [HHS Reference No. E–116–2003/0–US–04]; United States Provisional Patent Application No. 61/915,948, filed December 13, 2013, entitled ''Multi-Epitope TARP Peptide Vaccine and Uses Thereof'' [HHS Reference No. E–047–2014/0–US–01]; International Patent Application No. PCT/US2014/070144 filed December 12, 2014 entitled ''Multi-Epitope TARP Peptide Vaccine and Uses Thereof'' [HHS Reference No. E–047–2014/0–PCT–02]; and all continuation applications, divisional applications and foreign counterpart applications claiming priority to the US provisional application no. 61/915, 948 and U.S. Provisional Application No. 62/248,964 filed October 30, 2015 titled ''Compositions and Methods for the Treatment of HER2-Expressing Solid Tumors'' [HHS Reference No. E–187–2015/0–US–01] and continuation applications, divisional applications and foreign counterpart applications claiming priority to the US provisional application no. 62/248,964.

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for the following:

(1) Development and commercialization of a therapeutic cancer vaccine specifically in combination with Licensee's proprietary or exclusively in-licensed vectors/adjuvants and ME–TARP;

(2) Development and commercialization of a combination product using Licensee's proprietary or

exclusively in-licensed check point inhibitor with Ad-Her2 and ME–TARP vaccine within the Licensed Patent Rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 6, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A. Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702 Telephone: (240)–276–5530; Facsimile: (240)–276–5504E-mail: *chatterjeesa@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns the identification of immunogenic peptides within TARP, and their use to create an anti-cancer immune response in patients. By introducing these peptides into a patient, an immune response against these cancer cells can be initiated by the peptides, resulting in treatment of the cancer. A phase I clinical trial in stage D0 prostate cancer patients is nearing completion. Initial results indicate a statistically significant decrease in the slope of PSA for 48 weeks after vaccination.

Additionally, a novel vaccine candidate using recombinant adenoviruses expressing the extracellular (EC) and transmembrane (TM) domains of human HER2 (HER2ECTM) are also being developed that is within the scope of the field of use licensed to Midissia. The recombinant adenovirus expresses a chimeric fiber protein having the adenovirus type 35 (Ad5) shaft and knob domains, which facilitates transduction of human dendritic cells by the recombinant HER2ECTM expressing adenovirus. The vaccine candidate, namely, AdHer2ECTM) can potentially to treat patients with Her2 expressing tumors. Clinical studies with this adenovirus based vaccine is currently being planned.

Both technologies have the potential of being developed into a vaccine for several cancer indications or for the treatment of any cancer associated with increased or preferential expression of TARP and Her 2/neu.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 16, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–06374 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK

Date: April 14–15, 2016.

Open: April 14, 2016, 8:00 a.m. to 8:15 a.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Rooms 620/630, Bethesda, MD 20892.

Close: April 14, 2016, 8:15 a.m. to 4:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Rooms 620/630, Bethesda, MD 20892.

Close: April 15, 2016, 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Rooms 620/630, Bethesda, MD 20892.

Contact Person: Michael W. Krause, Ph.D., Scientific Director, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06336 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request: Cancer Genomics Cloud Pilots Survey (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 13,

2016, Vol. 81 pp.1633 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Anthony Kerlavage, NCI CBIIT, Program Manager, 9609 Medical Center Drive, Room 1W–436, Rockville, MD 20850 or call non-toll-free number 240–276–5190 or email your request, including your address to: *anthony.kerlavage@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Cancer Genomics Cloud Pilots Survey, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection Need and Use of Information Collection: The Center for Biomedical Informatics and Information Technology (CBIIT), in collaboration with the Center for Cancer Genomics at the National Cancer Instititues (NCI) in the National Institutes of Health (NIH), is coordinating a program to develop three Cancer Genomics Cloud Pilots to help meet the research community's needs to access and analyze high quality, large-scale cancer genomic data and associated clinical information. The goal of this effort is to develop an innovative, cost-effective model for computational analysis of biological data and provide broader yet secure access to genomic data that NCI generates. Cloud computing will be a valuable tool to support studies related to the mechanisms of cancer. This capability will be equally valuable to other NCI scientific areas, including clinical trials and other types of patient-focused research. In order to understand the utility and value of the tools being developed, the NCI has developed a survey instrument to capture feedback from the cancer research community. The information collected as part of this survey process will be used exclusively by the NCI to determine future funding of cloud technology projects.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 375.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Cloud Pilot Survey	Principal Investigator	1500	1	15/60	375
Totals		1500	1500		375

Dated: March 14, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–06332 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, 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 the meeting of the President's Cancer Panel.

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: President's Cancer Panel.

Date: June 10, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: Examining the Cancer Drug Cost and Access Landscape.

Place: New York Hilton Midtown, 1335 Avenue of the Americas, New York, NY 10019.

Contact Person: Abby B. Sandler, Ph.D., Executive Secretary, President's Cancer Panel, Special Assistant to the Director, NCI Center for Cancer Research, 9000 Rockville Pike, Building 31, Room B2B37, MSC 2590, Bethesda, MD 20892–8349, 301–451–9399, *sandlera@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/pcp/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 16, 2016.

Melanie Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Final Action Under the NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules (NIH Guidelines)

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notice of changes to the *NIH Guidelines.*

SUMMARY: This notice sets forth final changes to the *National Institutes of Health Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules (NIH Guidelines)* to incorporate the recommendations of the Institute of Medicine (IOM) regarding human gene transfer protocols, as initially outlined by the NIH Office of Science Policy (OSP) in a **Federal Register** notice issued on October 16, 2015 (80 FR 62543). Following the solicitation of public comment on its original proposal, the NIH is amending the *NIH Guidelines* in the following areas: (A) The criteria for selecting protocols for in-depth review and public discussion by the NIH Recombinant DNA Advisory Committee (RAC), (B) the process by which human gene transfer protocols are reviewed and registered with the NIH, and (C) the streamlining of the NIH protocol submission requirements under Appendix M–I–A of the *NIH Guidelines.* In a continuing effort to harmonize with the Food and Drug Administration (FDA) regulations, a change is being made to the reporting requirement for additional clinical trial sites allowing for a delay of 30 days to submit appropriate documentation.

The changes set forth in this notice do not affect the responsibility of the Principal Investigator to submit documentation to his or her local oversight bodies and to the NIH, nor do they affect the requirement to submit appropriate documentation to the NIH when new clinical trial sites are registered. The changes also do not affect the responsibility of a Principal Investigator (or a delegated clinical trial sponsor) to submit appropriate and timely follow up information to the NIH as outlined in the *NIH Guidelines* (*e.g.,* protocol amendments, serious adverse events, annual reports with cumulative safety data).

DATES: Changes outlined in this notice will be effective April 27, 2016, to coincide with the RAC review cycle and to allow institutions and investigators to establish processes for implementing the new review procedures.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional background information about these changes, please contact the NIH by email at *SciencePolicy@od.nih.gov*, by telephone at 301–496–9838, by fax at 301–496–9839, or by mail to the Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892–7985.

SUPPLEMENTARY INFORMATION: The NIH Office of the Director requested that the IOM review whether gene transfer research raises issues of concern that warrant the current level of RAC oversight of individual clinical trials involving gene transfer techniques. The IOM noted that the RAC has served a valuable role, but concluded that the current level of oversight over individual clinical trials is no longer justifiable. In an effort to maximize the benefits of the RAC review process, the IOM recommended that the NIH maintain its protocol submission and safety reporting requirements, but restrict individual gene transfer protocol reviews to exceptional cases that meet specified criteria (full recommendations are listed in the IOM report *Oversight and Review of Clinical Gene Transfer Protocols: Assessing the Role of the Recombinant DNA Advisory Committee* (*http://www.iom.edu/Reports/2013/Oversight-and-Review-of-Clinical-Gene-Transfer-Protocols.aspx*)).

After careful consideration of the IOM's recommendations and public consultation, the NIH is amending the *NIH Guidelines* in the following areas:

A. *Criteria and process for selecting protocols for RAC review.* The following criteria (subsequently referred to as the NIH RAC review criteria) are being implemented for initiating RAC review of individual human gene transfer protocols (criteria listed in both items 1 and 2 must be met):

1. An oversight body (an Institutional Biosafety Committee (IBC) or an Institutional Review Board (IRB)) determines that a human gene transfer protocol submitted to it for approval would significantly benefit from RAC review; and

2. One or more of the criteria below are satisfied:

a. The protocol uses a new vector, genetic material, or delivery methodology that represents a first-in-human experience, thus presenting an unknown risk.

b. The protocol relies on preclinical safety data that were obtained using a new preclinical model system of unknown and unconfirmed value.

c. The proposed vector, gene construct, or method of delivery is associated with possible toxicities that are not widely known and that may render it difficult for oversight bodies to evaluate the protocol rigorously.

The chair of an oversight body or an authorized oversight body representative may submit a request for RAC review by sending the request to the NIH as part of the submission materials provided by the Principal Investigator. Requests for RAC review must originate from oversight bodies involved in the initial site(s) review. This request must include the rationale for why the protocol satisfies both items 1 and 2 of the NIH RAC review criteria. The NIH will review the request and notify the requestor of a decision within 10 working days.

1. If the NIH determines that the criteria listed in both 1 and 2 above are satisfied, the NIH Director will convene the RAC.

2. If the NIH receives a request for RAC review of a protocol that the NIH determines does not meet both of these criteria, the NIH will:

a. Inform the requestor that RAC review is not warranted, and

b. indicate that information regarding human gene transfer trials is available in the Genetic Modification Clinical Research Information System (GeMCRIS®), which may be found at *https://www.gemcris.od.nih.gov*.

3. Even if the protocol does not meet the proposed criteria listed in both items 1 and 2 above, the NIH Director, in consultation (if necessary) with appropriate regulatory authorities (*e.g.,* the Office for Human Research Protections, the Food and Drug Administration), can select protocols for review that may present significant scientific, societal, or ethical concerns.

B. *Process by which human gene transfer protocols are registered with the NIH.* All human gene transfer protocols subject to Section III–C of the *NIH Guidelines* will continue to be registered with the NIH. However, the following changes are being implemented:

1. The Principal Investigator will continue to be responsible for submitting documentation regarding a proposed human gene transfer protocol to his or her local oversight bodies. The Principal Investigator will also continue to be responsible for submitting documentation as outlined in Appendix M–I–A to the NIH. As part of the submission to the NIH, documentation shall also include written assessments originating from all oversight bodies involved in the review at an initial site(s) as to whether or not RAC review is warranted.

2. Completion of the protocol registration process:

a. If no oversight body involved in the review at an initial site(s) requests public RAC review, the IBC(s) may proceed with its approval process upon receipt of documentation from the NIH indicating that the initial protocol registration process is complete. This documentation will be provided by the NIH to the Principal Investigator within 10 working days.

b. If one or more oversight bodies involved in the review at an initial site(s) requests public RAC review and

the NIH agrees that the submission has met the above criteria in (A), the protocol will undergo RAC review and public discussion. The IBC(s) may not approve a protocol until the RAC has completed its review. The IBC(s) may proceed with the approval process upon receipt of a letter from the NIH summarizing the RAC's comments and recommendations (if any) regarding the protocol. Unless the NIH determines that there are exceptional circumstances, the NIH will send notification to the Principal Investigator within 10 working days after the completion of the RAC meeting at which the experiment was reviewed. Receipt of this letter concludes the protocol registration process.

C. *Streamlining the submission requirements for protocol registration.* Section III–C–1 and Appendix M of the *NIH Guidelines* specify the requirements for protocol submission, RAC review, and reporting requirements for human gene transfer experiments. In an effort to streamline the protocol submission process, the NIH is reducing the submission requirements as outlined in Appendix M–I–A. Specifically, only a subset of the information listed under the current Appendices M–II through M–V will be required mainly for oversight bodies to determine RAC review eligibility and to support GeMCRIS®, which facilitates safety data reporting and enables public access to information about human gene transfer protocols registered with the NIH.

The changes to the RAC review process, outlined above, will require amendment of multiple portions of the *NIH Guidelines* (see section below on ''Amendments to the *NIH Guidelines''*).

Overview of Comments Received in Response to the October 16, 2015 Notice

In response to its October 16, 2015, **Federal Register** notice, the NIH received 11 letters of comment from academic institutions, private companies, and trade organizations representing the biosafety and biomedical research communities. The majority of letters endorsed the proposed changes to the review process; however commenters suggested that some revisions would be helpful to clarify the proposal. All comments, regardless of position, were reviewed and considered by the NIH. These comments, along with the NIH responses, are summarized below:

Submission requirements for human gene transfer protocols. Several comments focused on the appropriate amount of documentation needed for the registration of human gene transfer protocols, especially in light of other federal reporting requirements. In its report, the IOM recognized the value of ongoing registration of all protocols, the dissemination of that information on these protocols through GeMCRIS, the ongoing reporting and analysis of safety data, and their public discussion at scientific workshops and symposia for the benefit of this field. Thus, to continue the NIH's role in fostering a public discussion of human gene transfer research, no further changes to the material required under Appendix M–I–A are being made.

Criteria by which human gene transfer protocols will be selected. Some entities raised concerns about the difficulty in applying the IOM criteria to human gene transfer protocols, specifically in terms of defining ''novelty.'' Given the evolving field of human gene transfer research, it is important that the RAC review criteria maintain a degree of flexibility. Thus, the NIH intends to implement the IOM criteria as outlined in its report. Of relevance, the IOM did elaborate that ''[n]ovelty indicates an untested area of science, one that brings an additional layer of uncertainty as compared to research in areas of greater experience and one for which institutional review bodies typically do not have the requisite expertise.'' This may include a novel approach, application of a new technology, or a new route of administration of a gene transfer product to target a disease.

Process by which human gene transfer protocols will be selected. Several comments requested clarification regarding the process by which a RAC public discussion would occur, whether entities other than oversight bodies (*e.g.* investigational new drug sponsors or Principal Investigators) could request review, or in the case of trials being conducted at more than one site, whether a clinical trial site added after completion of the protocol registration process for the initial site(s) could request RAC review. The ability to request RAC review lies initially and solely within the purview of the local oversight bodies (*i.e.,* IBC and IRB), although the NIH Director in consultation (as needed) with the appropriate regulatory authorities may also require it. Since both the expertise that these oversight bodies (IBCs and IRBs) have regarding the review of human gene transfer trials and their rationale for requesting public review are potentially very different, a recommendation for public review from either oversight body will be sufficient to trigger a determination from the NIH as to whether the IOM criteria are met. To clarify the process for requesting RAC review, the *NIH Guidelines* will be amended to specify that a request for RAC review must be made by oversight bodies involved in the review at an initial site(s) registering the protocol with the NIH.

RAC expertise and review. Several comments discussed the value of RAC review in terms of scientific expertise, and expressed concerns about removing this resource for local oversight bodies. The NIH recognizes the value of the RAC and intends to continue to support its review of those protocols that would benefit from additional expertise and public discussion. Historically, only a fraction of all protocols registered with the NIH are publicly reviewed and it is expected that oversight bodies will continue to review and approve protocols in the same manner they always have. In cases where an oversight body feels additional expertise is needed, it is encouraged to augment its membership with *ad hoc* experts.

Proprietary confidential information. Comments were raised regarding the confidentiality of information submitted to the NIH, especially in cases where the submitter considers the information to be confidential or proprietary. The *NIH Guidelines* state that documents submitted to the NIH should not contain information considered ''confidential'' and that the amended *NIH Guidelines* will further indicate that an entire document such as a clinical protocol cannot be classified as ''confidential'' in its entirety. Should a submitter choose to provide information that is considered to be trade secret, confidential commercial, or financial in nature, it is incumbent on the submitter to identify clearly these specific portions, outlining how the release of this information would cause financial or competitive harm. All records submitted to the NIH, including human gene transfer clinical trial information, are subject to the Freedom of Information Act (FOIA—5 U.S.C. 552) and the Department of Health and Human Services FOIA regulations (45 CFR part 5). Details about the FOIA and the regulations can be found on the NIH Web site at this address: *http://www.nih.gov/institutes-nih/nih-office-director/office-communications-public-liaison/freedom-information-act-office.*

Amendments to the NIH Guidelines

Throughout the document the following global changes will be made: (i) The NIH OSP will replace the NIH OBA, (ii) the term ''RAC review'' will be replaced with the term ''NIH protocol registration process'' as appropriate; (iii) the title for Appendix M–I–B will be changed; and (iv) the requirement for a CV/biosketch of key personnel will be

deleted (except for the requirements under the membership provisions of IBCs, Section IV–B–2–a).

Section I–E will be amended to include the following new definitions:

I–E–11. An ''oversight body'' is an institutional entity (an Institutional Biosafety Committee or an Institutional Review Board) that must review and approve a human gene transfer trial.

I–E–12. A ''regulatory authority'' in the context of human gene transfer research is a federal entity that by statute has oversight over research involving human subjects.

Section III–C–1 will be amended as follows:

Section III–C–1. Experiments Involving the Deliberate Transfer of Recombinant or Synthetic Nucleic Acid Molecules, or DNA or RNA Derived from Recombinant or Synthetic Nucleic Acid Molecules, into One or More Human Research Participants Human gene transfer is the deliberate transfer into human research participants of either:

1. Recombinant nucleic acid molecules, or DNA or RNA derived from recombinant nucleic acid molecules, or

2. Synthetic nucleic acid molecules, or DNA or RNA derived from synthetic nucleic acid molecules that meet any one of the following criteria:

a. Contain more than 100 nucleotides; or

b. Possess biological properties that enable integration into the genome (*e.g., cis* elements involved in integration); or

c. Have the potential to replicate in a cell; or

d. Can be translated or transcribed.

No research participant shall be enrolled (see definition of enrollment in Section I–E–7) until the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion).

In its evaluation of human gene transfer protocols, the NIH will make a determination, following a request from one or more oversight bodies involved in the review at an initial site(s), whether a proposed human gene transfer experiment has one or more of the characteristics that warrant public RAC review and discussion (See Appendix M–1–B–1). The process of public RAC review and discussion is intended to foster the safe and ethical conduct of human gene transfer experiments. Public review and discussion of a human gene transfer experiment (and access to relevant information) also serves to inform the public about the technical aspects of the proposal, the meaning and significance of the research, and any significant safety, social, and ethical implications of the research.

Public RAC review and discussion of a human gene transfer experiment will be initiated in two exceptional circumstances: (1) Following a request for public RAC review from one or more oversight bodies involved in the review at an initial site(s), the NIH concurs that the submission meets one or more of the following NIH RAC review criteria: (i) The protocol uses a new vector, genetic material, or delivery methodology that represents a first-in-human experience, thus presenting an unknown risk; (ii) the protocol relies on preclinical safety data that were obtained using a new preclinical model system of unknown and unconfirmed value; or (iii) the proposed vector, gene construct, or method of delivery is associated with possible toxicities that are not widely known and that may render it difficult for oversight bodies involved in the review at an initial site(s) to evaluate the protocol rigorously. However, if one or more oversight bodies involved in the review at an initial site(s) requests public RAC review, but the NIH does not concur that the submission meets one or more of the RAC review criteria (listed in i, ii, or iii), then the NIH OSP will inform, within 10 working days, the requesting and other oversight bodies involved in the review at an initial site(s) that public RAC review is not warranted. (2) The NIH Director, in consultation (if needed) with appropriate regulatory authorities, determines that the submission: (a) Meets one or more of the NIH RAC review criteria (listed in i, ii, or iii) and that public RAC review and discussion would provide a clear and obvious benefit to the scientific community or the public; or (b) raises significant scientific, societal, or ethical concerns.

For a clinical trial site that is added after completion of the NIH protocol registration process, no research participant shall be enrolled (see definition of enrollment in Section I–E–7) at the clinical trial site until the following documentation has been submitted to the NIH OSP: (1) Institutional Biosafety Committee approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; and (4) the NIH grant number(s) if applicable.

In order to maintain public access to information regarding human gene transfer (including protocols that are not publicly reviewed by the RAC), the NIH OSP will maintain the documentation described in Appendices M–I through M–II. The information provided in response to Appendix M should not contain any confidential commercial or financial information or trade secrets, enabling all aspects of RAC review to be open to the public.

Note: For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B–V–1, Murine, Retroviral Vectors.

Section IV–B–1–f will be amended as follows:

Section IV–B–1–f. Ensure that when the institution participates in or sponsors recombinant or synthetic nucleic acid molecule research involving human subjects: (i) The Institutional Biosafety Committee has adequate expertise and training (using *ad hoc* consultants as deemed necessary), (ii) all aspects of Appendix M have been appropriately addressed by the Principal Investigator; and (iii) no research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion), Institutional Biosafety Committee approval has been obtained, Institutional Review Board approval has been obtained, and all applicable regulatory authorizations have been obtained. Institutional Biosafety Committee approval must be obtained from the clinical trial site.

None of the other sub-sections under Section IV–B–1. General Information are to be amended.

Section IV–B–2–a–(1) will be amended as follows:

Section IV–B–2–a–(1). The Institutional Biosafety Committee must be composed of no fewer than five members so selected that they collectively have experience and expertise in recombinant or synthetic nucleic acid molecule technology and the capability to assess the safety of recombinant or synthetic nucleic acid molecule research and to identify any potential risk to public health or the environment. At least two members shall not be affiliated with the institution (apart from their membership on the Institutional Biosafety Committee) and who represent the interest of the surrounding community with respect to health and protection of the environment (*e.g.,* officials of state or local public health or environmental protection agencies, members of other local governmental bodies, or persons active in medical, occupational health, or environmental concerns in the community). The Institutional Biosafety Committee shall include at least one individual with expertise in plant, plant pathogen, or plant pest containment

principles when experiments utilizing Appendix P, Physical and Biological Containment for Recombinant or Synthetic Nucleic Acid Molecule Research Involving Plants, require prior approval by the Institutional Biosafety Committee. The Institutional Biosafety Committee shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q, Physical and Biological Containment for Recombinant or Synthetic Nucleic Acid Molecule Research Involving Animals, require Institutional Biosafety Committee prior approval. When the institution conducts recombinant or synthetic nucleic acid molecule research at BL3, BL4, or Large Scale (greater than 10 liters), a Biological Safety Officer is mandatory and shall be a member of the Institutional Biosafety Committee (see Section IV–B–3, Biological Safety Officer). When the institution participates in or sponsors recombinant or synthetic nucleic acid molecule research involving human research participants, the institution must ensure that: (i) The Institutional Biosafety Committee has adequate expertise and training (using ad hoc consultants as deemed necessary); (ii) all aspects of Appendix M have been appropriately addressed by the Principal Investigator; (iii) no research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion); and (iv) final IBC approval is granted only after the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion). Institutional Biosafety Committee approval must be obtained from the clinical trial site.

Note: Individuals, corporations, and institutions not otherwise covered by the *NIH Guidelines,* are encouraged to adhere to the standards and procedures set forth in Sections I through IV (see Section IV–D, Voluntary Compliance. The policy and procedures for establishing an Institutional Biosafety Committee under Voluntary Compliance, are specified in Section IV–D–2, Institutional Biosafety Committee Approval).

None of the other sub-sections under Section IV–B2–a. Membership and Procedures of the IBC are to be amended.

Section IV–B–2–b–(1) will be amended as follows:

Section IV–B–2–b–(1). Reviewing recombinant or synthetic nucleic acid molecule research conducted at or sponsored by the institution for compliance with the *NIH Guidelines* as specified in Section III, Experiments Covered by the *NIH Guidelines,* and approving those research projects that are found to conform to the *NIH Guidelines.* This review shall include: (i) Independent assessment of the containment levels required by the *NIH Guidelines* for the proposed research; (ii) assessment of the facilities, procedures, practices, and training and expertise of personnel involved in recombinant or synthetic nucleic acid molecule research; (iii) ensuring that all aspects of Appendix M have been appropriately addressed by the Principal Investigator (iv) ensuring that no research participant is enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion), Institutional Biosafety Committee approval (from the clinical trial site) has been obtained, Institutional Review Board approval has been obtained, and all applicable regulatory authorizations have been obtained; (v) for human gene transfer protocols selected for public RAC review and discussion, consideration of the issues raised and recommendations made as a result of this review and consideration of the Principal Investigator's response to the RAC recommendations; (vi) ensuring that final IBC approval is granted only after the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion); and (vii) ensuring compliance with all surveillance, data reporting, and adverse event reporting requirements set forth in the *NIH Guidelines.*

None of the other sub-sections under Section IV–B–2–b. Functions of the IBC are to be amended.

Section IV–B–6 will be amended as follows:

Section IV–B–6. Human Gene Therapy Expertise. When the institution participates in or sponsors recombinant or synthetic nucleic acid molecule research involving human subjects, the institution must ensure that: (i) The Institutional Biosafety Committee has adequate expertise and training (using ad hoc consultants as deemed necessary) and (ii) all aspects of Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant or Synthetic Nucleic Acid Molecules into One or More Human Subjects (Points to Consider), have been appropriately addressed by the Principal Investigator prior to its approval.

Section IV–B–7–b–(6) will be amended as follows:

Section IV–B–7–b–(6). Ensure that all aspects of Appendix M have been appropriately addressed prior to submission. No research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the NIH protocol registration process has been completed (see Appendix M–I–B, Selection of Individual Protocols for Public RAC Review and Discussion); IBC approval (from the clinical trial site) has been obtained; Institutional Review Board (IRB) approval has been obtained; and all applicable regulatory authorization(s) have been obtained.

For a clinical trial site that is added after completion of the NIH protocol registration process, no research participant shall be enrolled (see definition of enrollment in Section I–E–7) at the clinical trial site until the following documentation has been submitted to the NIH OSP: (1) IBC approval (from the clinical trial site); (2) IRB approval; (3) IRB-approved informed consent document; and (4) NIH grant number(s) if applicable.

To implement this new process, the NIH will amend Appendix M, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant or Synthetic Nucleic Acid Molecules into One or More Human Research Participants (Points to Consider).

Appendix M will be amended as follows:

Appendix M applies to research conducted at or sponsored by an institution that receives any support for recombinant or synthetic nucleic acid molecule research from NIH. Researchers not covered by the *NIH Guidelines* are encouraged to use Appendix M (see Section I–C, General Applicability).

The acceptability of human somatic cell gene transfer has been addressed in several public documents as well as in numerous academic studies. In November 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research published a report, *Splicing Life,* which resulted from a two-year process of public deliberation and hearings. Upon release of that report, a U.S. House of Representatives subcommittee held three days of public hearings with witnesses from a wide range of fields

from the biomedical and social sciences to theology, philosophy, and law. In December 1984, the Office of Technology Assessment released a background paper, *Human Gene Therapy,* which concluded that civic, religious, scientific, and medical groups have all accepted, in principle, the appropriateness of gene transfer of somatic cells in humans for specific genetic diseases. Somatic cell gene transfer is seen as an extension of present methods that might be preferable to other technologies. In light of this public support, the NIH is prepared to consider proposals for somatic cell gene transfer.

The NIH will not at present entertain proposals for germ line alterations but will consider proposals involving somatic cell gene transfer. The purpose of somatic cell gene transfer is to treat an individual patient, *e.g.,* by inserting a properly functioning gene into the subject's somatic cells. Germ line alteration involves a specific attempt to introduce genetic changes into the germ (reproductive) cells of an individual, with the aim of changing the set of genes passed on to the individual's offspring.

The NIH continues to explore the issues raised by the potential of *in utero* gene transfer clinical research. However, the NIH concludes that, at present, it is premature to undertake any *in utero* gene transfer clinical trial. Significant additional preclinical and clinical studies addressing vector transduction efficacy, biodistribution, and toxicity are required before a human *in utero* gene transfer protocol can proceed. In addition, a more thorough understanding of the development of human organ systems, such as the immune and nervous systems, is needed to better define the potential efficacy and risks of human *in utero* gene transfer. Prerequisites for considering any specific human *in utero* gene transfer procedure include an understanding of the pathophysiology of the candidate disease and a demonstrable advantage to the *in utero* approach. Once the above criteria are met, the NIH would be willing to consider well rationalized human *in utero* gene transfer clinical trials.

Research proposals involving the deliberate transfer of recombinant or synthetic nucleic acid molecules, or DNA or RNA derived from such nucleic acid molecules, into one or more human subjects (human gene transfer) will be considered through a registration process involving the NIH, oversight bodies involved in the review at an initial site(s), and regulatory authorities, when appropriate. Investigators shall submit the relevant information on the proposed human gene transfer experiment to the oversight bodies involved in the review at an initial site(s) and then to the NIH. The format of the submission is described in Appendix M–I–A, Requirements for Protocol Submission. Submission to the NIH OSP shall be for registration purposes and will ensure continued public access to relevant human gene transfer information conducted in compliance with the *NIH Guidelines.*

Public RAC review and discussion of a human gene transfer experiment will be initiated in two exceptional circumstances: (1) Following a request for public RAC review from one or more oversight bodies involved in the review at an initial site(s), the NIH concurs that the submission meets one or more of the following NIH RAC review criteria: (i) The protocol uses a new vector, genetic material, or delivery methodology that represents a first-in-human experience, thus presenting an unknown risk; (ii) the protocol relies on preclinical safety data that were obtained using a new preclinical model system of unknown and unconfirmed value; or (iii) the proposed vector, gene construct, or method of delivery is associated with possible toxicities that are not widely known and that may render it difficult for oversight bodies involved in the review at an initial site(s) to evaluate the protocol rigorously. However, if one or more oversight bodies involved in the review at an initial site(s) requests public RAC review, but the NIH does not concur that the submission meets one or more of the RAC review criteria (listed in i, ii, or iii), then the NIH OSP will inform, within 10 working days, the requesting and other oversight bodies involved in the review at an initial site(s) that public RAC review is not warranted. (2) The NIH Director, in consultation (if needed) with appropriate regulatory authorities, determines that the submission: (a) Meets one or more of the NIH RAC review criteria (listed in i, ii, or iii) and that public RAC review and discussion would provide a clear and obvious benefit to the scientific community or the public; or (b) raises significant scientific, societal, or ethical concerns.

If it is determined that a human gene transfer trial will undergo public RAC review, the NIH will immediately notify the Principal Investigator. RAC recommendations following public review on a specific human gene transfer experiment shall be forwarded to the Principal Investigator, oversight bodies involved in the review at an initial site(s), and regulatory authorities, as appropriate. Relevant documentation will be included in the material for the RAC meeting at which the human gene transfer trial is scheduled to be discussed. RAC meetings will be open to the public except where trade secrets and proprietary information are reviewed (see Section IV–D–5, *Protection of Proprietary Data—Voluntary Compliance*). Information provided in response to Appendix M should not contain any proprietary data or trade secrets, enabling all aspects of the review to be open to the public.

Some but not all sections of Appendix M–I Requirements for Protocol Submission, Review, and Reporting—Human Gene Transfer Experiments will be amended to decrease the number and amount of supporting documentation that must be submitted upon protocol registration, and to modify the timing of the registration processes. Principal Investigators must submit the material as outlined below to oversight bodies at the proposed clinical trial sites; however, submission of responses to Appendices M–II through M–V or curriculum vitae will no longer be required.

Appendix M–I–A will be amended as follows:

Appendix M–I–A. Requirements for Protocol Submission

The following documentation must be submitted according to institutional policy, to the appropriate oversight bodies involved in the review at an initial site(s) and subsequently in electronic form to the NIH OSP:

1. A scientific abstract.

2. The proposed clinical protocol, including tables, figures, and any relevant publications.

3. Summary of preclinical studies conducted in support of the proposed clinical trial or reference to the specific section of the protocol providing this information.

4. A description of the product:

a. Describe the derivation of the delivery vector system including the source (*e.g.,* viral, bacterial, or plasmid vector); and modifications (*e.g.,* deletions to attenuate or self-inactivate, encapsulation in any synthetic complex, changes to tropisms, etc.). Please reference any previous clinical experience with this vector or similar vectors.

b. Describe the genetic content of the transgene or nucleic acid delivered including the species source of the sequence and whether any modifications have been made (*e.g.* mutations, deletions, and truncations). What are the regulatory elements contained in the construct?

c. Describe any other material to be used in preparation of the agent (vector and transgene) that will be administered to the human research subject (*e.g.,* helper virus, packaging cell line, carrier particles).

d. Describe the methods for replication-competent virus testing, if applicable.

e. Describe the intended *ex vivo* or *in vivo* target cells and transduction efficiency.

f. Describe the gene transfer agent delivery method.

5. The proposed informed consent document.

6. Specifically for submission to the NIH OSP, the Principal Investigator shall provide additional documentation originating from oversight bodies involved in the review at an initial site(s) regarding their assessment of whether public RAC review is warranted. In the event that review is requested, a justification that the NIH RAC review criteria (see Section III–C–1) are met shall be included.

Note: Any application submitted shall not contain any document that is designated as 'confidential' in its entirety. In the event that a determination has been made that a specific portion of a document should be considered proprietary or trade secret, each specific portion should be clearly identified as such. In the event that a specific portion of the submission is identified to be proprietary or trade secret, the submission to the NIH OSP must contain a letter that: (1) Clearly indicates what select portions of the application contain information considered as proprietary or trade secret, and (2) provides justification as to why this information is considered to be proprietary or trade secret. The justification must be able to demonstrate *with specificity* how release of that information will reveal a trade secret or will result in substantial competitive harm.

Appendix M–I–B, RAC Review Requirements will be amended to change the process and timing of public RAC review. Currently, investigators are informed within 15 working days whether or not the protocol requires public RAC review. Public discussion of selected protocols then occurs at the next quarterly RAC meeting, which occurs, at a minimum of, eight weeks after receipt of a complete protocol submission. Individual RAC members will no longer make a recommendation regarding whether a protocol should be selected for review at a public meeting.

Therefore, Appendix M–1–B–1 and Appendix M–1–B–2 are being amended as follows to form a consolidated Appendix M–1–B:

Appendix M–1–B. Selection of Individual Protocols for Public RAC Review and Discussion

As part of the NIH protocol registration process, documentation originating from all oversight bodies involved in the review at an initial site(s) regarding their assessment of whether public RAC review is warranted must accompany the Principal Investigator's submission to the NIH. If no oversight body involved in the review at an initial site(s) requests public RAC review, then the required documentation to register the protocol (see Appendix M–I–A) shall be submitted to the NIH OSP at any time, but not less than 10 working days prior to the anticipated date of enrollment of the first subject (see definition of enrollment in Section I–E–7). This information shall be provided in electronic form to the Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892–7985 (20817 for non-USPS mail), 301–496–9838, 301–496–9839 (fax), Email: *HGTprotocols@mail.nih.gov*. An acknowledgement that the protocol registration process is complete will occur within the 10 working days period prior to the anticipated date of enrollment. Final IBC approval may then be granted.

If one or more oversight bodies involved in the review at an initial site(s) requests public RAC review, but the NIH does not concur that the submission meets one or more of the RAC review criteria, the NIH OSP will notify the Principal Investigator, oversight bodies involved in the review at an initial site(s), and regulatory authorities, as appropriate, that public RAC review is not warranted. An acknowledgement that the protocol registration process is complete will accompany this decision. Final IBC approval may then be granted.

If an oversight body involved in the review at an initial site(s) determines that: (1) A protocol submission would significantly benefit from public RAC review and discussion and (2) that one or more of the following NIH RAC review criteria are met: (i) The protocol uses a new vector, genetic material, or delivery methodology that represents a first-in-human experience, thus presenting an unknown risk; or (ii) the protocol relies on preclinical safety data that were obtained using a new preclinical model system of unknown and unconfirmed value; or (iii) the proposed vector, gene construct, or method of delivery is associated with possible toxicities that are not widely known and that may render it difficult for local and federal regulatory bodies to evaluate the protocol rigorously, and is therefore requesting RAC review and public discussion, the Principal Investigator shall submit the documentation as outlined in Appendix M–I–A at least 8 weeks prior to the next scheduled meeting in order to be reviewed at that RAC meeting. The submission shall include documentation originating from oversight bodies involved in the review at an initial site(s) regarding their assessment of whether public RAC review is warranted and that one or both have justified their request according the NIH RAC review criteria listed above. The submission shall be provided to the NIH in electronic form to the Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892–7985 (20817 for non-USPS mail), 301–496–9838, 301–496–9839 (fax), Email: *HGTprotocols@mail.nih.gov*. If the NIH concurs that the submission meets one or more of the following NIH RAC review criteria above, the protocol will undergo public RAC review and discussion.

Even if an oversight body involved in the review at an initial site(s) does not request public RAC review, the NIH Director, after consultation (if needed) with appropriate regulatory authorities, may initiate public RAC review if (a) the protocol has one or more of the characteristics listed above (i, ii, or iii) and public RAC review and discussion would provide a clear and obvious benefit to the scientific community or public; or (b) the protocol otherwise raises significant scientific, societal, or ethical concerns. If a protocol is to undergo RAC public discussion a complete human gene transfer protocol package must be submitted at least 8 weeks before a scheduled RAC meeting to be reviewed at that upcoming meeting.

After a human gene transfer experiment is publicly reviewed by the full RAC at a regularly scheduled meeting, the NIH OSP will send a letter summarizing the RAC's comments and recommendations (if any) regarding the protocol to the Principal Investigator(s), oversight bodies involved in the review at an initial site(s), and regulatory authorities as appropriate. Unless the NIH determines that there are exceptional circumstances, the NIH will send this letter to the Principal Investigator within 10 working days after the completion of the RAC meeting at which the experiment was reviewed. Receipt of this letter concludes the

protocol registration process. Final IBC approval may then be granted.

RAC meetings will be open to the public except where trade secrets or confidential commercial information are reviewed. To enable all aspects of the protocol review process to be open to the public, information provided in response to Appendix M–I–A should not contain trade secrets or confidential commercial or financial information. Documentation submitted to the NIH OSP shall not be designated as 'confidential' in its entirety. In the event that a determination has been made that a specific portion of a document submitted should be considered as proprietary or trade secret, each specific portion should be clearly identified as such. The cover letter (attached to the submitted material) shall: (1) Clearly indicate what select portions contain information considered as proprietary or a trade secret; and (2) provide justification as to why this information is considered to be proprietary or trade secret. This justification must be able to demonstrate *with specificity* how release of that information will reveal a trade secret or will result in substantial competitive harm.

Appendix M–I–C–2 currently states:

Appendix M–I–C–2. Additional Clinical Trial Sites

No research participant shall be enrolled (see definition of enrollment in Section I–E–7) at a clinical trial site until the following documentation has been submitted to NIH OBA: (1) Institutional Biosafety Committee approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; (4) curriculum vitae of the Principal Investigator(s) (no more than two pages in biographical sketch format); and (5) NIH grant number(s) if applicable.

Appendix M–1–C–2 will be amended as follows:

Appendix M–I–C–2. Additional Clinical Trial Sites

Within 30 days of enrollment (see definition of enrollment in Section I–E–7) at a clinical trial site, the following documentation shall be submitted to NIH OSP: (1) Institutional Biosafety Committee approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; and (4) NIH grant number(s) if applicable.

There are no amendments to Appendix M–I–D, Safety Assessments in Human Gene Transfer Research.

The current appendices Appendix M–II, Description of the Proposal; Appendix M–III, Informed Consent; Appendix M–IV, Privacy; and Appendix M–V, Special Issues will be deleted in their entirety, except for Appendix M–III–B–2–b, Long Term Follow-Up which will be updated to include a reference to FDA's current guidance on this issue and will become Appendix M–II.

Appendix M–II will be amended as follows:

Appendix M–II. Long Term Follow-Up

To permit evaluation of long-term safety and efficacy of gene transfer, prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. A list of persons who can be contacted in the event that questions arise during the follow-up period should be provided to the investigator. In addition, the investigator should request that subjects continue to provide a current address and telephone number.

The subjects should be informed of any significant findings resulting from the study will be made known in a timely manner to them and/or their parent or guardian including new information about the experimental procedure, the harms and benefits experienced by other individuals involved in the study, and any long-term effects that have been observed.

Additional guidance is available in the FDA Guidance for Industry: Gene Therapy Clinical Trials—Observing Subjects for Delayed Adverse Events (available at the following URL: *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/CellularandGeneTherapy/default.htm).*

Appendix M–VI Footnotes of Appendix M will be renumbered to Appendix M–III. Footnotes of Appendix M. There will be no amendment to the language.

Dated: March 15, 2016.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2016–06448 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

This meeting is open to the public but is being held by teleconference only. No physical meeting location is provided for any interested individuals to listen to and/or participate in the meeting. Any individual interested in listening to the meeting discussions must call 800–779–9040 and use Participant Passcode 5055308 for access to the meeting. Individuals needing special assistance should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: April 21, 2016.

Time: 4:00 p.m. to 6:00 p.m. EDT.

Agenda: The HeLa Genome Data Access working group will report on the evaluation of requests to access HeLa cell genome sequence data. The Clinical Center working group will present their final report to the Advisory Committee to the Director, NIH.

Place: National Institutes of Health, (Telephone Conference Call), Dial In Number 800–779–9040, Participant Passcode: 5055308.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, Telephone: 301–496–4272, Email: *woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding their statement electronically to the Contact Person at *woodgs@od.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested of the interested person.

Additional information for this meeting including both working group reports will be posted, when available, on the Advisory Committee to the Director, NIH, Web site (*http://acd.od.nih.gov*). Additional information about the HeLA Genome Data Access working group is available at *http://acd.od.nih.gov/hlgda.htm* and additional information about the Clinical Center working group is available at *http://acd.od.nih.gov/redteam.htm.*

Dated: March 15, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06333 Filed 3–21–16; 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; Member Conflict: Addictions, Depression, Bipolar Disorder, Schizophrenia.

Date: April 1, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Brain Disorders, Chronic and Clinical Neurodegeneration.

Date: April 7, 2016.

Time: 2:00 p.m. to 4:00 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: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846. Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: March 16, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–06334 Filed 3–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0106]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0104

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day Notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collection of information: 1625–0104, Barges Carrying Bulk Hazardous Materials. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 23, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0106] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0106], and must be received by May 23, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 1625–0104.

SUMMARY: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. The requirements are necessary to ensure that barges meet safety standards and to ensure that barge's crewmembers have the information necessary to operate barges safely.

Need: Title 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules

related to the carriage of liquid bulk dangerous cargoes. Title 46 CFR 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Forms: N/A.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 28,958 hours a year to 40,307 hours a year. The change in burden is an ADJUSTMENT due to a change in the estimated annual number of new construction (n/c) tank barges. In the last ICR, the Coast Guard estimated about 160 n/c tank barges per year. In this ICR, the Coast Guard estimates about 282 n/c tank barges per year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: March 14, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–06430 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0164]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The National Boating Safety Advisory Council and its Subcommittees will meet on April 21, 22, and 23, 2016, in Arlington, VA, to discuss issues relating to recreational boating safety. These meetings will be open to the public.

DATES: The National Boating Safety Advisory Council will meet on Thursday, April 21, 2016, from 8:30 a.m. to 12:00 p.m. and on Saturday, April 23, 2016 from 9:00 a.m. to 12:00 p.m. The Boats and Associated Equipment Subcommittee will meet on April 21, 2016, from 1:30 p.m. to 5:00 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on April 22, 2016, from 9:00 a.m. to 12:00 p.m. The Prevention through People Subcommittee will meet on April 22, 2016, from 1:30 p.m. to 5:00 p.m. Please note that these meetings may conclude early if the National Boating Safety Advisory Council has completed all business.

ADDRESSES: All meetings will be held in the Ballroom of the Holiday Inn Arlington (*http://www.hiarlington.com*), 4610 N Fairfax Drive, Arlington, VA 22203.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Jeff Ludwig, Alternate Designated Federal Officer, telephone 202–372–1061, or at *jeffrey.a.ludwig@uscg.mil.*

To facilitate public participation, we are inviting public comment on the issues to be considered by the Council as listed in the ''Agenda'' section below. Written comments for distribution to Council members must be submitted no later than April 14, 2016, if Council review is desired prior to the meeting, and must be identified by docket number USCG 2010–0164. Written comments may be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Alternate Designated Federal Officer for alternate instructions.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number of this action, USCG–2010–0164. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov* insert USCG–2010–0164 in the ''Search'' box, press Enter, then click the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, Alternate Designated Federal Officer of the National Boating Safety Advisory Council, telephone (202) 372–1061, or at *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* (Title 5 U.S.C. Appendix). Congress established the National Boating Safety Advisory Council in the *Federal Boat Safety Act of 1971* (Pub. L. 92–75). The National Boating Safety Advisory Council currently operates under the authority of 46 U.S.C. 13110, which requires the Secretary of Homeland Security and the Commandant of the Coast Guard by delegation to consult with the National Boating Safety Advisory Council in prescribing regulations for recreational vessels and associated equipment and on other major safety matters. See 46 U.S.C. 4302(c) and 13110(c).

Meeting Agenda

The agenda for the National Boating Safety Advisory Council meeting is as follows:

Thursday, April 21, 2016

(1) Opening remarks and swearing-in of new members.

(2) Receipt and discussion of the following reports:

(a) Chief, Office of Auxiliary and Boating Safety, Update on the Coast Guard's implementation of National Boating Safety Advisory Council Resolutions and Recreational Boating Safety Program report.

(b) Alternate Designated Federal Officer's report concerning Council administrative and logistical matters.

(3) Subcommittee Session:

Boats and Associated Equipment Subcommittee

Issues to be discussed include alternatives to pyrotechnic visual distress signals; grant projects related to boats and associated equipment; and updates to 33 CFR 181 ''Manufacturer Requirements'' and 33 CFR 183 ''Boats and Associated Equipment.''

(4) Public comment period.

(5) Meeting Recess.

Friday, April 22, 2016

The day will be dedicated to Subcommittee sessions:

(1) *Prevention Through People Subcommittee.* Issues to be discussed include paddlesports participation, boater education requirements, and licensing requirements for on-water boating safety instruction providers.

(2) *Recreational Boating Safety Strategic Planning Subcommittee.*

Issues to be discussed include progress on implementation of the 2012–2016 Strategic Plan, and development of the 2017–2021 Strategic Plan.

Saturday, April 23, 2016

The full Council will resume meeting.

(1) Receipt and discussion of the Boats and Associated Equipment, Prevention through People and The Recreational Boating Safety Strategic Planning Subcommittee reports.

(2) Discussion of any recommendations to be made to the Coast Guard.

(3) Public comment period.

(4) Voting on any recommendations to be made to the Coast Guard.

(5) Adjournment of meeting.

There will be a comment period for the National Boating Safety Advisory Council members and a comment period for the public after each report presentation, but before each is voted on by the Council. The Council members will review the information presented on each issue, deliberate on any recommendations presented in the Subcommittees' reports, and formulate recommendations for the Department's consideration.

The meeting agenda and all meeting documentation can be found at: *http://homeport.uscg.mil/NBSAC.* Alternatively, you may contact Mr. Jeff Ludwig as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public oral comment periods will be held during the meetings after each presentation and at the end of each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment periods may end before the time indicated, following the last call for comments. Contact Mr. Jeff Ludwig as indicated above to register as a speaker.

Dated: March 10, 2016.

Verne B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2016–06426 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0125]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0105

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collection of information: 1625–0105, Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before May 23, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2016–0125] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2016–0125], and must be received by May 23, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

SUMMARY: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying certain dangerous cargoes (CDCs) in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Need: This information is used to ensure port safety and security and to ensure the uninterrupted flow of commerce.

Forms: None.

Respondents: Owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 1,901 hours

to 4 hours a year due to a decrease in the estimated number of responses. The change in responses is due to recent District 8 & District 9 administrative changes to the reporting requirements.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: March 14, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–06429 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0316]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council. This Council advises the Coast Guard on recreational boating safety regulations and other major boating safety matters.

DATES: Completed applications should reach the Coast Guard on or before May 23, 2016.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the National Boating Safety Advisory Council and specifying which membership category the applicant is applying under, along with a resume detailing the applicant's boating experience via one of the following methods:

- *By email: jeffrey.a.ludwig@uscg.mil* (preferred).
- *By mail:* Commandant (CG–BSX–2)/NBSAC, *Attn:* Mr. Jeff Ludwig, U.S. Coast Guard, 2703 Martin Luther King Ave. SE., Stop 7581, Washington, DC 20593–7581.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ludwig, Alternate Designated Federal Officer of the National Boating Safety Advisory Council; telephone 202–372–1061 or email at *jeffrey.a.ludwig@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council is a Federal advisory committee which operates under the provisions of Federal Advisory Committee Act, (Title 5 U.S.C., Appendix). It was established under the authority of 46 United States Code 13110 and advises the Coast Guard on boating safety regulations and other major boating safety matters. The Council usually meets at least twice each year at a location selected by the Coast Guard. It may also meet for extraordinary purposes. Subcommittees or working groups may also meet to consider specific issues.

Each member serves for a term of three years. Members may be considered to serve a maximum of two consecutive full terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is when attending National Boating Safety Advisory Council meetings; members may be reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

We will consider applications for the following seven positions that will be vacant on December 31, 2016:

- Two representatives of State officials responsible for State boating safety programs;
- Three representatives of recreational boat and associated equipment manufacturers; and
- Two representatives of national recreational boating organizations or the general public.

Applications will also be considered for one vacancy in the national recreational boating organizations or the general public membership category that was caused by the inability of a person appointed in 2016 to accept their appointment. This position will serve a term that expires on December 31, 2018.

If you are selected as a member from the general public, you will be appointed and serve as a Special Government Employee as defined in section 202(a) of Title 18, United States Code. As a candidate for appointment as a Special Government Employee, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*) or by contacting the individual listed above in **FOR FURTHER INFORMATION CONTACT**. Applications for a member drawn from the general public that are not accompanied by a completed OGE Form 450 will not be considered.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. The vacancies announced in this notice apply to membership positions that become vacant on January 1, 2017. Individuals who have applied for National Boating Safety Advisory Council membership in any prior years are asked to re-submit a complete application if the individual wishes to apply for any of the vacancies announced in this notice.

To be eligible, applicants should have experience in one of the categories listed above.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). Registered lobbyists are lobbyists required to comply with provisions contained in The Lobbying Disclosure Act of 1995 (2 U.S.C. 1605; Pub. L. 104–65 as amended by Title II of Pub. L. 110–81).

The Department of Homeland Security does not discriminate in selection of Council members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Council, send your cover letter and resume to Mr. Jeff Ludwig, Alternate Designated Federal Officer of National Boating Safety Advisory Council via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

Dated: March 10, 2016.

Verne B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2016–06427 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0201]

Notification of the Removal of Conditions of Entry on Vessels Arriving From the Republic of Cuba

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the conditions of entry on vessels arriving from the country of the Republic of Cuba.

DATES: The policy announced in this notice is effective on March 22, 2016.

ADDRESSES: This notice is part of docket USCG–2016–0201 and is available online by going to *http://www.regulations.gov,* inserting USCG–2016–0201 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Michael Brown, Office of Domestic and International Port Security, United States Coast Guard, telephone 202–372–1081 and email *Michael.W.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 70110 of title 46, United States Code, enacted as part of section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, Nov. 25, 2002) authorizes the Secretary of Homeland Security to impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures. It also requires public notice of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries, and those conditions of entry and the countries they pertain to remain in effect unless modified by this notice. On April 4, 2008 the Coast Guard published a Notice of Policy in the **Federal Register**, (73 FR 18546), announcing that it had determined that ports in the Republic of Cuba were not maintaining effective anti-terrorism measures, and imposed conditions of entry.

Based on port assessments conducted in February 2016, the Coast Guard has determined that the Republic of Cuba is now maintaining effective anti-terrorism measures, and is accordingly removing the conditions of entry announced in the previously published Notice of Policy. With this notice, the current list of countries not maintaining effective anti-terrorism measures is as follows: Cambodia, Cameroon, Comoros, Cote d'Ivoire, Equatorial Guinea, The Gambia, Guinea-Bissau, Iran, Liberia, Libya, Madagascar, Nigeria, Sao Tome and Principe, Syria, Timor-Leste, Venezuela and Yemen. Notwithstanding this Notice, the ''Unauthorized Entry into Cuban Territorial Waters'' regulations located at 33 CFR part 107 remain in effect.

This notice is issued under authority of 46 U.S.C. 70110(d).

Dated: March 16, 2016.

Fred M. Midgette,

Vice Admiral, USCG, Deputy Commandant for Operations.

[FR Doc. 2016–06431 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0165]

Port Access Route Study (PARS): In Nantucket Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) to determine whether it should revise existing regulations to improve navigation safety in Nantucket Sound due to factors such as increased vessels traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty.

DATES: Comments and related material must be received on or before June 20, 2016.

ADDRESSES: You may submit comments, or view documents noted to be available in the docket, and comments made in response to this notice using the Federal eRulemaking Portal (*http://www.regulations.gov*), docket USCG–2016–0165.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, email *D01-SMB-NantucketPARS@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

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

A. Submitting Comments: You may submit your comments and material online via *http://www.regulations.gov.* Type ''USCG–2016–0165'' into the search bar and click search, next to the displayed search results click ''Comment Now'', which will open the comment page for this study. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type ''USCG–2016–0165'' into the search bar and click search, next to the displayed search results click ''Open Docket Folder'', which will display all comments and documents associated with this study.

C. Public Meeting: The Coast Guard may hold public meeting(s) if there is sufficient public interest. You must submit a request for one on or before April 12, 2016. You may submit your request for a public meeting online via *http://www.regulations.gov.* Please explain why you believe a public meeting would be beneficial. If we determine that a public meeting would aid in the study, we will hold a meeting at a time and place announced by a later notice in the **Federal Register**.

D. Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Definitions

The following definitions (except ''Regulated Navigation Area'') are from the International Maritime Organization's (IMO's) publication ''*Ships' Routing*'' Tenth Edition 2010 and should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on the chart.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must

navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Regulated Navigation Area (RNA) means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation zone or separation line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ship proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

III. Background and Purpose

A. Section 310 of the 2015 Coast Guard Authorization Act, Public Law 114–120 signed by the President on February 8, 2016, directs the Commandant of the Coast Guard to complete and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a Port Access Route Study (PARS) of Nantucket Sound using the standards and methodology of the Atlantic Coast Port Access Route Study, to determine whether the Coast Guard should revise existing regulations to improve navigation safety in Nantucket Sound due to factors such as increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. The Atlantic Coast Port Access Route Study contained in the ''marine planning guidelines'' of the Study are included in the docket for this notice.

B. The purpose of this notice is to announce commencement of this PARS and to solicit public comments. We encourage you to participate in the study process by submitting comments in response to this notice. Comments should address impacts to navigation in Nantucket Sound resulting from factors such as increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty.

IV. This PARS: Timeline, Study Area, and Process

The First Coast Guard District will conduct this PARS. The study will commence upon publication of this notice and may take 10 months to complete.

The study area is described as Nantucket Sound, an area bounded by a line connecting the following geographic positions, including the entrance and exit routes to the sound but not the individual harbors.

- 41°41′ N., 070°00′ W.;
- 41°20′ N., 070°00′ W.;
- 41°16′ N., 070°15′ W.
- 41°28′ N., 070°40′ W.; and
- 41°34′ N., 070°40′ W.;

An illustration showing the study area is available in the docket.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to address navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: March 10, 2016.

L. L. Fagan,

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

[FR Doc. 2016–06424 Filed 3–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2579–15; DHS Docket No. USCIS–2014–0011]

RIN 1615–ZB47

Extension of the Designation of Liberia for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Liberia for Temporary Protected Status (TPS) for 6 months, from May 22, 2016, through November 21, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through November 21, 2016, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because, although there have been significant improvements, conditions in Liberia supporting its November 2014 designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for eligible nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Liberia and whose applications have been granted. Certain nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since November 20, 2014, and continuous physical presence in the United States since November 21, 2014).

For individuals who have already been granted TPS under Liberia's designation, the 60-day re-registration period runs from March 22, 2016 through May 23, 2016. USCIS will issue new EADs with a November 21, 2016, expiration date to eligible Liberia TPS

beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on May 21, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Liberia for 6 months, through November 21, 2016, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the Employment Eligibility Verification (Form I–9) and E-Verify processes.

DATES: The 6-month extension of the TPS designation of Liberia is effective May 22, 2016, and will remain in effect through November 21, 2016. The 60-day re-registration period runs from March 22, 2016 through May 23, 2016. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about Liberia's TPS extension by selecting ''Liberia'' from the menu on the left side of the TPS Web page.
- For questions concerning this FRN, you can also contact Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
EVD—Ebola Virus Disease
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is temporary protected status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility requirements at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).
- When the Secretary terminates a country's TPS designation, although TPS benefits end, former TPS beneficiaries continue to hold any lawful immigration status that they maintained or obtained while holding TPS.

When and why was Liberia designated for TPS?

On November 21, 2014, the Secretary designated Liberia for TPS for a period of 18 months due to the extraordinary and temporary conditions caused by an epidemic of Ebola Virus Disease (EVD) in West Africa that prevented nationals of Liberia from returning to Liberia in safety. The extraordinary and temporary conditions included high EVD transmission rates in widespread geographic areas, overwhelmed health care systems unable to handle the large number of EVD patients or to provide treatment for normally preventable or treatable conditions, and containment measures that were causing significant disruptions to Liberia's economy and individuals' ability to access food and earn a livelihood. *See Designation of Liberia for Temporary Protected Status,* 79 FR 69502 (Nov. 21, 2014).

What authority does the Secretary have to extend the designation of Liberia for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Liberia through November 21, 2016?

DHS and the Department of State (DOS) have reviewed conditions in Liberia. Based on the reviews and after consulting with DOS, the Secretary has determined that a 6-month extension is warranted because, although there have been significant improvements, conditions in Liberia supporting its November 2014 designation for TPS persist.

Guinea, Liberia, and Sierra Leone were designated for TPS in the midst of the largest EVD outbreak in history.

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

From March 2014 through November 2015, these three countries suffered over 11,000 deaths among their more than 28,500 cases of EVD. At the height of the outbreak in late 2014, hundreds of new cases were being reported each week, the health care systems were overwhelmed, and containment measures were causing significant disruptions to individuals' ability to access food and earn a livelihood. A robust response by the international community and the governments of Guinea, Liberia, and Sierra Leone has now brought EVD transmission in West Africa substantially under control. The World Health Organization declared Liberia free of EVD transmission on January 14, 2016.

Despite the absence of current widespread EVD transmission, Guinea, Liberia, and Sierra Leone still face containment and recovery challenges, and the risk of flare-ups of EVD remains, as demonstrated by the two cases reported in Sierra Leone in January 2016 after the country had previously been declared free of EVD transmission. All three countries continue to experience consequences of the epidemic, including the ongoing medical issues and mental trauma experienced by EVD survivors; challenges in rebuilding fragile healthcare systems; and lingering food insecurity due to the epidemic's impact on economic activity, productivity, and livelihoods. The World Health Organization continues to consider the EVD outbreak a Public Health Emergency of International Concern.

Although the countries continue to struggle with the effects of the epidemic, in light of the absence of widespread transmission of EVD, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention has removed warnings for travel to Guinea, Liberia, and Sierra Leone. Accordingly, the restrictions placed on grants of advance parole for travel to Guinea, Liberia, and Sierra Leone in conjunction with these countries' designations for TPS in November 2014 are removed. Beneficiaries of TPS Liberia who wish to travel abroad must still comply with the requirements for obtaining advance parole stated in the Instructions to Form I–131, Application for Travel Document. They should also be aware that travel abroad may cause a break in their continuous residence and continuous physical presence in the United States, making them ineligible for TPS, unless the absence from the United States is considered by USCIS to be ''brief, casual and innocent'' under 8 CFR 244.1.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- Conditions supporting the November 2014 designation of Liberia for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Liberia that prevent Liberian nationals (or aliens having no nationality who last habitually resided in Liberia) from returning to Liberia in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit Liberian nationals (or aliens having no nationality who last habitually resided in Liberia) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Liberia for TPS should be extended for a 6-month period from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Requests for advance travel authorization (''advance parole'') for travel to Guinea, Liberia, or Sierra Leone no longer require demonstration of extraordinary circumstances in order to be approvable.
- There are approximately 2,085 current Liberia TPS beneficiaries who are expected to file for re-registration under the extension.

Notice of Extension of the TPS Designation of Liberia

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that conditions supporting Liberia's November 2014 designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of Liberia for TPS for 6 months, from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees To Register or Re-register for TPS

To register or re-register for TPS based on the designation of Liberia, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I–821)

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765)

- If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. You do not need to pay this fee if you are under the age of 14 or are 66 or older.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age, if you want an EAD.
- You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at

http://www.uscis.gov. If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-filing a Re-registration TPS Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the biometrics fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Liberia, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Liberia, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. After you submit your application and receive a USCIS receipt number, please send an email to the appropriate USCIS Service Center handling your application, providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA. To get additional information, including the email address of the appropriate Service Center, you may go to the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Liberia TPS. Please mail your application to the mailing address listed in Table 1.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You must also submit two color passport-style photographs of yourself. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''Liberia.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through November 21, 2016?

Provided that you currently have TPS under the designation of Liberia, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Liberia (or an alien having no nationality who last habitually resided in Liberia);
- Received an EAD under the November 2014 designation of Liberia for TPS; and
- Have an EAD with a marked expiration date of May 21, 2016, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through November 21, 2016, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I–9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.'' You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I–9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or

damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of May 21, 2016, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through November 21, 2016 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through November 21, 2016, based on your Temporary Protected Status. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through November 21, 2016. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of May 21, 2016, that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once May 21, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer does not need to complete a new Employment Eligibility Verification (Form I–9) to reverify your employment authorization until November 21, 2016, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Employment Eligibility Verification (Form I–9) if your employer did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By November 21, 2016, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is November 21, 2016, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I–9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Liberian citizenship or proof that I have re-registered for TPS?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Liberian citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

What happens after November 21, 2016, for purposes of employment authorization?

After November 21, 2016, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. New EADs requested and issued under this TPS extension will also expire on November 21, 2016, unless automatically extended by a subsequent **Federal Register** Notice.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job before November 21, 2016, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write the automatically extended EAD expiration date (November 21, 2016) in the first space; and

c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).

2. For Section 2, employers should record the:

a. Document title;

b. Issuing authority;

c. Document number; and

d. Automatically extended EAD expiration date (November 21, 2016).

By November 21, 2016, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the first space;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''EAD Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By November 21, 2016, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By November 21, 2016, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888–897–7781 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that

provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2580–15; DHS Docket No. USCIS–2014–0009]

RIN 1615–ZB48

Extension of the Designation of Sierra Leone for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Sierra Leone for Temporary Protected Status (TPS) for 6 months, from May 22, 2016, through November 21, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through November 21, 2016, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because, although there have been significant improvements, conditions in Sierra Leone supporting its November 2014 designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for eligible nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Sierra Leone and whose applications have been granted. Certain nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since November 20, 2014, and continuous physical presence in the United States since November 21, 2014).

For individuals who have already been granted TPS under Sierra Leone's designation, the 60-day re-registration period runs from March 22, 2016 through May 23, 2016. USCIS will issue new EADs with a November 21, 2016, expiration date to eligible Sierra Leone TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on May 21, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Sierra Leone for 6 months, through November 21, 2016, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the Employment Eligibility Verification (Form I–9) and E-Verify processes.

DATES: The 6-month extension of the TPS designation of Sierra Leone is effective May 22, 2016, and will remain in effect through November 21, 2016. The 60-day re-registration period runs from March 22, 2016 through May 23, 2016. (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* You can find specific information about Sierra Leone's TPS extension by selecting ''Sierra Leone'' from the menu on the left side of the TPS Web page.
- For questions concerning this FRN, you can also contact Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
EVD—Ebola Virus Disease
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is temporary protected status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they

continue to meet the requirements of TPS.

- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility requirements at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).
- When the Secretary terminates a country's TPS designation, although TPS benefits end, former TPS beneficiaries continue to hold any lawful immigration status that they maintained or obtained while holding TPS.

When and why was Sierra Leone designated for TPS?

On November 21, 2014, the Secretary designated Sierra Leone for TPS for a period of 18 months due to the extraordinary and temporary conditions caused by an epidemic of Ebola Virus Disease (EVD) in West Africa that prevented nationals of Sierra Leone from returning to Sierra Leone in safety. The extraordinary and temporary conditions included high EVD transmission rates in widespread geographic areas, overwhelmed health care systems unable to handle the large number of EVD patients or to provide treatment for normally preventable or treatable conditions, and containment measures that were causing significant disruptions to Sierra Leone's economy and individuals' ability to access food and earn a livelihood. *See Designation of Sierra Leone for Temporary Protected Status,* 79 FR 69506 (Nov. 21, 2014).

What authority does the Secretary have to extend the designation of Sierra Leone for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Sierra Leone through November 21, 2016?

DHS and the Department of State (DOS) have reviewed conditions in Sierra Leone. Based on the reviews and after consulting with DOS, the Secretary has determined that a 6-month extension is warranted because, although there have been significant improvements, conditions in Sierra Leone supporting its November 2014 designation for TPS persist.

Guinea, Liberia, and Sierra Leone were designated for TPS in the midst of the largest EVD outbreak in history. From March 2014 through November 2015, these three countries suffered over 11,000 deaths among their more than 28,500 cases of EVD. At the height of the outbreak in late 2014, hundreds of new cases were being reported each week, the health care systems were overwhelmed, and containment measures were causing significant disruptions to individuals' ability to access food and earn a livelihood. A robust response by the international community and the governments of Guinea, Liberia, and Sierra Leone has now brought EVD transmission in West Africa substantially under control.

In Sierra Leone, the EVD epidemic started in May 2014 and peaked between October and December 2014. Sierra Leone's government and international partners mounted an effective response that dramatically decreased the number of new EVD cases from a high of 500 per week in late 2014 to between 8 to 12 cases in June 2015, to single digits in August 2015. The World Health Organization declared Sierra Leone free of EVD transmission as of November 7, 2015; however, two new cases were subsequently reported in January 2016. Since that time, no additional cases have been reported. If no further cases are detected, the World Health Organization will again declare Sierra Leone free of EVD transmission on March 17, 2016.

Despite the absence of current widespread EVD transmission, Guinea, Liberia, and Sierra Leone still face containment and recovery challenges, and the risk of flare-ups of EVD remains, as demonstrated by the two cases reported in Sierra Leone in January 2016 after the country had previously been declared free of EVD transmission. All three countries continue to experience consequences of the epidemic, including the ongoing medical issues and mental trauma experienced by EVD survivors; challenges in rebuilding fragile healthcare systems; and lingering food insecurity due to the epidemic's impact on economic activity, productivity, and livelihoods. The World Health Organization continues to consider the EVD outbreak a Public Health Emergency of International Concern.

Although the countries continue to struggle with the effects of the epidemic, in light of the absence of widespread transmission of EVD, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention has removed warnings for travel to Guinea, Liberia, and Sierra Leone. Accordingly, the restrictions placed on grants of advance parole for travel to Guinea, Liberia, and Sierra Leone in conjunction with these countries' designations for TPS in November 2014 are removed. Beneficiaries of TPS Sierra Leone who wish to travel abroad must still comply with the requirements for obtaining advance parole stated in the Instructions to Form I–131, Application for Travel Document. They should also be aware that travel abroad may cause a break in their continuous residence and continuous physical presence in the United States, making them ineligible for TPS, unless the absence from the United States is considered by USCIS to be ''brief, casual and innocent'' under 8 CFR 244.1.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- Conditions supporting the November 2014 designation of Sierra Leone for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

• There continue to be extraordinary and temporary conditions in Sierra Leone that prevent nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) from returning to Sierra Leone in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

• It is not contrary to the national interest of the United States to permit nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).

• The designation of Sierra Leone for TPS should be extended for a 6-month period from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

• Requests for advance travel authorization (''advance parole'') for travel to Guinea, Liberia, or Sierra Leone no longer require demonstration of extraordinary circumstances in order to be approvable.

• There are approximately 1,145 current Sierra Leone TPS beneficiaries who are expected to file for re-registration under the extension.

Notice of Extension of the TPS Designation of Sierra Leone

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that conditions supporting Sierra Leone's November 2014 designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of Sierra Leone for TPS for 6 months, from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees to Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Sierra Leone, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I–821)

• If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*

• If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765)

• If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. You do not need to pay this fee if you are under the age of 14 or are 66 or older.

• If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age, if you want an EAD.

• You do not pay the fee for the Application for Employment Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-filing a Re-registration TPS Application after Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the biometrics fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Sierra Leone, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Sierra Leone, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. After you

submit your application and receive a USCIS receipt number, please send an email to the appropriate USCIS Service Center handling your application, providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA. To get additional information, including the email address of the appropriate Service Center, you may go to the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Sierra Leone TPS. Please mail your application to the mailing address listed in Table 1.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You must also submit two color passport-style photographs of yourself. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''Sierra Leone.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through November 21, 2016?

Provided that you currently have TPS under the designation of Sierra Leone, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone);
- Received an EAD under the November 2014 designation of Sierra Leone for TPS; and
- Have an EAD with a marked expiration date of May 21, 2016, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through November 21, 2016, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I–9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.'' You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I–9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of May 21, 2016, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through November 21, 2016 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through November 21, 2016, based on your Temporary Protected Status. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through November 21, 2016. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of May 21, 2016, that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once May 21, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer does not need to complete a new Employment Eligibility Verification (Form I–9) to reverify your employment authorization until November 21, 2016, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Employment Eligibility Verification (Form I–9) if your employer did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled

''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By November 21, 2016, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is November 21, 2016, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I–9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Sierra Leonean citizenship or proof that I have re-registered for TPS?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Sierra Leonean citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

What happens after November 21, 2016, for purposes of employment authorization?

After November 21, 2016, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. New EADs requested and issued under this TPS extension will also expire on November 21, 2016, unless automatically extended by a subsequent **Federal Register** Notice.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job before November 21, 2016, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write the automatically extended EAD expiration date (November 21, 2016) in the first space; and

c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).

2. For Section 2, employers should record the:

a. Document title;

b. Issuing authority;

c. Document number; and

d. Automatically extended EAD expiration date (November 21, 2016).

By November 21, 2016, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the first space;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''EAD Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By November 21, 2016, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By November 21, 2016, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email *I–9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888–897–7781 (TTY 877–875–6028) or email *I–9Central@dhs.gov.* Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2581–15; DHS Docket No. USCIS–2014–0010]

RIN 1615–ZB49

Extension of the Designation of Guinea for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Guinea for Temporary Protected Status (TPS) for 6 months, from May 22, 2016, through November 21, 2016.

The extension allows currently eligible TPS beneficiaries to retain TPS through November 21, 2016, so long as they otherwise continue to meet the eligibility requirements for TPS. The Secretary has determined that an extension is warranted because,

although there have been significant improvements, conditions in Guinea supporting its November 2014 designation for TPS continue to be met.

Through this Notice, DHS also sets forth procedures necessary for eligible nationals of Guinea (or aliens having no nationality who last habitually resided in Guinea) to re-register for TPS and to apply for renewal of their Employment Authorization Documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Guinea and whose applications have been granted. Certain nationals of Guinea (or aliens having no nationality who last habitually resided in Guinea) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions if they meet (1) at least one of the late initial filing criteria, and (2) all TPS eligibility criteria (including continuous residence in the United States since November 20, 2014, and continuous physical presence in the United States since November 21, 2014).

For individuals who have already been granted TPS under Guinea's designation, the 60-day re-registration period runs from March 22, 2016 through May 23, 2016. USCIS will issue new EADs with a November 21, 2016, expiration date to eligible Guinea TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on May 21, 2016. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under the TPS designation of Guinea for 6 months, through November 21, 2016, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on the Employment Eligibility Verification (Form I–9) and E-Verify processes.

DATES: The 6-month extension of the TPS designation of Guinea is effective May 22, 2016, and will remain in effect through November 21, 2016. The 60-day re-registration period runs from March 22, 2016 through *May 23, 2016.* (**Note:** It is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire.)

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

You can find specific information about Guinea's TPS extension by selecting ''Guinea'' from the menu on the left side of the TPS Web page.

- For questions concerning this FRN, you can also contact the Jerry Rigdon, Chief of the Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquires.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
EVD—Ebola Virus Disease
FNC—Final Nonconfirmation Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work and obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility requirements at INA section 244(c)(2), 8 U.S.C. 1254a(c)(2).
- When the Secretary terminates a country's TPS designation, although TPS benefits end, former TPS beneficiaries continue to hold any lawful immigration status that they maintained or obtained while holding TPS.

When and why was Guinea designated for TPS?

On November 21, 2014, the Secretary designated Guinea for TPS for a period of 18 months due to the extraordinary and temporary conditions caused by an epidemic of Ebola Virus Disease (EVD) in West Africa that prevented nationals of Guinea from returning to Guinea in safety. The extraordinary and temporary conditions included high EVD transmission rates in widespread geographic areas, overwhelmed health care systems unable to handle the large number of EVD patients or to provide treatment for normally preventable or treatable conditions, and containment measures that were causing significant disruptions to Guinea's economy and individuals' ability to access food and earn a livelihood. *See Designation of Guinea for Temporary Protected Status,* 79 FR 69511 (Nov. 21, 2014).

What authority does the Secretary have to extend the designation of Guinea for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government (Government), to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or eligible aliens having no nationality who last habitually resided in the designated country). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation or extension, the Secretary, after

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Guinea through November 21, 2016?

DHS and the Department of State (DOS) have reviewed conditions in Guinea. Based on the reviews and after consulting with DOS, the Secretary has determined that a 6-month extension is warranted because, although there have been significant improvements, conditions in Guinea supporting its November 2014 designation for TPS persist.

Guinea, Liberia, and Sierra Leone were designated for TPS in the midst of the largest EVD outbreak in history. From March 2014 through November 2015, these three countries suffered over 11,000 deaths among their more than 28,500 cases of EVD. At the height of the outbreak in late 2014, hundreds of new cases were being reported each week, the health care systems were overwhelmed, and containment measures were causing significant disruptions to individuals' ability to access food and earn a livelihood. A robust response by the international community and the governments of Guinea, Liberia, and Sierra Leone has now brought EVD transmission in West Africa substantially under control. The World Health Organization declared Guinea free of EVD transmission on December 29, 2015.

Despite the absence of current widespread EVD transmission, Guinea, Liberia, and Sierra Leone still face containment and recovery challenges, and the risk of flare-ups of EVD remains, as demonstrated by the two cases reported in Sierra Leone in January 2016 after the country had previously been declared free of EVD transmission. All three countries continue to experience consequences of the epidemic, including the ongoing medical issues and mental trauma experienced by EVD survivors; challenges in rebuilding fragile healthcare systems; and lingering food insecurity due to the epidemic's impact on economic activity, productivity, and livelihoods. The World Health Organization continues to consider the EVD outbreak a Public Health Emergency of International Concern.

Although the countries continue to struggle with the effects of the epidemic, in light of the absence of widespread transmission of EVD, the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention has removed warnings for travel to Guinea, Liberia, and Sierra Leone. Accordingly, the restrictions placed on grants of advance parole for travel to Guinea, Liberia, and Sierra Leone in conjunction with these countries' designations for TPS in November 2014 are removed. Beneficiaries of TPS Guinea who wish to travel abroad must still comply with the requirements for obtaining advance parole stated in the Instructions to Form I–131, Application for Travel Document. They should also be aware that travel abroad may cause a break in their continuous residence and continuous physical presence in the United States, making them ineligible for TPS, unless the absence from the United States is considered by USCIS to be ''brief, casual and innocent'' under 8 CFR 244.1.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- Conditions supporting the November 2014 designation of Guinea for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There continue to be extraordinary and temporary conditions in Guinea that prevent Guinean nationals (or aliens having no nationality who last habitually resided in Guinea) from returning to Guinea in safety. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- It is not contrary to the national interest of the United States to permit Guinean nationals (or aliens having no nationality who last habitually resided in Guinea) who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Guinea for TPS should be extended for a 6-month period from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Requests for advance travel authorization (''advance parole'') for travel to Guinea, Liberia, or Sierra Leone no longer require demonstration of extraordinary circumstances in order to be approvable.
- There are approximately 990 current Guinea TPS beneficiaries who are expected to file for re-registration under the extension.

Notice of Extension of the TPS Designation of Guinea

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that conditions supporting Guinea's November 2014 designation for TPS continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). On the basis of this determination, I am extending the existing designation of Guinea for TPS for 6 months, from May 22, 2016, through November 21, 2016. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

Jeh Charles Johnson,

Secretary.

Required Application Forms and Application Fees To Register or Re-Register for TPS

To register or re-register for TPS based on the designation of Guinea, you must submit each of the following applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an application for late initial registration, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on late initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765).

- If you are applying for late initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. You do not need to pay this fee if you are under the age of 14 or are 66 or older.
- If you are applying for re-registration, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age, if you want an EAD.
- You do not pay the fee for the Application for Employment

Authorization (Form I–765) if you are not requesting an EAD, regardless of whether you are applying for late initial registration or re-registration.

You must submit both completed application forms together. If you are unable to pay the application fee and/or biometrics fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay for the biometric services fee, you may complete a Request for Fee Waiver (Form I–912) or submit a personal letter requesting a fee waiver with satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Re-Filing a Re-Registration TPS Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue any EAD promptly. Filing early will also allow you to have time to re-file your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to re-file by the re-registration deadline, you may still re-file your application. This situation will be reviewed to determine whether you established good cause for late re-registration. However, you are urged to re-file within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*

Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, you may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee until after USCIS has approved your TPS re-registration, if you are eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the biometrics fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Mailing Information

Mail your application for TPS to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Guinea, P.O. Box 6943, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Guinea, 131 S. Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate mailing address in Table 1. After you submit your application and receive a USCIS receipt number, please send an email to the appropriate USCIS Service Center handling your application, providing the receipt number and stating that you submitted a re-registration and/or request for an EAD based on an IJ/BIA grant of TPS. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA. To get additional information, including the email address of the appropriate Service Center, you may go to the USCIS TPS Web page at *http://www.uscis.gov/tps.*

E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Guinea TPS. Please mail your application to the mailing address listed in Table 1.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You must also submit two color passport-style photographs of yourself. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''Guinea.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days, and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through November 21, 2016?

Provided that you currently have TPS under the designation of Guinea, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Guinea (or an alien having no nationality who last habitually resided in Guinea);
- Received an EAD under the November 2014 designation of Guinea for TPS; and
- Have an EAD with a marked expiration date of May 21, 2016, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through November 21, 2016, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of being hired, you must present proof of identity and employment authorization to your employer.

You may present any document from List A (reflecting both your identity and employment authorization) or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization). An EAD is an acceptable document under ''List A.'' You may present an acceptable receipt for a List A, List B, or List C document as described in the Employment Eligibility Verification (Form I–9) Instructions. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged. If you present an acceptable receipt, you must present your employer with the actual document within 90 days. Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of May 21, 2016, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Employment Eligibility Verification (Form I–9) through November 21, 2016 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?''* for further information). To minimize confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through November 21, 2016, based on your Temporary Protected Status. You are also strongly encouraged, although not required, to show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through November 21, 2016. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, or a combination of one selection from List B and one selection from List C.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of May 21, 2016, that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once May 21, 2016, is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer does not need to complete a new Employment Eligibility Verification (Form I–9) to reverify your employment authorization until November 21, 2016, the expiration date of the automatic extension, but may need to reinspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Employment Eligibility Verification (Form I–9) if your employer did not keep a copy of this EAD at the time you initially presented it. You and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?''* for further information). You are also strongly encouraged, although not required, to show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By November 21, 2016, the expiration date of the automatic extension, your employer must reverify your employment authorization. At that time, you must present any unexpired document from List A or any unexpired document from List C on Employment Eligibility Verification (Form I–9) to reverify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) instructions. Your employer is required to reverify on Employment Eligibility Verification (Form I–9) the employment authorization of current employees upon the automatically extended expiration date of a TPS-related EAD, which is November 21, 2016, in this case. Your employer should use either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for the employee or, if this section has already been completed or if the version of Employment Eligibility Verification (Form I–9) is no longer valid, complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt. An acceptable receipt is one that shows an employee has applied to replace a document that was lost, stolen or damaged.

Can my employer require that I produce any other documentation to prove my current TPS status, such as proof of my Guinean citizenship or proof that I have re-registered for TPS?

No. When completing Employment Eligibility Verification (Form I–9), including reverifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Guinean citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Note that although you are not required to provide your employer with a copy of this **Federal Register** Notice, you are strongly encouraged to do so to help avoid confusion.

What happens after November 21, 2016, for purposes of employment authorization?

After November 21, 2016, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. New EADs requested and issued under this TPS extension will also expire on November 21, 2016,

unless automatically extended by a subsequent **Federal Register** Notice.

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job before November 21, 2016, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work;''

b. Write the automatically extended EAD expiration date (November 21, 2016) in the first space; and

c. Write your alien number (USCIS number or A-number) in the second space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).

2. For Section 2, employers should record the:

a. Document title;

b. Issuing authority;

c. Document number; and

d. Automatically extended EAD expiration date (November 21, 2016).

By November 21, 2016, employers must reverify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job but that EAD has now been automatically extended, your employer may reinspect your automatically extended EAD if the employer does not have a photocopy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in the first space;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''November 21, 2016'' above the previous date;

c. Write ''EAD Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By November 21, 2016, when the automatic extension of EADs expires, employers must reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

If you are an employer who participates in E-Verify and you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when this EAD is about to expire. Usually, this message is an alert to complete Section 3 of the Employment Eligibility Verification (Form I–9) to reverify an employee's employment authorization. For existing employees with TPS-related EADs that have been automatically extended, employers should dismiss this alert by clicking the red ''X'' in the ''dismiss alert'' column and follow the instructions above explaining how to correct the Employment Eligibility Verification (Form I–9). By November 21, 2016, employment authorization must be reverified in Section 3. Employers should never use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process, employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline, at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, you may call USCIS at 888–897–7781 (TTY 877–875–6028) or email *I-9Central@dhs.gov.* Calls are accepted in English and many other languages. You may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship status, immigration status, or national origin, or for information regarding discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against you based on your decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify your employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). If you believe you were discriminated against by an employer in the E-Verify process based on citizenship or immigration status or based on national origin, you may contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-

Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each State may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples are:

(1) Your unexpired EAD;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Approval Notice (Form I–797), if you received one from USCIS; and/or

(5) If there is an automatic extension of work authorization, a copy of the fact sheet from the USCIS TPS Web site that provides information on the automatic extension.

Check with the government agency regarding which document(s) the agency will accept. You may also provide the agency with a copy of this **Federal Register** Notice.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) to verify the current immigration status of applicants for public benefits. If such an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found at the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''How to Correct Your Records'' from the menu on the right.

[FR Doc. 2016–06325 Filed 3–21–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N047; FXES11120400000–156–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for an Incidental Take Permit; Availability of Low-Effect Habitat Conservation Plan and Associated Documents; Osceola County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and a habitat conservation plan (HCP). JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust (applicants) request ITP TE81666B–0 under the Endangered Species Act of 1973, as amended (Act). The applicants anticipate taking about 0.5 acre of feeding, breeding, and sheltering habitat used by the sand skink and blue-tailed mole skink incidental to land preparation and construction in Osceola County, Florida. The applicant's HCP describes proposed minimization measures and mitigation measures to address the effects of development on the covered species.

DATES: We must receive your written comments on the ITP application and HCP on or before April 21, 2016.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing the South Florida Ecological Services Office, Attn: Permit number TE81666B–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Alfredo Begazo, South Florida Ecological Services Office (see **ADDRESSES**); telephone: 772–469–4234.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and a habitat conservation plan (HCP). JKAF Investments, LLC, and Kathryn Kendrick Davidow Trust (applicants) request ITP TE81666B–0 under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act). The applicants anticipate taking about 0.5 acre of feeding, breeding, and sheltering habitat used by the sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) (skinks) incidental to land preparation and construction in Osceola County, Florida. The applicant's HCP describes proposed minimization measures and mitigation measures to address the effects of development on the covered species.

Submitting Comments

If you wish to comment on the ITP application or HCP, you may submit comments by any one of the following methods:

Email: alfredo_begazo@fws.gov. Use ''Attn: Permit number ''TE81666B–0'' as your message subject line.

Fax: Alfredo Begazo, 772–469–4234, Attn.: Permit number ''TE81666B–0.''

U.S. mail: Alfredo Begazo, South Florida Ecological Services Field Office, Attn: Permit number ''TE81666B–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off comments or request information during regular business hours at the U.S. mail address.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comments that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Applicants' Proposed Project

We received an application for an incidental take permit, along with a proposed habitat conservation plan. The applicants request an ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). If we approve the application, the applicants anticipate taking a total of approximately 0.5 acre of skink breeding, feeding, and sheltering habitat, incidental to land preparation and construction in Section 30, Township 25 South, and Range 27 East in Osceola County, Florida. The applicants currently have neither a

time-frame for development nor a specific site plan; however, development of this parcel would likely include construction of one or more structures and a parking area, and installation of associated utilities.

The applicants propose to minimize impacts to skinks by preserving a total of 1 acre of skink-occupied habitat off site. The Service listed the skinks as threatened in 1987 (November 6, 1987; 52 FR 20715), effective December 7, 1987.

Our Preliminary Determination

We have made a preliminary determination that the applicants' project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, our proposed issuance of the requested ITP qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).We base our preliminary determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the project, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued.

Authority

We provide this notice under Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: March 14, 2016.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2016–06378 Filed 3–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N048; FXES11120400000–156–FF04EF2000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for an Incidental Take Permit; Availability of Low-Effect Habitat Conservation Plan and Associated Documents; Polk County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and a habitat conservation plan (HCP). Love's Travel Stops & Country Stores, Inc. (applicant) requests ITP TE86106B–0 under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 2.54 acres of feeding, breeding, and sheltering habitat used by the sand skink and blue-tailed mole skink incidental to land preparation and construction in Polk County, Florida. The applicant's HCP describes proposed minimization measures and mitigation measures to address the effects of development on the covered species.

DATES: We must receive your written comments on the ITP application and HCP on or before April 21, 2016.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing to the South Florida Ecological Services Office, Attn: Permit number TE86106B–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Alfredo Begazo, South Florida Ecological Services Office (see **ADDRESSES**); telephone: 772–469 –4234.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and a habitat conservation plan (HCP). Love's Travel Stops & Country Stores, Inc. (applicant) requests ITP TE86106B–0 under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 2.54 acres of feeding, breeding, and sheltering habitat used by the sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) (skinks) incidental to land preparation and construction in Polk County, Florida. The applicant's HCP describes proposed minimization measures and mitigation measures to address the effects of development on the covered species.

Submitting Comments

If you wish to comment on the ITP application or HCP, you may submit comments by any one of the following methods:

Email: alfredo_begazo@fws.gov. Use ''Attn: Permit number ''TE86106B–0'' as your message subject line.

Fax: Alfredo Begazo, 772–562–4288, Attn.: Permit number ''TE86106B–0.''

U.S. mail: Alfredo Begazo, South Florida Ecological Services Field Office, Attn: Permit number ''TE86106B–0,'' U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off comments or request information during regular business hours at the U.S. mail address.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comments that your personal identifying information be withheld from public review, we cannot guarantee that we will be able to do so.

Applicant's Proposed Project

We received an application for an incidental take permit, along with a proposed habitat conservation plan. The applicant requests an ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*). If we approve the application, the applicant anticipates taking a total of approximately 2.54 acres of skink breeding, feeding, and sheltering habitat, incidental to land preparation and construction in Section 14,

Township 30 South, Range 27 East, Polk County, Florida. The applicant currently has neither a time frame for development, nor a specific site plan; however, development of this parcel would likely include construction of one or more structures and a parking area, and installation of associated utilities.

The applicant proposes to minimize impacts to skinks by preserving a total of 5.08 acres of skink-occupied habitat off site. The Service listed the skinks as threatened in 1987 (November 6, 1987; 52 FR 20715), effective December 7, 1987.

Our Preliminary Determination

We have made a preliminary determination that the applicant's project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, our proposed issuance of the requested ITP qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). We base our preliminary determination that issuance of the ITP qualifies as a low-effect action on the following three criteria: (1) Implementation of the project would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the project would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the project, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP. If it is determined that the requirements of the Act are met, the ITP will be issued.

Authority

We provide this notice under Section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: March 14, 2016.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2016–06379 Filed 3–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Information Collection: Indian Health Service Forms To Implement the Privacy Rule

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''IHS Forms to Implement the Privacy Rule (45 CFR parts 160 and 164),'' Office of Management and Budget (OMB) Control Number 0917–0030.

DATES: *Comment Due Date:* April 21, 2016. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

ADDRESSES: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection, or to obtain a copy of the data collection instruments and/or instruction(s), contact Tamara Clay by one of the following methods:

- *Mail:* Tamara Clay, Information Collection Clearance Officer, Indian Health Service, Office of Management Services, Division of Regulatory Affairs, 5600 Fishers Lane, Mail Stop 09E70, Rockville, MD 20857.
- *Phone:* 301–443–4750.
- *Email: tamara.clay@ihs.gov.*
- *Fax:* 301–443–2316.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** (81 FR 3806) on January 22, 2016, and allowed 60 days for public comment. No public comment was received in response to the notice. This notice announces our intent to submit the collection, which expires April 30, 2016, to OMB for approval of an extension, and to solicit comments on specific aspects of the information collection. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2016–1).

Title of Collection: 0917–0030, IHS Forms to Implement the Privacy Rule (45 CFR parts 160 and 164). *Type of Information Collection Request:* Extension of the currently approved information collection, 0917-0030, IHS Forms to Implement the Privacy Rule (45 CFR parts 160 and 164). *Form(s):* IHS–810, IHS–912–1, IHS–912–2, IHS–913, and IHS–917. *Need and Use of Information Collection:* This collection of information is made necessary by the Department of Health and Human Services Rule entitled ''Standards for Privacy of Individually Identifiable Health Information'' (Privacy Rule) (45 CFR parts 160 and 164). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, creates national standards to protect individual's personal health information, and gives patients increased access to their medical records. 45 CFR 164.508, 164.522, 164.526 and 164.528 of the Rule require the collection of information to implement these protection standards and access requirements. The IHS will continue to use the following data collection instruments to meet the information collection requirements contained in the Rule.

45 CFR 164.508: This provision requires covered entities to obtain or receive a valid authorization for its use or disclosure of protected health information for other than treatment, payment and healthcare operations. Under the provision, individuals may initiate a written authorization permitting covered entities to release their protected health information to entities of their choosing. The form IHS–810 ''Authorization for Use or Disclosure of Protected Health

Information'' is used to document an individual's authorization to use or disclose their protected health information.

45 CFR 164.522: Section 164.522(a)(1) requires a covered entity to permit individuals to request that the covered entity restrict the use and disclosure of their protected health information. The covered entity may or may not agree to the restriction. The form IHS–912–1 ''Request for Restrictions(s)'' is used to document an individual's request for restriction of their protected health information, and whether IHS agreed or disagreed with the restriction. Section 164.522(a)(2) permits a covered entity to terminate its agreement to a restriction if the individual agrees to or requests the termination in writing. The form IHS–912–2 ''Request for Revocation of Restriction(s)'' is used to document the agency or individual request to terminate a formerly agreed to restriction regarding the use and disclosure of protected health information.

45 CFR 164.528 and 45 CFR 5b.9(c): This provision requires covered entities to permit individuals to request that the covered entity provide an accounting of disclosures of protected health information made by the covered entity. The form IHS–913 ''Request for an Accounting of Disclosures'' is used to document an individual's request for an accounting of disclosures of their protected health information and the agency's handling of the request.

45 CFR 164.526: This provision requires covered entities to permit an individual to request that the covered entity amend protected health information. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must inform the individual that the amendment is accepted. If the covered entity denies the requested amendment, in whole or in part, the covered entity must provide the individual with a written denial. The form IHS–917 ''Request for Correction/Amendment of Protected Health Information'' will be used to document an individual's request to amend their protected health information and the agency's decision to accept or deny the request. Completed forms used in this collection of information are filed in the IHS medical, health and billing record, a Privacy Act System of Records Notice. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides for this information collection: Types of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour(s).

Data collection instrument	Number of respondents	Number of responses per respondent	Average burden hour per response*	Total annual burden hours
Authorization for Use or Disclosure of Protected Health Information (OMB Form No. 0917–0030, IHS–810)	210,954	1	10/60	35,159
Request for Restriction(s) (OMB Form No. 0917–0030, IHS–912–1)	214	1	10/60	36
Request for Revocation of Restriction(s) (OMB Form No. 0917–0030, IHS–912–2)	3	1	10/60	.5
Request for Accounting of Disclosures (OMB Form No. 0917–0030, IHS–913)	39	1	10/60	6.5
Request for Correction/Amendment of Protected Health Information (OMB Form No. 0917–0030, IHS–917)	54	1	10/60	9
Total Annual Burden	211,264			35,211

* For ease of understanding, burden hours are provided in actual minutes.

The total estimated burden for this collection of information is 35,211 hours.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 10, 2016.

Mary Smith,

Principal Deputy Director, Indian Health Service.

[FR Doc. 2016–06445 Filed 3–21–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L14400000–BJ0000–16XL1109AF: HAG 16–0101

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 2 E., accepted March 14, 2016.

Washington

Tps. 33 and 34 N., R. 2 E, accepted March 8, 2016.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Timothy J. Moore,

Acting Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2016–06381 Filed 3–21–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L13400000.PQ0000 LXSS006F0000; MO#4500091407]

Notice of Public Meeting: Bureau of Land Management Nevada Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Nevada will hold a joint meeting of its three Resource Advisory Councils (RACs), the Sierra Front-Northwestern Great Basin RAC, the Northeastern Great Basin RAC, and the Mojave-Southern Great Basin RAC in Sparks, Nevada. The meeting is open to the public and a public comment period is scheduled for March 24.

Dates and Times: The three RACs will meet on Wednesday, March 23, from 8 a.m. to 4:30 p.m. and Thursday, March 24, from 8 a.m. to 4:30 p.m. A public comment period will be held on Thursday, March 24, at 3:30 p.m. The agenda and additional information will be posted at *http://on.doi.gov/1bkJm1g.*

FOR FURTHER INFORMATION CONTACT: Chris Rose, telephone: (775) 861–6480, email: *crose@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The three 15-member Nevada RACs advise the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in Nevada. The meeting will be held at the Nugget Casino Resort, 1100 Nugget Avenue, Sparks, Nevada. Agenda topics include an update on sage grouse, grazing and wild horses and burros; closeout reports of the three RACs; breakout meetings of the three RACs; and scheduling meetings of the individual RACs for the upcoming year. The public may provide written comments to the three RAC groups or to an individual RAC.

Comments may also be submitted by email to *crose@blm.gov* with the subject: 2016 Tri-RAC Comment or by mail at the address provided below. Written comments should be received no later than March 22.

BLM Nevada Tri-RAC Comments, c/o Chris Rose, 1340 Financial Blvd., Reno, NV 89502.

Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations may contact Chris Rose at the phone number or email address above.

Rudy Evenson,

Deputy Chief, Office of Communications.

[FR Doc. 2016–06380 Filed 3–21–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00; 4500069133]

Notice of Public Meeting, Twin Falls District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Twin Falls District RAC will meet April 21, 2016 at the Sawtooth Best Western Inn, 2653 S. Lincoln, Jerome, Idaho 83338. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. The public comment period will take place from 9:45 to 10:15 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the April 21st meeting, there will be an update on the Craters of the Moon National Monument Draft Environmental Impact Statement Amendment, an update on the status of the wild horses gathered following the Soda Fire, an overview of BLM-Idaho's Artist in Residence program, and an update on the Sage-Grouse Environmental Impact Statement Amendments implementation strategy, as well as field office updates. Additional topics may be added and will be included in local media announcements.

More information is available at *www.blm.gov/id/st/en/res/resource_advisory.3.html.* RAC meetings are open to the public.

Authority: 43 CFR 1784.4–1.

Brian C. Amme,

BLM Twin Falls District Manager (Acting).

[FR Doc. 2016–06377 Filed 3–21–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0105]

Agency Information Collection Activities: Proposed eCollection eComments Requested; Revision to a Currently Approved Collection; Community Policing Self-Assessment (CP–SAT)

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** at 81 *FR* 1444, on January 12, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 April 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lashon M. Hilliard, Department of Justice, Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Community Policing Self-Assessment (CP–SAT).

(3) *The agency form number 1103–0105:* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law Enforcement Agencies and community partners.

Abstract: The purpose of this project is to improve the practice of community policing throughout the United States by supporting the development of a series of tools that will allow law enforcement agencies to gain better insight into the depth and breadth of their community policing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 20,964 respondents will respond with an average of 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated burden is 5,241 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: March 17, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–06384 Filed 3–21–16; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Return A—Monthly Return of Offenses Known to Police and Supplement to Return A—Monthly Return of Offenses Known to Police

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the established review procedures of the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 23, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Samuel Berhanu, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. Type of Information Collection: Revision of a currently approved collection.

2. The Title of the Form/Collection: Return A—Monthly Return of Offenses Known to Police and Supplement to Return A—Monthly Return of Offenses Known to Police.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Forms 1–720 and 1–706; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract: City, county, state, tribal, and federal law enforcement agencies. Under Title 28, U.S. Code, Section 534, Acquisition, Preservation, and Exchange of Identification Records; Appointment of Officials, 1930, this collection requests Part I offense and clearance data as well as stolen and recovered monetary values of stolen property throughout the United States from city, county, state, tribal, and federal law enforcement agencies in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of crime data and to publish these statistics in the *Preliminary Annual Reports* and *Crime in the United States.*

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are a potential of 18,498 law enforcement agency respondents; calculated estimates indicate 10 minutes for the Return A and 11 minutes for the Supplement to Return A.

6. An estimate of the total public burden (in hours) associated with the collection: There are approximately 48,686 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 17, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–06407 Filed 3–21–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0029]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection, Annual Reporting for Manufacturers of Listed Chemicals

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 81 *FR* 1443, on January 12, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until April 21, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Annual Reporting for Manufacturers of Listed Chemicals.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. The Department of Justice component is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: This information collection permits the DEA to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information is required by law.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that there are 100 total respondents for this information collection. In total, 100 respondents submit 100 responses, with each response taking 0.25 hours to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 25 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and

Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: March 17, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–06383 Filed 3–21–16; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA 2016–022]

FOIA Advisory Committee; Solicitation for Committee Member Nominations

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) seeks member nominations for our Freedom of Information Act (FOIA) Advisory Committee (Committee).

DATES: We must receive nominations for Committee membership before 5 p.m. EDT on April 30, 2016.

ADDRESSES: Email nominations to OGIS at *foia-advisory-committee@nara.gov,* fax them to Kate Gastner's attention at 202–741–5769, or mail them to Kate Gastner; National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kate Gastner by phone at 202–741–5770, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road; College Park, MD 20740–6001, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We established the Committee under the Federal Advisory Committee Act, 5 U.S.C. App., to advise NARA on improvements to the FOIA and to study the current FOIA landscape across the executive branch. We also established the Committee in accordance with the second United States Open Government National Action Plan released on December 5, 2013, and the directive in the FOIA, 5 U.S.C. 552(h)(1)(C), that the Office of Government Information Services (OGIS) within NARA ''recommend policy changes . . . to improve'' FOIA administration.

This Committee is subject to the Federal Advisory Committee Act (FACA), the FOIA, and the Government in the Sunshine Act (GISA).

II. Charter and Membership Appointment Terms

We first chartered the Committee on May 20, 2014, and we anticipate renewing the charter for another two-year term beginning in May 2016. Member appointment terms run for two years, concurrently with the Committee charter.

III. Committee Membership

The Committee includes at least eight Government and seven non-Government representatives. We select Committee members so that the Committee membership includes the following range of representatives, at a minimum:

Government members: Three FOIA professionals from Cabinet-level Departments; three FOIA professionals from non-Cabinet agencies; one representative from the Department of Justice, Office of Information Policy; and one representative from NARA.

Non-Government Members: Two individuals representing the interests of non-Governmental organizations that advocate on FOIA matters; one individual representing the interests of FOIA requesters who qualify for the ''all other'' FOIA requester fee category; one individual representing the interests of requesters who qualify for the ''news media'' FOIA requester fee category; one individual representing the interests of requesters who qualify for the ''commercial'' FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia.

IV. Nomination information

All nominations for Committee membership should provide the following information:

1. Your name, title, and relevant contact information (including phone, fax, and email address);

2. The nominee's name, title, and relevant contact information, and the Committee position for which you are submitting the nominee;

3. A short paragraph or biography about the nominee (fewer than 250 words), summarizing their resumé or otherwise highlighting the contributions the nominee would bring to the Committee; and

4. The nominee's resumé or curriculum vitae.

OGIS will notify nominees selected for appointment to the Committee in the summer of 2016.

Dated: March 16, 2016.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2016–06319 Filed 3–21–16; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0056]

Fees Development and Communications

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for information.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting information from the public on a number of issues associated with the development of the agency's fees. Specifically, the NRC would like stakeholder input regarding the general communications the NRC provides about its fees and the public's understanding of the NRC's fees. The information collected will be used by the NRC in developing ways to improve the transparency of its fees development and invoicing processes.

DATES: Submit information and comments by May 6, 2016. Information and comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for information and comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0056. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail information and comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining and submitting information and comments, see ''Obtaining and Submitting Information and Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anna Bradford, Office of the Chief Financial Officer, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1560; email: *Anna.Bradford@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining and Submitting Information and Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0056 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0056.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Information and Comments

Please include Docket ID NRC–2016–0056 in your submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your submission. The NRC will post all submissions at *http://www.regulations.gov* as well as enter the submissions into ADAMS. The NRC does not routinely remove identifying or contact information.

If you are requesting or aggregating information from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their submissions. Your request should state that the NRC does not routinely edit submissions to remove such information before making the submissions available to the public or entering the submission into ADAMS.

II. Background

Each year, the NRC determines its hourly, annual, and flat fees via the rulemaking process. During that rulemaking process, the NRC receives public comments regarding the specific fees being proposed, and at times also receives more generalized comments regarding the processes that the NRC uses to calculate and communicate those fees—such comments are outside the scope of the annual rulemaking process.

In a January 30, 2015, paper to the Commission (SECY–15–0015, ''Project Aim 2020 Report and Recommendations,'' ADAMS Accession No. ML15012A594), the NRC staff recommended that the Office of the Chief Financial Officer (OCFO) undertake an effort to: 1) Simplify how the NRC calculates its fees, 2) improve transparency, and 3) improve the timeliness of the NRC's communications about fee changes. These areas overlap with the out-of-scope comments that the NRC at times receives during its annual fee rulemaking. In addition, the NRC staff's paper recommended that the OCFO assess alternative methods of allocating fees; specifically, the paper recommended that the OCFO look at whether the NRC should continue to assess flat fees to materials licensees, and whether the NRC should use flat fees for other regulatory activities. The Commission approved these recommendations in a Staff Requirements Memorandum dated June 8, 2015 (ADAMS Accession No. ML15159A234).

In accordance with the Commission's direction in June 2015, the NRC is now seeking input from its stakeholders. The focus of this information-gathering effort is to obtain information for the NRC to consider in evaluating the changes (if any) that the NRC can make to improve the transparency and the timeliness of its fees development and invoicing processes. Potential improvements identified as a result of this information-gathering effort may be implemented in a variety of ways, including during the development of future annual fee rulemakings or by making changes to other agency communication methods (*e.g.,* by posting additional information to the public Web site regarding fees).

III. Requested Information and Comments

The NRC is interested in obtaining stakeholder comments regarding the general communications the NRC provides about its fees and the public's understanding of the NRC's fees. In particular, the NRC is requesting answers to the following questions:

1. What are some specific ways that the NRC can improve the public's understanding of its fees and how those fees relate to the agency's budget?

2. What are some specific improvements that could be made to the fee-related work papers or forms that would assist in the public's understanding of those papers and forms? For example, can the NRC improve the clarity and content of NRC invoice forms? If so, how?

3. How can the NRC improve its explanation of any changes to the annual fees or hourly rates in the annual fee rule?

4. What additional information can the NRC provide along with the proposed fee rule and work papers to help explain how the NRC determines fees?

5. Given the statutory requirement to base the NRC's fees on the annual appropriation enacted by Congress, are there any ways that the NRC can improve the timeliness of completing its annual fee rulemaking or communicating fee changes?

6. Are there activities that the NRC should convert from fee-billable to non-fee-billable (or vice versa) and, if so, why? For example, should hearings for new licenses be fee-billable, or should the NRC continue to recover those costs through 10 CFR part 171 annual charges?

7. Are there activities or fee classes that are more suited to flat fees rather than hourly? For example, should reviews of topical reports be subject to a flat fee or is the level of effort associated with individual topical reports too variable?

8. Are the current fee classes and categories appropriately defined? If not, how should they be revised and why?

9. Is there general information that the NRC can add to its public Web site that would assist stakeholders in their understanding of the NRC's fees development and invoicing processes?

Dated at Rockville, Maryland, this 16th day of March, 2016.

For the Nuclear Regulatory Commission.

Maureen E. Wylie,

Chief Financial Officer.

[FR Doc. 2016–06422 Filed 3–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 7–9, 2016, 11545 Rockville Pike, Rockville, Maryland.

Thursday, April 7, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: AP1000 Generic Design Changes (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse regarding the AP1000 generic design changes. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

10:45 a.m.–12:00 p.m.: Regulatory Guide (RG) 1.229 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding RG 1.229 and its risk-informed approach for addressing the effects of debris on post-accident long-term core cooling.

2:00 p.m.–4:00 p.m.: Spent Fuel Storage and Transportation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute regarding framework for storage and transportation of spent fuel and NUREG–1927, ''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliances for Dry Storage of Spent Fuel.''

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

Friday, April 8, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Baltimore Tunnel Fire (NUREG/CR–6866) and Caldecott Tunnel Fire (NUREG/CR–6894) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the above fire events.

1:00 p.m.–2:00 p.m.: Biennial Review and Evaluation of the NRC Safety Research Program (Open)—The Committee will hold a discussion regarding the NRC Safety Research Program.

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

Saturday, April 9, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. 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 Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are

available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 16th day of March, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–06421 Filed 3–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: March 21, 28, April 4, 11, 18, 25, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of March 21, 2016

There are no meetings scheduled for the week of March 21, 2016.

Week of March 28, 2016—Tentative

Tuesday, March 29, 2016

9:30 a.m. Briefing on Project Aim (Public Meeting), (Contact: Janelle Jessie: 301–415–6775).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Wednesday, March 30, 2016

9:30 a.m. Briefing on Security Issues (Closed Ex. 1).

Week of April 4, 2016—Tentative

Tuesday, April 5, 2016

9:30 a.m. Briefing on Threat Environment Assessment (Closed Ex. 1).

Week of April 11, 2016—Tentative

There are no meetings scheduled for the week of April 11, 2016.

Week of April 18, 2016—Tentative

Tuesday, April 19, 2016

9:30 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting), (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 25, 2016—Tentative

There are no meetings scheduled for the week of April 25, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: March 17, 2016.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–06490 Filed 3–18–16; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–97 and CP2016–122; Order No. 3156]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services—Non-Published Rates Contract 10 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 23, 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 Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and Order No. 2967,[1] the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services—Non-Published Rates Contract 10 (GEPS–NPR 10) to the competitive product list.[2] The Postal Service states the addition of GEPS–NPR 10 to the competitive product list is necessary due to its revision of the Management Analysis of the Prices and Methodology for Determining Prices for Negotiated Service Agreements under Global Expedited Package Services—Non-

[1] Docket Nos. MC2016–46 and CP2016–61, Order Adding Global Expedited Package Services—Non-Published Rates Contract 9 (GEPS–NPR 9) to the Competitive Product List, December 30, 2015, at 6–8 (Order No. 2967).

[2] Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 10 (GEPS–NPR 10) to the Competitive Products List and Notice of Filing GEPS–NPR 10 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, March 15, 2016 (Request).

Published Rates 9 and accompanying financial model. Request at 3.

To support its Request, the Postal Service filed the following attachments:

- Attachment 1, an application for non-public treatment of materials filed under seal;
- Attachment 2A, a redacted version of Governors' Decision No. 11–6;
- Attachment 2B, a revised version of Mail Classification Schedule section 2510.8 GEPS–NPR;
- Attachment 2C, a redacted version of the GEPS–NPR 10 Management Analysis;
- Attachment 2D, Maximum and Minimum Prices for Priority Express Mail International (PMEI), Priority Mail International (PMI), and Global Express Guaranteed (GXG); First-Class Package International Service (FCPIS); and International Merchandise Return Service (IMRS) prices under GEPS–NPR 10 Contracts;
- Attachment 2E, a certified statement concerning the prices for applicable negotiated service agreements under GEPS–NPR 10, required by 39 CFR 3015.5(c)(2);
- Attachment 3, a Statement of Supporting Justification, which is filed pursuant to 39 CFR 3020.32; and
- Attachment 4, a redacted version of the GEPS–NPR 10 model contract. *Id.* at 3–4.

In a Statement of Supporting Justification, Giselle Valera, Managing Director and Vice President, Global Business, asserts the product is designed to increase efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. *Id.* Attachment 3 at 1.

She contends GEPS–NPR 10 belongs on the competitive product list as it is part of a market over which the Postal Service does not exercise market dominance,[3] is not subsidized by market dominant products, covers costs attributable to it, and does not cause competitive products as a whole to fail to make the appropriate contribution to institutional costs. Request at 3.

The Postal Service included a redacted version of the GEPS–NPR 10 model contract with the Request. *Id.* Attachment 4. The Postal Service represents the GEPS–NPR 10 model contract is a slight modification of the GEPS–NPR 9 model contract approved by the Commission in Order No. 2967. *See* Request at 3.

The Postal Service represents it will notify each GEPS–NPR 10 customer of the contract's effective date no later than 30 days after receiving the signed agreement from the customer. *Id.* Attachment 4 at 4. Unless terminated earlier, each contract will expire the later of one year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). Request at 5; *id.* Attachment 2E; *id.* Attachment 3 at 2–3.

The Postal Service filed much of the supporting materials, including an unredacted model contract, under seal. Request at 3. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* Attachment 1 at 1–2, 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost coverage, non-published rates, as well as some customer-identifying information in future signed agreements. *Id.* at 4–5. The Postal Service asks the Commission to protect customer-identifying information from public disclosure for ten years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 11.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–97 and CP2016–122 to consider the Request pertaining to the proposed GEPS–NPR 10 product and the related model contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 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 March 23, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–97 and CP2016–122 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than March 23, 2016.

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

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06344 Filed 3–21–16; 8:45 am]

BILLING CODE 7710–FW–P

[3] The Postal Service claims it does not exercise sufficient market power to set the price of PMEI, PMI, FCPIS, and GXG substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. *Id.* at 3–4; *see* 39 U.S.C. 3642(b).

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–125; Order No. 3157]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to an existing 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:* March 24, 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 March 16, 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

[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, March 16, 2016 (Notice).

treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–125 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 March 24, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–125 for consideration of the matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya 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 March 24, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–06418 Filed 3–21–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 10 (GEPS—NPR 10) to the Competitive Products List.

DATES: *Effective date:* March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on March 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 10 (GEPS—NPR 10) to the Competitive Products List,* and *Notice of Filing GEPS—NPR 10 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–97 and CP2016–122.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–06331 Filed 3–21–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–464, OMB Control No. 3235–0527]

Proposed Collection; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 7d–2.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''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.

In Canada, as in the United States, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts (''Canadian retirement accounts''). These accounts, which operate in a manner similar to individual retirement accounts in the United States, encourage retirement savings by permitting savings on a tax-deferred basis. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States (''Canadian-U.S. Participants'' or ''participants'') often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or ''cashing out'') those assets, which would result in immediate taxation in Canada.

Once in the United States, however, these participants historically have been unable to manage their Canadian retirement account investments. Most investment companies (''funds'') that are ''qualified companies'' for Canadian retirement accounts are not registered under the U.S. securities laws. Securities of those unregistered funds, therefore, generally cannot be publicly offered and sold in the United States without violating the registration requirement of the Investment Company Act of 1940 (''Investment Company Act'').[1] As a result of this registration requirement, Canadian-U.S. Participants previously were not able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

The Commission issued a rulemaking in 2000 that enabled Canadian-U.S. Participants to manage the assets in their Canadian retirement accounts by providing relief from the U.S. registration requirements for offers of securities of foreign issuers to Canadian-U.S. Participants and sales to Canadian retirement accounts.[2] Rule 7d–2 under the Investment Company Act[3] permits foreign funds to offer securities to Canadian-U.S. Participants and sell securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d–2 contains a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[4] Rule 7d–2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d–2 does not require any documents to be filed with the Commission.

Rule 7d–2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from

[1] 15 U.S.C. 80a. In addition, the offering and selling of securities that are not registered pursuant to the Securities Act of 1933 (''Securities Act'') is generally prohibited by U.S. securities laws. 15 U.S.C. 77.

[2] *See* Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts, Release Nos. 33–7860, 34–42905, IC–24491 (June 7, 2000) [65 FR 37672 (June 15, 2000)]. This rulemaking also included new rule 237 under the Securities Act, permitting securities of foreign issuers to be offered to Canadian-U.S. Participants and sold to Canadian retirement accounts without being registered under the Securities Act. 17 CFR 230.237.

[3] 17 CFR 270.7d–2.

[4] 44 U.S.C. 3501–3502.

registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 3,164 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.[5] The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 158 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 474 offering documents. The staff therefore estimates that 158 respondents would make 474 responses by adding the new disclosure statement to 474 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d–2 disclosure requirement would be 79 hours (474 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be $30,020 (79 hours × $380 per hour of attorney time).[6]

[5] Investment Company Institute, 2015 Investment Company Fact Book (2015) at 238, tbl. 66.

[6] The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $380 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens 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.

Please direct your written comments to Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F St. NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 17, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06412 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77378; File No. SR–NASDAQ–2016–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Transaction Fees at Rule 7018(a)

March 16, 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 March 7, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Rules 7018(a)(2) and (3) to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in Tape A and B securities.

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 purpose of the proposed rule change is to amend Rule 7018(a)(2) and (3), concerning the fees and credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades. The Exchange is proposing to provide a new credit to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Tape [3] A and B securities in addition to other credits provided under Rules 7018(a)(2) and (3) for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders).

Currently under Rules 7018(a)(2) and (3), the Exchange provides credits ranging from $0.0020 per share executed to $0.00305 per share executed to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) if they qualify by meeting the requirements of the various credit tiers under the rules.

The Exchange is proposing to provide a new $0.0001 per share executed credit that would be provided to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tape A and B securities if they have shares of liquidity provided in all securities during the month representing at least 0.2% of Consolidated Volume [4] during the month, through one or more of its Nasdaq Market Center MPIDs.

As noted, this rebate will be provided in addition to other displayed liquidity credits that a member qualifies for under Rules 7018(a)(2) and (3), and will also be provided in addition to any rebates that a member qualifies for under the ISP, NBBO, and QMM programs under Rule 7014. The proposed rebate, however, will not be additive to LMM rebates under Rule 7014 or Designated Retail Order credits under Rule 7018.

The Exchange is implementing the proposed credit on March 7, 2016, at which time any member that qualifies will begin to receive the credit. The measurement period for the Consolidated Volume required to qualify for the new credit will initially be calculated based on such volume provided from March 7, 2016 through March 31, 2016, and then monthly thereafter. For example, a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume during the month would qualify for a $0.0025 per share executed credit under Rule 7018(a). If the member provides 0.21% of Consolidated Volume from March 7, 2016 through March 31, 2016 it would qualify for the new $0.0001 additional per share executed credit. The member's credit for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) in Tape A and B securities from March 1, 2016 through March 4, 2016 would be $0.0025 per share executed, and from March 7, 2016 through March 31, 2016 would be $0.0026 per share executed ($0.0025 credit + $0.0001 credit). If a member did not provide 0.2% of Consolidated Volume from March 7, 2016 through March 31, 2016 the member would not qualify for the additional $0.0001 credit. This is true regardless of the percent of Consolidated Volume provided for the whole month of March.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [5] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act [6] 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 Exchange believes that the proposed new credit is reasonable because it may provide incentive to members to increase the level of liquidity provided to the Exchange, which will in turn benefit all market participants. Providing credits for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) rewards members for improving the market through displayed liquidity. As such, the Exchange believes that providing an additional credit for such liquidity is reasonable.

The Exchange also believes that it is reasonable to limit the credit to only quotes/orders in Tape A and B securities because the Exchange has observed a decline in overall volume on the Exchange in Tape A and B securities in comparison to Tape C securities, and is thus providing incentive to members to provide displayed liquidity in Tape A and B securities.

Further, the Exchange has limited funds with which to apply in the form of incentives, and thus must deploy those limited funds to incentives that it believes will be the most effective and improve market quality in areas that the Exchange determines are in need of improvement. The Exchange believes that the proposed increased credit is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the credit to all members that qualify for it under the rule.

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 new credit for displayed liquidity in Tape A and B securities is reflective of robust competition among exchanges and other trading venues and does not place any burden on competition whatsoever. The credit is designed to provide additional incentive to members to enter displayed quotes and orders in Tape A and B securities traded on the Exchange, which are most in need of improvement. To the extent the incentive is successful; it will benefit all market participants trading in such securities on the Exchange.

Last, although the Exchange does not believe the proposed changes will be unattractive to market participants, if the changes were unattractive then it is likely that the Exchange would 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.

[3] There are three categories, or ''Tapes'' of securities, which are based on listing venue. Tape A securities are those that are listed on NYSE, Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE, and Tape C securities are those that are listed on the Exchange.

[4] Consolidated Volume is 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 a 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. *See* Rule 7018(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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–2016–037 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–037, and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06338 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 24, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Post Argument Discussion;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 17, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–06516 Filed 3–18–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32030; File No. 812–14586]

Principal Life Insurance Company, et al., Notice of Application

March 17, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''Act'').

Applicants: Principal Life Insurance Company (''PLIC''), Principal National Life Insurance Company (''PNL'') (PLIC and PNL are each an ''Insurance Company'' and together, the ''Insurance Companies''), Principal Life Insurance Company Variable Life Separate Account (''PLIC Variable Life Separate Account''), and Principal National Life Insurance Company Variable Life Separate Account (''PNL Variable Life Separate Account'') (PLIC Variable Life Separate Account and PNL Variable Life Separate Account are each a ''Separate Account'' and together, the ''Separate Accounts'').

Summary of Application: Applicants seek an order pursuant to Section 26(c) of the Act approving the substitution of shares of Fidelity Variable Insurance Products Fund V Government Money Market Portfolio (the ''Replacement Fund'') for shares of Principal Variable Contracts Funds, Inc. Money Market Account (the ''Existing Fund'') held by the Separate Accounts to support variable life insurance contracts (each, a ''Contract'' and collectively, the ''Contracts'') issued by the Insurance Companies.

Filing Dates: The application was filed on December 9, 2015, and amended on February 29, 2016, March 8, 2016, and March 14, 2016.

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 April 7, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Britney Schnathorst, Principal Life Insurance Company, The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Mary Kay Frech, Branch Chief at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. PLIC is a stock life insurance company incorporated under the laws of the state of Iowa. PLIC is authorized to transact life insurance business in all states of the United States and the District of Columbia. PLIC is a wholly-owned indirect subsidiary of Principal Financial Group, Inc. (''PFGI''). PLIC is the depositor and sponsor, as those terms have been interpreted by the Commission with respect to variable life insurance separate accounts, of PLIC Variable Life Separate Account. PLIC established PLIC Variable Life Separate Account as a separate account under Iowa law on November 2, 1987.

2. PNL is a stock life insurance company organized under the laws of the state of Ohio. PNL is authorized to transact life insurance business in the District of Columbia and in all states in the United States except New York. PNL is a wholly-owned indirect subsidiary of PFGI. PNL is the depositor and sponsor of PNL Variable Life Separate Account. PNL established PNL Variable Life Separate Account as a separate account under Iowa law on November 28, 2007.

3. Each Separate Account is a ''separate account'' as defined in Rule 0–1(e) under the Act and is registered as a unit investment trust under the Act. Under Iowa law, the applicable Insurance Company owns the assets of the Separate Account attributable to the Contracts through which interests in the Separate Account are issued, but those assets are held separately from all other assets of the applicable Insurance Company for the benefit of the owners of the Contracts (each, a ''Contract Owner'') and the persons entitled to payment under the Contracts. Consequently, the assets in each Separate Account are not chargeable with liabilities arising out of any other business that the applicable Insurance Company may conduct.

4. Each Separate Account is divided into subaccounts. Each subaccount invests exclusively in shares of a corresponding underlying registered open-end management investment company. The applicable Separate Account supports the respective Contracts, and interests in the Separate Account offered through such Contracts have been registered under the Securities Act of 1933 on Form N–6. The application sets forth the registration file numbers for the respective Contracts under the applicable Separate Account.

5. The Contracts are individual flexible premium variable insurance policies. Applicants state that, as disclosed in the prospectuses for the Contracts, the Insurance Companies reserve the right, subject to Commission approval and compliance with applicable law, to substitute shares of one registered open-end management investment company for shares of another registered open-end management investment company held by a subaccount of a Separate Account.

6. Principal Variable Contracts Funds, Inc. (''PVC'') is organized as a Maryland corporation and is registered as an open-end management investment company under the Act. PVC currently offers 37 series, including the Existing Fund. Principal Management Corporation (''PMC''), an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), provides investment advisory services and certain corporate administrative services to PVC and the Existing Fund. Principal Global Investors, an affiliate of PMC, is the sub-adviser for the Existing Fund and has day-to-day responsibility for selecting investments for the Existing Fund. The Existing Fund served as the only underlying money market investment option for all of the Contracts until the addition of the Replacement Fund effective on February 6, 2016.

7. Fidelity Variable Insurance Products Fund V (''Fidelity VIP Fund V'') was created under a declaration of trust under Massachusetts law and is registered as an open-end management investment company under the Act. Fidelity VIP Fund V currently offers 32 series, including the Replacement Fund. Fidelity Management & Research Company (''FMR''), an investment adviser registered under the Advisers Act, serves as the investment adviser of the Replacement Fund, with overall responsibility for directing portfolio investments and handling Fidelity VIP Fund V's business affairs. Fidelity Investments Money Management, Inc. (''FIMM'') and other affiliates of FMR serve as sub-advisers to the Replacement Fund, with FIMM having day-to-day responsibility of choosing investments for the Replacement Fund. Effective December 1, 2015, the fundamental concentration policy of the Replacement Fund was modified in such a manner as to enable it to operate as a government money market fund. None of Fidelity VIP Fund V, FMR, FIMM, and other affiliates of FMR are affiliated persons (or affiliated persons of affiliated persons) of applicants or PVC.

8. Applicants propose to substitute Service Class Shares of the Replacement Fund for Class 1 Shares of the Existing Fund (the ''Substitution'') to support the Contracts. Applicants represent that the Replacement Fund is an appropriate alternative for Contract Owners. Applicants state that the Replacement Fund and the Existing Fund each has an investment objective to seek current income as is consistent with preservation of capital and liquidity. In addition, while the principal investment strategies of the Replacement Fund may differ from those of the Existing Fund, the goal of each fund is to maintain a net asset value of $1.00 per share. Applicants note that although the risk profiles of the Replacement Fund and the Existing Fund differ, applicants believe that the Replacement Fund entails less investment risk than the Existing Fund. Additional information about the Existing Fund and the Replacement Fund, including investment objectives, principal investment strategies, principal risks and performance history can be found in the application.

9. Applicants represent that the proposed Substitution will result in a decrease in overall expenses, which benefits the Contract Owners. The application sets forth the fees and expenses of the appropriate class of the Existing Fund with the corresponding class of the Replacement Fund in greater detail.

10. Applicants state the board of directors of PVC voted to terminate the Existing Fund and liquidate its assets effective April 8, 2016. In light of the impending liquidation and the importance of offering a money market fund investment option for the Contracts, the applicants determined that the Substitution is necessary and in the best interest of Contract Owners.

11. Applicants represent that the Substitution and the selection of the Replacement Fund were not motivated by any financial consideration paid or to be paid to the Insurance Companies or their affiliates by the Replacement Fund, its adviser or underwriter, or their affiliates.

12. Applicants state that as of the effective date of the Substitution, April 8, 2016 (''Substitution Date''), shares of the Existing Fund will be redeemed for cash. The Insurance Companies, on behalf of the Existing Fund subaccount of the relevant Separate Account, will simultaneously place a redemption request with the Existing Fund and a purchase order with the Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the Replacement Fund.

13. The Substitution will take place at relative net asset value (in accordance with Rule 22c–1 under the Act) with no change in the amount of the Contract value, cash value, accumulation value, account value or death benefit or in dollar value of the investment in the applicable Separate Account. The Insurance Companies or their affiliates will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses.

14. The rights or obligations of the Insurance Companies under the Contracts of those Contract Owners with interests in the subaccount of the Existing Fund (''Affected Contract Owners'') will not be altered in any way. The Substitution will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitution. The Substitution also will not adversely affect any riders under the Contracts. To the extent a Contract offers living benefits, death benefits, or other guarantees, the value of any such guarantee will not materially decrease directly or indirectly as a result of the Substitution.

15. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Insurance Companies will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

16. All Contract Owners were notified of this application by means of a supplement to the Contract prospectuses dated December 9, 2015. Among other information regarding the Substitution, the supplement informed Affected Contract Owners of the right to transfer Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge. Additionally, a prospectus for the Replacement Fund was included with the supplement.

17. On March 9, 2016 (30 days before the Substitution Date), Affected Contract Owners were provided a ''Pre-Substitution Notice,'' setting forth: (a) the intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date (subject to approval and order by the Commission); and (c) information with respect to transfers. In addition, the Insurance Companies delivered a prospectus for the Replacement Fund with the Pre-Substitution Notice.

18. The Insurance Companies will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date, a written confirmation, which will include confirmation that the Substitution was carried out as previously notified, a restatement of the information set forth in the Pre-Substitution Notice, and before and after account values.

19. Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including, without limitation, 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the proposed Substitution. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(c) provides that such approval shall be granted by order of the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants submit that the proposed Substitution meets the standards set forth in Section 26(c) and that, if implemented, the Substitution would not raise any of the concerns underlying that provision. Applicants represent that the Substitution will provide Contract Owners with a comparable investment vehicle which will not circumvent Contract Owner-initiated decisions and the Insurance Companies' obligations under the Contracts, and will enable Contract Owners to continue to use the full range of applicable Contract features as they use today. Applicants further state that the Replacement Fund and the Existing Fund have essentially the same investment objectives, the Replacement Fund entails less investment risk than the Existing Fund, and the proposed Substitution will result in a decrease in overall expenses, thereby benefiting Contract Owners.

3. Applicants state that, as disclosed in the prospectuses for the Contracts, the Insurance Companies reserve the right, subject to Commission approval, to substitute shares of a registered open-end management investment company for shares of another registered open-end held by a subaccount of a Separate Account. Applicants determined that

the Substitution is necessary and in the best interests of Contract Owners in light of the impending liquidation of the Existing Fund and the importance of offering a money market fund investment option for the Contracts. Applicants state that the board of directors of PVC concluded that converting the Existing Fund to a government money market fund would not be a feasible option and voted to terminate the Existing Fund and liquidate its assets effective April 8, 2016. The Insurance Companies submit that the Replacement Fund should substituted for the Existing Fund to serve as the money market investment option for all of the Contracts, as well as for the Contract-related purposes for which the Existing Fund is currently used, so that Contract Owner-initiated decisions and the Insurance Companies' obligations under the Contracts are less likely to be prevented.

4. Applicants also assert that the Substitution does not entail any of the abuses that Section 26(c) was designed to prevent. Each Affected Contract Owner has been advised of his right, any time prior to the Substitution Date, and for at least 30 days after the Substitution Date, to reallocate account value under the affected Contract without any cost or limitation, or otherwise withdraw or terminate his interest in accordance with the terms and conditions of his Contract. Furthermore, Contract Owners will not incur any additional tax liability or any additional fees or expenses as a result of the Substitution.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitution will not be effected unless the Insurance Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitution can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitution.

2. The Insurance Companies or their affiliates will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Affected Contract Owners to effect the Substitution.

3. The Substitution will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by applicants. The Substitution will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitution will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitution.

5. The rights or obligations of the Insurance Companies under the Contracts of Affected Contract Owners will not be altered in any way. The Substitution will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Insurance Companies will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All Affected Contract Owners will be notified, at least 30 days before the Substitution Date about: (a) The intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Insurance Companies will deliver to all Affected Contract Owners, at least thirty (30) days before the Substitution Date, a prospectus for the Replacement Fund.

8. The Insurance Companies will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the Substitution was carried out as previously notified; (b) a restatement of the information set forth in the Pre-Substitution Notice; and (c) before and after account values.

9. Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including without limitation 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06411 Filed 3–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77388; File No. SR–NYSE–2016–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Decommission Extension Fee for Receipt of the NYSE BBO and NYSE Trades Market Data Products

March 17, 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 March 8, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Decommission Extension Fee for receipt of the NYSE BBO and NYSE Trades market data products. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a Decommission Extension Fee for receipt of the NYSE BBO and NYSE Trades market data products,[4] as set forth on the NYSE Proprietary Market Data Fee Schedule (''Fee Schedule''). Recipients of NYSE BBO and NYSE Trades would continue to be subject to the already existing subscription fees currently set forth in the Fee Schedule. The proposed Decommission Extension Fee would apply only to those subscribers who decide to continue to receive the NYSE BBO and NYSE Trades feeds in their legacy format for up to two months after those feeds otherwise will be distributed exclusively in the new format explained below.

NYSE Trades is an NYSE-only last sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations at the time of each sale and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.[5]

NYSE BBO is an NYSE-only market data feed that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that the Exchange reports under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. The data feed includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE reports quotes under the CQ Plan.

As part of the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves, beginning March 1, 2016, NYSE BBO and NYSE Trades will both be transmitted in a new format, Exchange Data Protocol (XDP). Beginning March 1, 2016, the Exchange will transmit NYSE BBO and NYSE Trades in both the legacy format and in XDP without any additional fee being charged for providing these data feeds in both formats. The dual dissemination will remain in place until July 1, 2016, the planned decommission date of the legacy format. Beginning July 1, 2016, recipients of NYSE BBO and NYSE Trades who wish to continue to receive NYSE BBO and NYSE Trades in the legacy format will each be subject to the proposed Decommission Extension Fee of $5,000 per month. During the extension period, recipients of NYSE BBO and NYSE Trades would continue to be subject to the subscription fees currently noted in the Fee Schedule. The extension period for receiving these data feeds in the legacy format will expire on September 1, 2016, on which date distribution of NYSE BBO and NYSE Trades in the legacy format will be permanently discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that adopting an extension fee for subscribers of NYSE BBO and NYSE Trades who wish to receive these data feeds in the legacy format for a period of time beyond the built-in overlap period is reasonable, equitable and not unfairly discriminatory because the proposed fee would apply equally to all data recipients that currently subscribe to NYSE BBO and NYSE Trades. The Exchange believes that it is reasonable to require data recipients to pay an additional fee for taking the data feeds in the legacy format beyond the period of time specifically allotted by the Exchange for data feed customers to adapt to the new XDP format at no extra cost. To that end, the extension fee is designed to encourage data recipients to migrate to the XDP format in order to continue to receive NYSE BBO and NYSE Trades in XDP as the legacy format would no longer be available after that date. The Exchange does not intend to support the legacy format at all after September 1, 2016.

The Exchange notes that NYSE BBO and NYSE Trades are entirely optional. The Exchange is not required to make NYSE BBO and NYSE Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE BBO and NYSE Trades, nor is the Exchange required to offer any feed (NYSE BBO, NYSE Trades, or otherwise) in a particular format, and it is a benefit to the markets generally that NYSE update its distribution technology to make it more efficient (and at the same time eliminate less efficient forms of dissemination). Firms that do purchase NYSE BBO and NYSE Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE BBO and NYSE Trades or any other similar products are attractively priced or not.[8]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system

[4] *See* Securities Exchange Act Release Nos. 61914 (Apr. 14, 2010), 74 FR 21077 (Apr. 22, 2010) (SR–NYSE–2010–30) (notice—NYSE BBO); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (approval order—NYSE BBO); 59309 (Jan. 28, 2009), 74 FR 6073 (Feb. 4, 2009) (SR–NYSE–2009–04) (notice—NYSE Trades); and 59309 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (approval order—NYSE Trades) (SR–NYSE–2009–04) and 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR–NYSE–2010–22).

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4), (5).

[8] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [9]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to the legacy format, such as converting to XDP as soon as possible, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[10]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data (and in this instance, the ability of any firm to switch to the new distribution format in a time frame that eliminates the need to pay these fees entirely).

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [11]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [12] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[13]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade

[9] *NetCoalition,* 615 F.3d at 535.

[10] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.* Finally, the prices set herein are prices for continuing to support distribution formats the Exchange has elected to retire in favor of new and more efficient distribution formats, making cost-based analyses even less relevant.

[11] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html; see also* Complaint in *U.S.* v. *Deutsche Borse AG and NYSE Euronext,* Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[12] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[13] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE BBO or NYSE Trades in the legacy format unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE BBO and NYSE Trades can provide value in the legacy formats by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. The Exchange has provided customers with adequate notice that it intends to discontinue dissemination of the data feeds in the legacy format. Therefore, the proposed Decommission Extension Fee would only be applicable to those customers who have a need or desire to continue to take the data feeds in the legacy format beyond the period provided for migration to the XDP format. Customers who timely migrate to the XDP format to receive the data feeds would not need to receive the data feeds in the legacy format and therefore would not be subject to the Decommission Extension Fee at all. All of these factors operate as constraints on pricing proprietary data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

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) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–21 and should be submitted on or before April 12, 2016.

[16] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06408 Filed 3–21–16; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77386; File No. SR–NYSEMKT–2016–20]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

March 17, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 2, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to implement proxy access. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of ICE (''ICE Bylaws''). The proposed amendments to the ICE Bylaws would (1) add a new Section 2.15 that permits a stockholder, or stockholders, that meet specific requirements to nominate director nominees for the board of directors of ICE (''ICE Board''), provided that the nominating stockholder(s) and nominee(s) satisfy the proposed requirements, and (2) amend the advance notice provisions in Section 2.13 to account for proxy access.[4]

ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE Arca, Inc.[5]

The proposed amendments to the ICE Bylaws have been approved by the ICE Board, subject to Securities and Exchange Commission (''Commission'') approval. Under Section 11.1 of the ICE Bylaws, no stockholder approval is required for amendment of the ICE Bylaws. ICE filed a Form 8–K setting forth the proposed amendments on January 22, 2016 after approval by the ICE Board, and will file a further Form 8–K when the amendments are adopted.

Bylaw Section 2.15

The proposed rule change would add new Section 2.15 to the ICE Bylaws. Section 2.15 would permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the ICE Board, so long as the stockholder(s) have owned at least three percent of ICE's outstanding shares of common stock continuously for at least three years. The director nominees would be included in ICE's annual meeting proxy materials. The proposed provision would limit the number of proposed director nominees to a number equal to twenty percent of the number of directors then serving on the ICE Board (rounded down to the nearest whole number, but no less than two) provided that the stockholder(s) and nominee(s) satisfy the other conditions specified in the ICE Bylaws.

A candidate would be nominated by a nomination notice (''Nomination Notice''). Subject to satisfaction of the conditions of Section 2.15, described below, as determined by the ICE Board, ICE would include in its proxy statement for the next annual meeting of stockholders the following information:

- The names of any person or persons nominated for election;
- disclosure about each nominee and the nominating stockholder required under the rules of the Commission or other applicable law to be included in the proxy statement;
- any statement in support of the nominee's (or nominees', as applicable) election, subject to a limit of 500 words and subject to compliance with Section 14 of the Exchange Act[6] and the rules thereunder, including Rule 14a–9;[7] and
- any other information that ICE management or the ICE Board determines, in their discretion, to include relating to the nomination of the nominee(s), including, without limitation, any statement in opposition to the nomination.[8]

ICE Bylaw 2.15 would permit stockholder nominees to constitute up to twenty percent of the number of directors then serving on the ICE Board, subject to the following:

- If twenty percent of the current number of directors is not a whole number, the number of permitted stockholder nominees would be rounded down to the nearest whole number, but no less than two.
- The number of permitted stockholder nominees would be further reduced by (a) the number of any stockholder nominees who are withdrawn or who are instead nominated by the ICE Board and (b) the number of directors, if any, who were stockholder nominees at the preceding annual meeting and whose re-election is recommended by the ICE Board. In the event that one or more vacancies for any reason were to occur on the ICE Board after the deadline for submitting a Nomination Notice, but before the date of the annual meeting, and the ICE Board resolved to reduce the size of the ICE Board, the number of permitted stockholder nominees would be calculated based on the number of directors in office as so reduced. If, after receipt of a Nomination Notice and following the deadline for receipt of such notices, either the nominating stockholder becomes ineligible or withdraws the nomination, or the nominee becomes ineligible or unwilling or unable to serve, such nominee will be disregarded.
- Bylaw 2.15(b) would provide a mechanism for pro rata reduction of the number of nominees nominated by different stockholders if the total number of permitted stockholder nominees exceeded the maximum permitted. Each nominating stockholder would select one of its nominees to be included in the proxy statement, with the nominees to be included selected from nominating stockholders going in the order of the largest stockholdings to the smallest, until the available number of nominees has been selected, with this process to be repeated if the maximum number of nominees has not been selected in the first round.

As a result of these potential reductions in the number of stockholder nominees, the number of stockholder nominees in any year could be fewer than two.

Each person or group of up to 20 persons desiring to nominate a candidate would be required to either (1) be a record holder of shares of ICE common stock used to satisfy the eligibility requirements for a stockholder nominee continuously for the three-year period, or (2) provide to the secretary of ICE evidence of continuous ownership of the minimum number of shares for such three-year period from one or more securities intermediaries in a form that the ICE Board determines would be acceptable for purposes of a shareholder proposal under Rule 14a–8(b)(2) under the

[4] In November 2015, the Comptroller of the City of New York, on behalf of certain city retirement systems that are stockholders of ICE, requested that ICE include a proxy access proposal in its 2016 proxy statement. After discussions with the Comptroller's office, ICE management determined to recommend the amendment reflected in the proposed rule change to the ICE Board and, on that basis, the Comptroller's request was withdrawn.

[5] The Exchange's affiliates have each submitted proposed rule changes to propose the changes described in this filing. *See* SR–NYSE–2016–14 and SR–NYSEArca–2016–25.

[6] 15 U.S.C. 78n.

[7] 17 CFR 240.14a–9.

[8] Proposed ICE Bylaw 2.15(a).

Exchange Act [9] (or any successor rule). The minimum number of shares would be determined as three percent of the outstanding shares as of the most recent date for which the total number of outstanding shares of common stock was included by ICE in a filing with the Commission prior to the submission of the Nomination Notice. Such shares would be required to be held continuously throughout the three-year period preceding and including the date of submission of the Nomination Notice, and through the date of the annual meeting. The proposed rule change includes provisions relating to how the members of a group would be counted and the consequences of withdrawal of a member from a group.[10]

A person (or member of a group of persons) whose nominee has been elected as a director at an annual meeting would not be eligible to nominate or participate in the nomination of a nominee for the following two annual meetings other than the nomination of such previously elected nominee.[11]

The proposed rule change would also specify that shares may be counted as ''owned'' only if the person making the nomination possess both the full voting and investment rights pertaining to the shares and the full economic interest in (including the opportunity for profit and risk of loss on) such shares. Shares that have been sold, borrowed or hedged are excluded. Loaned shares are included, provided they are recallable within five business days, and are recalled by the record date.[12]

No person would be permitted to be in more than one group nominating a nominee. A person who appears as a member of more than one group would be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.[13]

A Nomination Notice would be required to be submitted to the secretary of ICE at ICE's principal executive office, no earlier than the close of business 150 calendar days, and no later than the close of business 120 calendar days, before the anniversary of the date that ICE mailed its proxy statement for the prior year's annual meeting of stockholders. If an annual meeting were not scheduled to be held within a period that commences 30 days before and ends 30 days after such anniversary date, a Nomination Notice would be required to be given by the later of the close of business on the date that is 120 days prior to the date of such annual meeting or the tenth day following the date on which such annual meeting date is first publicly announced or disclosed.[14]

ICE Bylaw 2.15 would provide that any determination to be made by the ICE Board may be made by the ICE Board, a committee of the ICE Board or any officer of ICE designated by the ICE Board or a committee of the ICE Board and that any such determination shall be final and binding on ICE, any Eligible Holder (as defined in ICE Bylaw 2.15), any nominating stockholder, any nominee and any other person so long as made in good faith. The chairman of any annual meeting of stockholders shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of proposed Section 2.15 and, if not so nominated, shall direct and declare at the annual meeting that such Nominee shall not be considered.[15]

The proposed rule change specifies information that would be required in a Nomination Notice, including:

- A Schedule 14N [16] (or any successor form) relating to the nomination, completed and filed with the Commission;
- a written notice, in a form deemed satisfactory by the ICE Board, of the nomination of such nominee that includes additional information, agreements, representations and warranties by the nominating stockholder (including, in the case of a group, each group member),
  - the information otherwise required with respect to the nomination of directors by the ICE Bylaws;
  - the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;
  - a representation and warranty that the nominating stockholder did not acquire, and is not holding, securities of ICE for the purpose or with the effect of influencing or changing control of ICE;
  - a representation and warranty that the nominee's candidacy or, if elected, membership on the ICE Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded;
  - a representation and warranty that the nominee:
    - Does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent pursuant to the ICE Board's Independence Policy [17] as most recently published on its Web site and otherwise qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded; [18]
    - meets the audit committee independence requirements under the rules of the principal national securities exchange on which ICE's common stock is traded; [19]
    - is a ''non-employee director'' for the purposes of Rule 16b–3 under the Exchange Act [20] (or any successor rule);
    - is an ''outside director'' for the purposes of Section 162(m) of the Internal Revenue Code [21] (or any successor provision); and
    - is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D [22] (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S–K [23] (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the nominee;
  - a representation and warranty that the nominating stockholder satisfies the eligibility requirements set forth in Bylaw 2.15 and has provided evidence of ownership to the extent required by Bylaw 2.15(c)(i);
  - a representation and warranty that the nominating stockholder intends to continue to satisfy the eligibility requirements described in Bylaw 2.15(c) through the date of the annual meeting;
  - a representation and warranty that the nominating stockholder will not engage in a ''solicitation'' within the meaning of Rule 14a–1(l) [24] (without

[9] 17 CFR 240.14a–8(b)(2).

[10] Proposed ICE Bylaw 2.15(c).

[11] Proposed ICE Bylaw 2.15(c)(i).

[12] Proposed ICE Bylaw 2.15(c)(iv).

[13] Proposed ICE Bylaw 2.15(c)(v).

[14] Proposed ICE Bylaw 2.15(d).

[15] The Exchange notes that having the chairman of the annual meeting make such determination is consistent with the procedure in Section 2.13(f) of the ICE Bylaws with respect to non-proxy access nominations.

[16] 17 CFR 240.14n–101.

[17] The Commission notes that the Independence Policy can be found at the following Web site: *http://ir.theice.com/~/media/Files/I/Ice-IR/documents/corporate-governance-documents/board-independence-policy.pdf.*

[18] The Commission notes the independent director standards of New York Stock Exchange LLC (''NYSE''), which is the principal market for ICE's common stock, are set forth in NYSE's Listed Company Manual in Sections 303A.00, 303A.01 and 303A.02.

[19] The Commission notes that the audit committee independence requirements of NYSE, the principle market for ICE's common stock, are set forth in NYSE's Listed Company Manual under Sections 303A.06 and 303A.07.

[20] 17 CFR 240.16b–3.

[21] 26 U.S.C. 162(m).

[22] 17 CFR 230.506(d).

[23] 17 CFR 229.401(f).

[24] 17 CFR 240.14a–1(l).

reference to the exception in Rule 14a–(l)(l)(2)(iv) [25]) (or any successor rules) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting, other than its nominee(s) or any nominee of the ICE Board;

○ a representation and warranty that the nominating stockholder will not use any proxy card other than ICE's proxy card in soliciting stockholders in connection with the election of a nominee at the annual meeting;

○ if desired, a statement in support of the nominee meeting the standards identified above; and

○ in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

• an executed agreement, in a form deemed satisfactory by the ICE Board, pursuant to which the nominating stockholder (including each group member) agrees:

○ to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election of a nominee;

○ to file any written solicitation or other communication with ICE's stockholders relating to one or more of ICE's directors or director nominees or any stockholder nominee with the Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

○ to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the nominating stockholder or any of its nominees with ICE, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

○ to indemnify and hold harmless (jointly with all other group members, in the case of a group member) ICE and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against ICE or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the nominating stockholder or any of its nominees to comply with, or any breach or alleged breach of, its respective obligations, agreements or representations under Bylaw 2.15; and

○ in the event that (1) any information included in the Nomination Notice or any other communication by the nominating stockholder (including with respect to any group member) with ICE, its stockholders or any other person in connection with the nomination or election of a nominee ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading) or (2) the nominating stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Bylaw 2.15(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify ICE and any other recipient of such communication of (1) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (2) of such failure; and

• an executed agreement, in a form deemed satisfactory by the ICE Board, by the nominee:

○ to provide to ICE such other information and certifications, including completion of ICE's director questionnaire, as it may reasonably request;

○ that the nominee has read and agrees, if elected, to serve as a member of the ICE Board, to adhere to ICE's Corporate Governance Guidelines and Global Code of Business Conduct and any other policies and guidelines applicable to directors; and

○ that the nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than ICE in connection with service or action as a director of ICE that has not been disclosed to ICE, (ii) any agreement, arrangement or understanding with any person or entity as to how the nominee would vote or act on any issue or question as a director (a ''Voting Commitment'') that has not been disclosed to ICE or (iii) any Voting Commitment that could reasonably be expected to limit or interfere with the nominee's ability to comply, if elected as a director of ICE, with its fiduciary duties under applicable law.

ICE Bylaw 2.15 would specify that the information and documents required to be provided by the nominating stockholder must be: (i) Provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a nominating stockholder or group member that is an entity. A Nomination Notice would be deemed submitted on the date on which all of the information and documents required by ICE Bylaw 2.15 (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of ICE.

Access to ICE's proxy statement for stockholder nominations under ICE Bylaw 2.15(e)(i) would not be available in any year in which ICE has received advance notice under ICE Bylaw Section 2.13 that a stockholder intends to nominate a director. In addition, nominations would be disregarded under ICE Bylaw 2.15(e)(i) if

• the nominating stockholder or its representative fails to appear at the annual meeting to present the nomination or withdraws its nomination;

• the nomination or election of the nominee would be in violation of ICE's certificate of incorporation or bylaws, or applicable law, rule or regulation, including those of stock exchanges;

• the nominee was nominated pursuant to ICE Bylaw 2.15 at one of the past two annual meetings and either withdrew or became ineligible, or failed to receive 20% of the vote;

• the nominee is, or has within the last three years been, an officer or director of a competitor of ICE or is a U.S. Disqualified Person as defined in ICE's certificate of incorporation; or

• ICE is notified, or the ICE Board determines, that a nominating stockholder has failed to continue to satisfy the eligibility requirements, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), the nominee becomes unwilling or unable to serve on the ICE Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the nominating stockholder or the nominee under ICE Bylaw Section 2.15.

In addition, Bylaw 2.15(e)(ii) would permit ICE to omit from its proxy statement, or supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the

[25] 17 CFR 240.14a–1(l)(2)(iv).

Nomination Notice, if the ICE Board determines that:

- Such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;
- Such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or
- The inclusion of such information in the proxy statement would otherwise violate the federal proxy rules or any other applicable law, rule or regulation.

Bylaw Section 2.13

The proposed rule change also would amend the existing advance notice provisions in Bylaw 2.13 to extend their application to stockholder nominations under the proxy access provision in Bylaw 2.15.

- Bylaw 2.13(b) would be amended to provide that stockholder nominations would be subject to inclusion in the ICE Board's notice of annual meeting, and that the timing and notice requirements of the existing advance notice bylaw would not apply to stockholder nominations, which have different timing and notice requirements as described above.
- Bylaw 2.13(d) would be amended to specify that the definition therein of ''publicly announced or disclosed'' would also apply in Bylaw 2.15.

Conforming Changes

Finally, the Exchange proposes to make conforming changes to the title of the Bylaws.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[26] in general, and Section 6(b)(1) of the Exchange Act,[27] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes that, by permitting a stockholder, or a group of up to twenty stockholders, of ICE that meet the stated requirements to nominate and have included in ICE's annual meeting proxy materials director nominees, the proposed rule change strengthens the corporate governance of the Exchange's ultimate parent company and is thus consistent with Section 6(b)(1).

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act,[28] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that by expanding the ability of stockholders to nominate directors that could constitute a significant percent (20%) of the number of directors currently serving on the ICE Board, the proposed rule change would ensure better corporate governance and accountability to stockholders, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, adoption of a proxy access bylaw by ICE is intended to enhance corporate governance and accountability to stockholders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–20. 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

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–20 and should be submitted on or before April 12,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06364 Filed 3–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77384; File No. SR–NYSE–2016–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

March 17, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 2, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to implement proxy access. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of ICE (''ICE Bylaws''). The proposed amendments to the ICE Bylaws would (1) add a new Section 2.15 that permits a stockholder, or stockholders, that meet specific requirements to nominate director nominees for the board of directors of ICE (''ICE Board''), provided that the nominating stockholder(s) and nominee(s) satisfy the proposed requirements, and (2) amend the advance notice provisions in Section 2.13 to account for proxy access.[4]

ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates NYSE Arca, Inc. and NYSE MKT LLC.[5]

The proposed amendments to the ICE Bylaws have been approved by the ICE Board, subject to Securities and Exchange Commission (''Commission'') approval. Under Section 11.1 of the ICE Bylaws, no stockholder approval is required for amendment of the ICE Bylaws. ICE filed a Form 8–K setting forth the proposed amendments on January 22, 2016 after approval by the ICE Board, and will file a further Form 8–K when the amendments are adopted.

Bylaw Section 2.15

The proposed rule change would add new Section 2.15 to the ICE Bylaws. Section 2.15 would permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the ICE Board, so long as the stockholder(s) have owned at least three percent of ICE's outstanding shares of common stock continuously for at least three years. The director nominees would be included in ICE's annual meeting proxy materials. The proposed provision would limit the number of proposed director nominees to a number equal to twenty percent of the number of directors then serving on the ICE Board (rounded down to the nearest whole number, but no less than two) provided that the stockholder(s) and nominee(s) satisfy the other conditions specified in the ICE Bylaws.

A candidate would be nominated by a nomination notice (''Nomination Notice''). Subject to satisfaction of the conditions of Section 2.15, described below, as determined by the ICE Board, ICE would include in its proxy statement for the next annual meeting of stockholders the following information:

- The names of any person or persons nominated for election;
- disclosure about each nominee and the nominating stockholder required under the rules of the Commission or other applicable law to be included in the proxy statement;
- any statement in support of the nominee's (or nominees', as applicable) election, subject to a limit of 500 words and subject to compliance with Section 14 of the Exchange Act[6] and the rules thereunder, including Rule 14a–9;[7] and
- any other information that ICE management or the ICE Board determines, in their discretion, to include relating to the nomination of the nominee(s), including, without limitation, any statement in opposition to the nomination.[8]

ICE Bylaw 2.15 would permit stockholder nominees to constitute up to twenty percent of the number of directors then serving on the ICE Board, subject to the following:

- If twenty percent of the current number of directors is not a whole number, the number of permitted stockholder nominees would be rounded down to the nearest whole number, but no less than two.
- The number of permitted stockholder nominees would be further reduced by (a) the number of any stockholder nominees who are

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In November 2015, the Comptroller of the City of New York, on behalf of certain city retirement systems that are stockholders of ICE, requested that ICE include a proxy access proposal in its 2016 proxy statement. After discussions with the Comptroller's office, ICE management determined to recommend the amendment reflected in the proposed rule change to the ICE Board and, on that basis, the Comptroller's request was withdrawn.

[5] The Exchange's affiliates have each submitted proposed rule changes to propose the changes described in this filing. *See* SR–NYSEMKT–2016–20 and SR–NYSEArca–2016–25.

[6] 15 U.S.C. 78n.

[7] 17 CFR 240.14a–9.

[8] Proposed ICE Bylaw 2.15(a).

withdrawn or who are instead nominated by the ICE Board and (b) the number of directors, if any, who were stockholder nominees at the preceding annual meeting and whose re-election is recommended by the ICE Board. In the event that one or more vacancies for any reason were to occur on the ICE Board after the deadline for submitting a Nomination Notice, but before the date of the annual meeting, and the ICE Board resolved to reduce the size of the ICE Board, the number of permitted stockholder nominees would be calculated based on the number of directors in office as so reduced. If, after receipt of a Nomination Notice and following the deadline for receipt of such notices, either the nominating stockholder becomes ineligible or withdraws the nomination, or the nominee becomes ineligible or unwilling or unable to serve, such nominee will be disregarded.

• Bylaw 2.15(b) would provide a mechanism for pro rata reduction of the number of nominees nominated by different stockholders if the total number of permitted stockholder nominees exceeded the maximum permitted. Each nominating stockholder would select one of its nominees to be included in the proxy statement, with the nominees to be included selected from nominating stockholders going in the order of the largest stockholdings to the smallest, until the available number of nominees has been selected, with this process to be repeated if the maximum number of nominees has not been selected in the first round.

As a result of these potential reductions in the number of stockholder nominees, the number of stockholder nominees in any year could be fewer than two.

Each person or group of up to 20 persons desiring to nominate a candidate would be required to either (1) be a record holder of shares of ICE common stock used to satisfy the eligibility requirements for a stockholder nominee continuously for the three-year period, or (2) provide to the secretary of ICE evidence of continuous ownership of the minimum number of shares for such three-year period from one or more securities intermediaries in a form that the ICE Board determines would be acceptable for purposes of a shareholder proposal under Rule 14a–8(b)(2) under the Exchange Act [9] (or any successor rule). The minimum number of shares would be determined as three percent of the outstanding shares as of the most recent date for which the total number of outstanding shares of common stock was included by ICE in a filing with the Commission prior to the submission of the Nomination Notice. Such shares would be required to be held continuously throughout the three-year period preceding and including the date of submission of the Nomination Notice, and through the date of the annual meeting. The proposed rule change includes provisions relating to how the members of a group would be counted and the consequences of withdrawal of a member from a group.[10]

A person (or member of a group of persons) whose nominee has been elected as a director at an annual meeting would not be eligible to nominate or participate in the nomination of a nominee for the following two annual meetings other than the nomination of such previously elected nominee.[11]

The proposed rule change would also specify that shares may be counted as ''owned'' only if the person making the nomination possess both the full voting and investment rights pertaining to the shares and the full economic interest in (including the opportunity for profit and risk of loss on) such shares. Shares that have been sold, borrowed or hedged are excluded. Loaned shares are included, provided they are recallable within five business days, and are recalled by the record date.[12]

No person would be permitted to be in more than one group nominating a nominee. A person who appears as a member of more than one group would be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.[13]

A Nomination Notice would be required to be submitted to the secretary of ICE at ICE's principal executive office, no earlier than the close of business 150 calendar days, and no later than the close of business 120 calendar days, before the anniversary of the date that ICE mailed its proxy statement for the prior year's annual meeting of stockholders. If an annual meeting were not scheduled to be held within a period that commences 30 days before and ends 30 days after such anniversary date, a Nomination Notice would be required to be given by the later of the close of business on the date that is 120 days prior to the date of such annual meeting or the tenth day following the date on which such annual meeting date is first publicly announced or disclosed.[14]

ICE Bylaw 2.15 would provide that any determination to be made by the ICE Board may be made by the ICE Board, a committee of the ICE Board or any officer of ICE designated by the ICE Board or a committee of the ICE Board and that any such determination shall be final and binding on ICE, any Eligible Holder (as defined in ICE Bylaw 2.15), any nominating stockholder, any nominee and any other person so long as made in good faith. The chairman of any annual meeting of stockholders shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of proposed Section 2.15 and, if not so nominated, shall direct and declare at the annual meeting that such Nominee shall not be considered.[15]

The proposed rule change specifies information that would be required in a Nomination Notice, including:

• A Schedule 14N [16] (or any successor form) relating to the nomination, completed and filed with the Commission;

• a written notice, in a form deemed satisfactory by the ICE Board, of the nomination of such nominee that includes additional information, agreements, representations and warranties by the nominating stockholder (including, in the case of a group, each group member),

○ the information otherwise required with respect to the nomination of directors by the ICE Bylaws;

○ the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

○ a representation and warranty that the nominating stockholder did not acquire, and is not holding, securities of ICE for the purpose or with the effect of influencing or changing control of ICE;

○ a representation and warranty that the nominee's candidacy or, if elected, membership on the ICE Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded;

○ a representation and warranty that the nominee:

[9] 17 CFR 240.14a–8(b)(2).

[10] Proposed ICE Bylaw 2.15(c).

[11] Proposed ICE Bylaw 2.15(c)(i).

[12] Proposed ICE Bylaw 2.15(c)(iv).

[13] Proposed ICE Bylaw 2.15(c)(v).

[14] Proposed ICE Bylaw 2.15(d).

[15] The Exchange notes that having the chairman of the annual meeting make such determination is consistent with the procedure in Section 2.13(f) of the ICE Bylaws with respect to non-proxy access nominations.

[16] 17 CFR 240.14n–101.

▪ Does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent pursuant to the ICE Board's Independence Policy [17] as most recently published on its Web site and otherwise qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded; [18]

▪ meets the audit committee independence requirements under the rules of the principal national securities exchange on which ICE's common stock is traded; [19]

▪ is a ''non-employee director'' for the purposes of Rule 16b–3 under the Exchange Act [20] (or any successor rule);

▪ is an ''outside director'' for the purposes of Section 162(m) of the Internal Revenue Code [21] (or any successor provision); and

▪ is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D [22] (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S–K [23] (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the nominee;

○ a representation and warranty that the nominating stockholder satisfies the eligibility requirements set forth in Bylaw 2.15 and has provided evidence of ownership to the extent required by Bylaw 2.15(c)(i);

○ a representation and warranty that the nominating stockholder intends to continue to satisfy the eligibility requirements described in Bylaw 2.15(c) through the date of the annual meeting;

○ a representation and warranty that the nominating stockholder will not engage in a ''solicitation'' within the meaning of Rule 14a–1(l) [24] (without reference to the exception in Rule 14a–(l)(l)(2)(iv) [25]) (or any successor rules) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting, other than its nominee(s) or any nominee of the ICE Board;

○ a representation and warranty that the nominating stockholder will not use any proxy card other than ICE's proxy card in soliciting stockholders in connection with the election of a nominee at the annual meeting;

○ if desired, a statement in support of the nominee meeting the standards identified above; and

○ in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

• an executed agreement, in a form deemed satisfactory by the ICE Board, pursuant to which the nominating stockholder (including each group member) agrees:

○ To comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election of a nominee;

○ to file any written solicitation or other communication with ICE's stockholders relating to one or more of ICE's directors or director nominees or any stockholder nominee with the Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

○ to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the nominating stockholder or any of its nominees with ICE, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

○ to indemnify and hold harmless (jointly with all other group members, in the case of a group member) ICE and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against ICE or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the nominating stockholder or any of its nominees to comply with, or any breach or alleged breach of, its respective obligations, agreements or representations under Bylaw 2.15; and

○ in the event that (1) any information included in the Nomination Notice or any other communication by the nominating stockholder (including with respect to any group member) with ICE, its stockholders or any other person in connection with the nomination or election of a nominee ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading) or (2) the nominating stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Bylaw 2.15(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify ICE and any other recipient of such communication of (1) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (2) of such failure; and

• an executed agreement, in a form deemed satisfactory by the ICE Board, by the nominee:

○ to provide to ICE such other information and certifications, including completion of ICE's director questionnaire, as it may reasonably request;

○ that the nominee has read and agrees, if elected, to serve as a member of the ICE Board, to adhere to ICE's Corporate Governance Guidelines and Global Code of Business Conduct and any other policies and guidelines applicable to directors; and

○ that the nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than ICE in connection with service or action as a director of ICE that has not been disclosed to ICE, (ii) any agreement, arrangement or understanding with any person or entity as to how the nominee would vote or act on any issue or question as a director (a ''Voting Commitment'') that has not been disclosed to ICE or (iii) any Voting Commitment that could reasonably be expected to limit or interfere with the nominee's ability to comply, if elected as a director of ICE, with its fiduciary duties under applicable law.

ICE Bylaw 2.15 would specify that the information and documents required to be provided by the nominating stockholder must be: (i) Provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a nominating stockholder or group

[17] The Commission notes that the Independence Policy can be found at the following Web site: *http://ir.theice.com/~/media/Files/I/Ice-IR/documents/corporate-governance-documents/board-independence-policy.pdf.*

[18] The Commission notes the independent director standards of NYSE, which is the principal market for ICE's common stock, are set forth in NYSE's Listed Company Manual in Sections 303A.00, 303A.01 and 303A.02.

[19] The Commission notes that the audit committee independence requirements of NYSE, the principle market for ICE's common stock, are set forth in NYSE's Listed Company Manual under Sections 303A.06 and 303A.07.

[20] 17 CFR 240.16b–3.

[21] 26 U.S.C. 162(m).

[22] 17 CFR 230.506(d).

[23] 17 CFR 229.401(f).

[24] 17 CFR 240.14a–1(l).

[25] 17 CFR 240.14a–1(l)(2)(iv).

member that is an entity. A Nomination Notice would be deemed submitted on the date on which all of the information and documents required by ICE Bylaw 2.15 (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of ICE.

Access to ICE's proxy statement for stockholder nominations under ICE Bylaw 2.15(e)(i) would not be available in any year in which ICE has received advance notice under ICE Bylaw Section 2.13 that a stockholder intends to nominate a director. In addition, nominations would be disregarded under ICE Bylaw 2.15(e)(i) if

- the nominating stockholder or its representative fails to appear at the annual meeting to present the nomination or withdraws its nomination;
- the nomination or election of the nominee would be in violation of ICE's certificate of incorporation or bylaws, or applicable law, rule or regulation, including those of stock exchanges;
- the nominee was nominated pursuant to ICE Bylaw 2.15 at one of the past two annual meetings and either withdrew or became ineligible, or failed to receive 20% of the vote;
- the nominee is, or has within the last three years been, an officer or director of a competitor of ICE or is a U.S. Disqualified Person as defined in ICE's certificate of incorporation; or
- ICE is notified, or the ICE Board determines, that a nominating stockholder has failed to continue to satisfy the eligibility requirements, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), the nominee becomes unwilling or unable to serve on the ICE Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the nominating stockholder or the nominee under ICE Bylaw Section 2.15.

In addition, Bylaw 2.15(e)(ii) would permit ICE to omit from its proxy statement, or supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the ICE Board determines that:

- Such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;
- Such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or
- The inclusion of such information in the proxy statement would otherwise violate the federal proxy rules or any other applicable law, rule or regulation.

Bylaw Section 2.13

The proposed rule change also would amend the existing advance notice provisions in Bylaw 2.13 to extend their application to stockholder nominations under the proxy access provision in Bylaw 2.15.

- Bylaw 2.13(b) would be amended to provide that stockholder nominations would be subject to inclusion in the ICE Board's notice of annual meeting, and that the timing and notice requirements of the existing advance notice bylaw would not apply to stockholder nominations, which have different timing and notice requirements as described above.
- Bylaw 2.13(d) would be amended to specify that the definition therein of ''publicly announced or disclosed'' would also apply in Bylaw 2.15.

Conforming Changes

Finally, the Exchange proposes to make conforming changes to the title of the Bylaws.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[26] in general, and Section 6(b)(1) of the Exchange Act,[27] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes that, by permitting a stockholder, or a group of up to twenty stockholders, of ICE that meet the stated requirements to nominate and have included in ICE's annual meeting proxy materials director nominees, the proposed rule change strengthens the corporate governance of the Exchange's ultimate parent company and is thus consistent with Section 6(b)(1).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act,[28] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that by expanding the ability of stockholders to nominate directors that could constitute a significant percent (20%) of the number of directors currently serving on the ICE Board, the proposed rule change would ensure better corporate governance and accountability to stockholders, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, adoption of a proxy access bylaw by ICE is intended to enhance corporate governance and accountability to stockholders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

[28] 15 U.S.C. 78f(b)(5).

the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–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–NYSE–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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–14 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06362 Filed 3–21–16; 8:45 am]

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[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77389; File No. SR–NYSEMKT–2016–37]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Adopting a Decommission Extension Fee for receipt of the NYSE MKT BBO and NYSE MKT Trades Market Data Products

March 17, 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 March 8, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a Decommission Extension Fee for receipt of the NYSE MKT BBO and NYSE MKT Trades market data products. The proposed change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a Decommission Extension Fee for receipt of the NYSE MKT BBO and NYSE MKT Trades market data products,[4] as set forth on the NYSE MKT LLC Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). Recipients of NYSE MKT BBO and NYSE MKT Trades would continue to be subject to the already existing subscription fees currently set forth in the Fee Schedule. The proposed Decommission Extension Fee would apply only to those subscribers who decide to continue to receive the NYSE MKT BBO and NYSE MKT Trades feeds in their legacy format for up to two months after those feeds otherwise will be distributed exclusively in the new format explained below.

NYSE MKT Trades is an NYSE MKT-only last sale market data feed. NYSE MKT Trades currently allows vendors, broker-dealers and others to make available on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams. Specifically, the NYSE MKT Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations at the time of each sale and a stock summary message. The stock summary message updates every minute and includes NYSE MKT's opening price, high price, low price, closing price, and cumulative volume for the security.[5]

NYSE MKT BBO is an NYSE MKT-only market data feed that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that the Exchange reports under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. The data feed

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 61936 (Apr. 16, 2010), 74 FR 21088 (Apr. 22, 2010) (SR–NYSEAmex–2010–35) (notice—NYSE MKT BBO and NYSE MKT Trades) and 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35) (approval order—NYSE MKT BBO and NYSE MKT Trades).

[5] *Id.*

includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE MKT reports quotes under the CQ Plan.

As part of the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves, beginning March 1, 2016, NYSE MKT BBO and NYSE MKT Trades will both be transmitted in a new format, Exchange Data Protocol (XDP). Beginning March 1, 2016, the Exchange will transmit NYSE MKT BBO and NYSE MKT Trades in both the legacy format and in XDP without any additional fee being charged for providing these data feeds in both formats. The dual dissemination will remain in place until July 1, 2016, the planned decommission date of the legacy format. Beginning July 1, 2016, recipients of NYSE MKT BBO and NYSE MKT Trades who wish to continue to receive NYSE MKT BBO and NYSE MKT Trades in the legacy format will each be subject to the proposed Decommission Extension Fee of $5,000 per month. During the extension period, recipients of NYSE MKT BBO and NYSE MKT Trades would continue to be subject to the subscription fees currently noted in the Fee Schedule. The extension period for receiving these data feeds in the legacy format will expire on September 1, 2016, on which date distribution of NYSE MKT BBO and NYSE MKT Trades in the legacy format will be permanently discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that adopting an extension fee for subscribers of NYSE MKT BBO and NYSE MKT Trades who wish to receive these data feeds in the legacy format for a period of time beyond the built-in overlap period is reasonable, equitable and not unfairly discriminatory because the proposed fee would apply equally to all data recipients that currently subscribe to NYSE MKT BBO and NYSE MKT Trades. The Exchange believes that it is reasonable to require data recipients to pay an additional fee for taking the data feeds in the legacy format beyond the period of time specifically allotted by the Exchange for data feed customers to adapt to the new XDP format at no extra cost. To that end, the extension fee is designed to encourage data recipients to migrate to the XDP format in order to continue to receive NYSE MKT BBO and NYSE MKT Trades in XDP as the legacy format would no longer be available after that date. The Exchange does not intend to support the legacy format at all after September 1, 2016.

The Exchange notes that NYSE MKT BBO and NYSE MKT Trades are entirely optional. The Exchange is not required to make NYSE MKT BBO and NYSE MKT Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE MKT BBO and NYSE MKT Trades, nor is the Exchange required to offer any feed (NYSE MKT BBO, NYSE MKT Trades, or otherwise) in a particular format, and it is a benefit to the markets generally that NYSE MKT update its distribution technology to make it more efficient (and at the same time eliminate less efficient forms of dissemination). Firms that do purchase NYSE MKT BBO and NYSE MKT Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE MKT BBO and NYSE MKT Trades or any other similar products are attractively priced or not.[8]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[9]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to the legacy format, such as converting to XDP as soon as possible, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[10]

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4), (5).

[8] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[9] *NetCoalition,* 615 F.3d at 535.

[10] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.* Finally, the prices set herein are prices for continuing to support distribution formats the Exchange has elected to retire in favor of new and more efficient distribution formats, making cost-based analyses even less relevant.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data (and in this instance, the ability of any firm to switch to the new distribution format in a time frame that eliminates the need to pay these fees entirely).

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [11]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [12] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[13]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE MKT BBO or NYSE MKT Trades in the legacy format unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE MKT BBO and NYSE MKT Trades can provide value in the legacy formats by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. The Exchange has provided customers with adequate notice that it intends to discontinue dissemination of the data feeds in the legacy format. Therefore, the proposed Decommission Extension Fee would only be applicable to those customers who have a need or desire to continue to take the data feeds in the legacy format beyond the period provided for migration to the XDP format. Customers who timely migrate to the XDP format to receive the data feeds would not need to receive the data feeds in the legacy format and therefore would not be subject to the Decommission Extension Fee at all. All of these factors operate as constraints on pricing proprietary data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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

[11] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html*; *see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (DC Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[12] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[13] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–37 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06409 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77385; File No. SR–NYSEARCA–2016–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

March 17, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 2, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. (''ICE''), to implement proxy access. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend and restate the Fifth Amended and Restated Bylaws of ICE (''ICE Bylaws''). The proposed amendments to the ICE Bylaws would (1) add a new Section 2.15 that permits a stockholder, or stockholders, that meet specific requirements to nominate director nominees for the board of directors of ICE (''ICE Board''), provided that the nominating stockholder(s) and nominee(s) satisfy the proposed requirements, and (2) amend the advance notice provisions in Section 2.13 to account for proxy access.[4]

ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. (''ICE Holdings''), which in turn owns 100% of the equity interest in NYSE Holdings LLC (''NYSE Holdings''). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE MKT LLC.[5]

The proposed amendments to the ICE Bylaws have been approved by the ICE Board, subject to Securities and Exchange Commission (''Commission'') approval. Under Section 11.1 of the ICE Bylaws, no stockholder approval is required for amendment of the ICE Bylaws. ICE filed a Form 8–K setting forth the proposed amendments on January 22, 2016 after approval by the ICE Board, and will file a further Form 8–K when the amendments are adopted.

Bylaw Section 2.15

The proposed rule change would add new Section 2.15 to the ICE Bylaws. Section 2.15 would permit a

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In November 2015, the Comptroller of the City of New York, on behalf of certain city retirement systems that are stockholders of ICE, requested that ICE include a proxy access proposal in its 2016 proxy statement. After discussions with the Comptroller's office, ICE management determined to recommend the amendment reflected in the proposed rule change to the ICE Board and, on that basis, the Comptroller's request was withdrawn.

[5] The Exchange's affiliates have each submitted proposed rule changes to propose the changes described in this filing. *See* SR–NYSE–2016–14 and SR–NYSEMKT–2016–20.

stockholder, or group of up to 20 stockholders, to nominate director nominees for the ICE Board, so long as the stockholder(s) have owned at least three percent of ICE's outstanding shares of common stock continuously for at least three years. The director nominees would be included in ICE's annual meeting proxy materials. The proposed provision would limit the number of proposed director nominees to a number equal to twenty percent of the number of directors then serving on the ICE Board (rounded down to the nearest whole number, but no less than two) provided that the stockholder(s) and nominee(s) satisfy the other conditions specified in the ICE Bylaws.

A candidate would be nominated by a nomination notice (''Nomination Notice''). Subject to satisfaction of the conditions of Section 2.15, described below, as determined by the ICE Board, ICE would include in its proxy statement for the next annual meeting of stockholders the following information:

- The names of any person or persons nominated for election;
- disclosure about each nominee and the nominating stockholder required under the rules of the Commission or other applicable law to be included in the proxy statement;
- any statement in support of the nominee's (or nominees', as applicable) election, subject to a limit of 500 words and subject to compliance with Section 14 of the Exchange Act [6] and the rules thereunder, including Rule 14a–9; [7] and
- any other information that ICE management or the ICE Board determines, in their discretion, to include relating to the nomination of the nominee(s), including, without limitation, any statement in opposition to the nomination.[8]

ICE Bylaw 2.15 would permit stockholder nominees to constitute up to twenty percent of the number of directors then serving on the ICE Board, subject to the following:

- If twenty percent of the current number of directors is not a whole number, the number of permitted stockholder nominees would be rounded down to the nearest whole number, but no less than two.
- The number of permitted stockholder nominees would be further reduced by (a) the number of any stockholder nominees who are withdrawn or who are instead nominated by the ICE Board and (b) the number of directors, if any, who were stockholder nominees at the preceding annual meeting and whose re-election is recommended by the ICE Board. In the event that one or more vacancies for any reason were to occur on the ICE Board after the deadline for submitting a Nomination Notice, but before the date of the annual meeting, and the ICE Board resolved to reduce the size of the ICE Board, the number of permitted stockholder nominees would be calculated based on the number of directors in office as so reduced. If, after receipt of a Nomination Notice and following the deadline for receipt of such notices, either the nominating stockholder becomes ineligible or withdraws the nomination, or the nominee becomes ineligible or unwilling or unable to serve, such nominee will be disregarded.
- Bylaw 2.15(b) would provide a mechanism for pro rata reduction of the number of nominees nominated by different stockholders if the total number of permitted stockholder nominees exceeded the maximum permitted. Each nominating stockholder would select one of its nominees to be included in the proxy statement, with the nominees to be included selected from nominating stockholders going in the order of the largest stockholdings to the smallest, until the available number of nominees has been selected, with this process to be repeated if the maximum number of nominees has not been selected in the first round.

As a result of these potential reductions in the number of stockholder nominees, the number of stockholder nominees in any year could be fewer than two.

Each person or group of up to 20 persons desiring to nominate a candidate would be required to either (1) be a record holder of shares of ICE common stock used to satisfy the eligibility requirements for a stockholder nominee continuously for the three-year period, or (2) provide to the secretary of ICE evidence of continuous ownership of the minimum number of shares for such three-year period from one or more securities intermediaries in a form that the ICE Board determines would be acceptable for purposes of a shareholder proposal under Rule 14a–8(b)(2) under the Exchange Act [9] (or any successor rule). The minimum number of shares would be determined as three percent of the outstanding shares as of the most recent date for which the total number of outstanding shares of common stock was included by ICE in a filing with the Commission prior to the submission of the Nomination Notice. Such shares would be required to be held continuously throughout the three-year period preceding and including the date of submission of the Nomination Notice, and through the date of the annual meeting. The proposed rule change includes provisions relating to how the members of a group would be counted and the consequences of withdrawal of a member from a group.[10]

A person (or member of a group of persons) whose nominee has been elected as a director at an annual meeting would not be eligible to nominate or participate in the nomination of a nominee for the following two annual meetings other than the nomination of such previously elected nominee.[11]

The proposed rule change would also specify that shares may be counted as ''owned'' only if the person making the nomination possess both the full voting and investment rights pertaining to the shares and the full economic interest in (including the opportunity for profit and risk of loss on) such shares. Shares that have been sold, borrowed or hedged are excluded. Loaned shares are included, provided they are recallable within five business days, and are recalled by the record date.[12]

No person would be permitted to be in more than one group nominating a nominee. A person who appears as a member of more than one group would be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.[13]

A Nomination Notice would be required to be submitted to the secretary of ICE at ICE's principal executive office, no earlier than the close of business 150 calendar days, and no later than the close of business 120 calendar days, before the anniversary of the date that ICE mailed its proxy statement for the prior year's annual meeting of stockholders. If an annual meeting were not scheduled to be held within a period that commences 30 days before and ends 30 days after such anniversary date, a Nomination Notice would be required to be given by the later of the close of business on the date that is 120 days prior to the date of such annual meeting or the tenth day following the date on which such annual meeting date is first publicly announced or disclosed.[14]

ICE Bylaw 2.15 would provide that any determination to be made by the ICE Board may be made by the ICE

[6] 15 U.S.C. 78n.

[7] 17 CFR 240.14a–9.

[8] Proposed ICE Bylaw 2.15(a).

[9] 17 CFR 240.14a–8(b)(2).

[10] Proposed ICE Bylaw 2.15(c).

[11] Proposed ICE Bylaw 2.15(c)(i).

[12] Proposed ICE Bylaw 2.15(c)(iv).

[13] Proposed ICE Bylaw 2.15(c)(v).

[14] Proposed ICE Bylaw 2.15(d).

Board, a committee of the ICE Board or any officer of ICE designated by the ICE Board or a committee of the ICE Board and that any such determination shall be final and binding on ICE, any Eligible Holder (as defined in ICE Bylaw 2.15), any nominating stockholder, any nominee and any other person so long as made in good faith. The chairman of any annual meeting of stockholders shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of proposed Section 2.15 and, if not so nominated, shall direct and declare at the annual meeting that such Nominee shall not be considered.[15]

The proposed rule change specifies information that would be required in a Nomination Notice, including:

- A Schedule 14N[16] (or any successor form) relating to the nomination, completed and filed with the Commission;
- a written notice, in a form deemed satisfactory by the ICE Board, of the nomination of such nominee that includes additional information, agreements, representations and warranties by the nominating stockholder (including, in the case of a group, each group member),
  - the information otherwise required with respect to the nomination of directors by the ICE Bylaws;
  - the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;
  - a representation and warranty that the nominating stockholder did not acquire, and is not holding, securities of ICE for the purpose or with the effect of influencing or changing control of ICE;
  - a representation and warranty that the nominee's candidacy or, if elected, membership on the ICE Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which ICE's securities are traded;
  - a representation and warranty that the nominee:
    - does not have any direct or indirect relationship with ICE that will cause the nominee to be deemed not independent pursuant to the ICE Board's Independence Policy[17] as most recently published on its Web site and otherwise qualifies as independent under the rules of the principal national securities exchange on which ICE's common stock is traded;[18]
    - meets the audit committee independence requirements under the rules of the principal national securities exchange on which ICE's common stock is traded;[19]
    - is a ''non-employee director'' for the purposes of Rule 16b–3 under the Exchange Act[20] (or any successor rule);
    - is an ''outside director'' for the purposes of Section 162(m) of the Internal Revenue Code[21] (or any successor provision); and
    - is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D[22] (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S–K[23] (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the nominee;
  - a representation and warranty that the nominating stockholder satisfies the eligibility requirements set forth in Bylaw 2.15 and has provided evidence of ownership to the extent required by Bylaw 2.15(c)(i);
  - a representation and warranty that the nominating stockholder intends to continue to satisfy the eligibility requirements described in Bylaw 2.15(c) through the date of the annual meeting;
  - a representation and warranty that the nominating stockholder will not engage in a ''solicitation'' within the meaning of Rule 14a–1(l)[24] (without reference to the exception in Rule 14a–(l)(l)(2)(iv)[25]) (or any successor rules) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting, other than its nominee(s) or any nominee of the ICE Board;
  - a representation and warranty that the nominating stockholder will not use any proxy card other than ICE's proxy card in soliciting stockholders in connection with the election of a nominee at the annual meeting;
  - if desired, a statement in support of the nominee meeting the standards identified above; and
  - in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;
- an executed agreement, in a form deemed satisfactory by the ICE Board, pursuant to which the nominating stockholder (including each group member) agrees:
  - To comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election of a nominee;
  - to file any written solicitation or other communication with ICE's stockholders relating to one or more of ICE's directors or director nominees or any stockholder nominee with the Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;
  - to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the nominating stockholder or any of its nominees with ICE, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;
  - to indemnify and hold harmless (jointly with all other group members, in the case of a group member) ICE and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against ICE or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the nominating stockholder or any of its nominees to comply with, or any breach or alleged breach of, its respective obligations, agreements or representations under Bylaw 2.15; and
  - in the event that (1) any information included in the Nomination Notice or any other communication by

[15] The Exchange notes that having the chairman of the annual meeting make such determination is consistent with the procedure in Section 2.13(f) of the ICE Bylaws with respect to non-proxy access nominations.

[16] 17 CFR 240.14n–101.

[17] The Commission notes that the Independence Policy can be found at the following Web site: *http://ir.theice.com/~/media/Files/I/Ice-IR/documents/corporate-governance-documents/board-independence-policy.pdf.*

[18] The Commission notes the independent director standards of New York Stock Exchange LLC (''NYSE''), which is the principal market for ICE's common stock, are set forth in NYSE's Listed Company Manual in Sections 303A.00, 303A.01 and 303A.02.

[19] The Commission notes that the audit committee independence requirements of NYSE, the principle market for ICE's common stock, are set forth in NYSE's Listed Company Manual under Sections 303A.06 and 303A.07.

[20] 17 CFR 240.16b–3.

[21] 26 U.S.C. 162(m).

[22] 17 CFR 230.506(d).

[23] 17 CFR 229.401(f).

[24] 17 CFR 240.14a–1(l).

[25] 17 CFR 240.14a–1(l)(2)(iv).

the nominating stockholder (including with respect to any group member) with ICE, its stockholders or any other person in connection with the nomination or election of a nominee ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading) or (2) the nominating stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Bylaw 2.15(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify ICE and any other recipient of such communication of (1) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (2) of such failure; and

- an executed agreement, in a form deemed satisfactory by the ICE Board, by the nominee:
  - To provide to ICE such other information and certifications, including completion of ICE's director questionnaire, as it may reasonably request;
  - that the nominee has read and agrees, if elected, to serve as a member of the ICE Board, to adhere to ICE's Corporate Governance Guidelines and Global Code of Business Conduct and any other policies and guidelines applicable to directors; and
  - that the nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than ICE in connection with service or action as a director of ICE that has not been disclosed to ICE, (ii) any agreement, arrangement or understanding with any person or entity as to how the nominee would vote or act on any issue or question as a director (a ''Voting Commitment'') that has not been disclosed to ICE or (iii) any Voting Commitment that could reasonably be expected to limit or interfere with the nominee's ability to comply, if elected as a director of ICE, with its fiduciary duties under applicable law.

ICE Bylaw 2.15 would specify that the information and documents required to be provided by the nominating stockholder must be: (i) Provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a nominating stockholder or group member that is an entity. A Nomination Notice would be deemed submitted on the date on which all of the information and documents required by ICE Bylaw 2.15 (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of ICE.

Access to ICE's proxy statement for stockholder nominations under ICE Bylaw 2.15(e)(i) would not be available in any year in which ICE has received advance notice under ICE Bylaw Section 2.13 that a stockholder intends to nominate a director. In addition, nominations would be disregarded under ICE Bylaw 2.15(e)(i) if

- the nominating stockholder or its representative fails to appear at the annual meeting to present the nomination or withdraws its nomination;
- the nomination or election of the nominee would be in violation of ICE's certificate of incorporation or bylaws, or applicable law, rule or regulation, including those of stock exchanges;
- the nominee was nominated pursuant to ICE Bylaw 2.15 at one of the past two annual meetings and either withdrew or became ineligible, or failed to receive 20% of the vote;
- the nominee is, or has within the last three years been, an officer or director of a competitor of ICE or is a U.S. Disqualified Person as defined in ICE's certificate of incorporation; or
- ICE is notified, or the ICE Board determines, that a nominating stockholder has failed to continue to satisfy the eligibility requirements, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), the nominee becomes unwilling or unable to serve on the ICE Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the nominating stockholder or the nominee under ICE Bylaw Section 2.15.

In addition, Bylaw 2.15(e)(ii) would permit ICE to omit from its proxy statement, or supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the ICE Board determines that:

- Such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;
- Such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or
- The inclusion of such information in the proxy statement would otherwise violate the federal proxy rules or any other applicable law, rule or regulation.

Bylaw Section 2.13

The proposed rule change also would amend the existing advance notice provisions in Bylaw 2.13 to extend their application to stockholder nominations under the proxy access provision in Bylaw 2.15.

- Bylaw 2.13(b) would be amended to provide that stockholder nominations would be subject to inclusion in the ICE Board's notice of annual meeting, and that the timing and notice requirements of the existing advance notice bylaw would not apply to stockholder nominations, which have different timing and notice requirements as described above.
- Bylaw 2.13(d) would be amended to specify that the definition therein of ''publicly announced or disclosed'' would also apply in Bylaw 2.15.

Conforming Changes

Finally, the Exchange proposes to make conforming changes to the title of the Bylaws.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b) of the Exchange Act,[26] in general, and Section 6(b)(1) of the Exchange Act,[27] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange believes that, by permitting a stockholder, or a group of up to twenty stockholders, of ICE that meet the stated requirements to nominate and have included in ICE's annual meeting proxy materials director nominees, the proposed rule change strengthens the corporate governance of the Exchange's ultimate parent company and is thus consistent with Section 6(b)(1).

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

Exchange Act,[28] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. As discussed above, the Exchange believes that by expanding the ability of stockholders to nominate directors that could constitute a significant percent (20%) of the number of directors currently serving on the ICE Board, the proposed rule change would ensure better corporate governance and accountability to stockholders, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue in the U.S. or European securities markets or have any impact on competition in those markets; rather, adoption of a proxy access bylaw by ICE is intended to enhance corporate governance and accountability to stockholders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–25. 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–NYSEARCA–2016–25 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06363 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77380; File No. TP 16–5]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to First Trust Dorsey Wright Dynamic Focus 5 ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

March 16, 2016.

By letter dated March 16, 2016 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for First Trust Exchange-Traded Fund VI (the ''Trust'') on behalf of the Trust, First Trust Dorsey Wright Dynamic Focus 5 ETF (the ''Fund''), any national securities exchange on or through which shares of the Fund (''Shares'') are listed and/or may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the ''Requestors''), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (''Exchange Act''), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of 50,000 shares (''Creation Units'').

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Fund seeks to track the performance of an underlying index, the Dorsey Wright Dynamic Focus Five Index (''Underlying Index''). The Underlying Index is designed to provide targeted exposure to the five First Trust sector-based and industry-based ETFs that the index provider determines offer the greatest potential to outperform the other First Trust sector-based and industry-based ETFs. The Underlying Index is also designed to decrease overall equity exposure when the cash equivalents [1]

[1] The cash equivalents in which the Fund may invest are 1- to 3-month U.S. Treasury Bills representing the component securities of an index (the Nasdaq US T-Bill Index (the ''Cash Index'')) that is a component of the Underlying Index.

gain strength. The allocation of the Cash Index is evaluated and adjusted periodically. The Cash Index may constitute between 0% and 95% of the weight of the Underlying Index.

The Fund will seek to track the performance of its Underlying Index by normally investing at least 80% of its total assets in the underlying exchange-traded funds and the cash equivalents that comprise the Underlying Index. In light of the composition of the Underlying Index, the Fund intends to operate as an ''ETF of ETFs.'' Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- Creation Units will be continuously redeemable at the net asset value (''NAV'') next determined after receipt of a request for redemption by the Fund, and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on The NASDAQ Stock Market LLC or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the ''Listing Exchange''); [2]
- The Fund seeks to track the performance of the Underlying Index, all the components of which have publicly available last sale trade information;
- The Listing Exchange will disseminate continuously every 15 seconds throughout the trading day, through the facilities of the Consolidated Tape Association, the market value of a Share;
- The Listing Exchange, market data vendors or other information providers will disseminate, every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;
- On each business day before the opening of business on the Listing Exchange, the Fund will cause to be published through the National Securities Clearing Corporation the list of the names and the quantities of securities of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intraday indicative value, the liquidity of securities held by the Fund, the ability to acquire such securities, as well as arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- All ETFs in which the Fund invests will either meet all conditions set forth in one or more class relief letters,[3] will have received individual relief from the Commission, will be able to rely on individual relief even though they are not named parties, or will be able to rely on applicable class relief for actively-managed ETFs; [4]
- The Trust believes that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[5] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[6]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to

[2] Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

[3] Exchange Act Rel. No. 67215 (Jun. 19, 2012), 77 FR 37941 (Jun. 25, 2012); Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (Nov. 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (Jun. 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (Apr. 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (Jun. 27, 2007).

[4] *See* Staff Legal Bulletin No. 9, ''Frequently Asked Questions About Regulation M'' (Apr. 12, 2002) (regarding actively-managed ETFs).

[5] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

[6] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[7]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on these exemptions. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06340 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

[7] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[8] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32029; File No. 812–14600]

Principal Life Insurance Company, *et al.,* Notice of Application

March 17, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''Act'').

Applicants: Principal Life Insurance Company (''PLIC'') and Principal Life Insurance Company Separate Account B (''Separate Account'') (together, the ''Applicants'').

SUMMARY: *Summary of Application:* Applicants seek an order pursuant to Section 26(c) of the Act approving the substitution of shares of Fidelity Variable Insurance Products Fund V Government Money Market Portfolio (the ''Replacement Fund'') for shares of Principal Variable Contracts Funds, Inc. Money Market Account (the ''Existing Fund'') held by the Separate Account to support variable annuity contracts (each, a ''Contract'' and collectively, the ''Contracts'') issued by PLIC.

DATES: *Filing Dates:* The application was filed on January 14, 2016 and amended on February 29, 2016, March 7, 2016, and March 14, 2016.

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 April 7, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Doug Hodgson, Principal Life Insurance Company, The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840, or Nadya Roytblat, Assistant Chief Counsel at (202) 551–0825 (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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. PLIC is a stock life insurance company incorporated under the laws of the state of Iowa. PLIC is authorized to transact life insurance business in all states of the United States and the District of Columbia. PLIC is a wholly-owned indirect subsidiary of Principal Financial Group, Inc. PLIC is the depositor and sponsor, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts, of the Separate Account. PLIC established the Separate Account as a separate account under Iowa law on January 12, 1970.

2. The Separate Account is a ''separate account'' as defined in Rule 0–1(e) under the Act and is registered as a unit investment trust under the Act. Under Iowa law, PLIC owns the assets of the Separate Account attributable to the Contracts through which interests in the Separate Account are issued, but those assets are held separately from all other assets of PLIC for the benefit of the owners of the Contracts and the persons entitled to payment under the Contracts. Consequently, the assets in the Separate Account are not chargeable with liabilities arising out of any other business that PLIC may conduct.

3. The Separate Account is divided into subaccounts. Each subaccount invests exclusively in shares of a corresponding underlying registered open-end management investment company. The Separate Account supports the Contracts and interests in the Separate Account offered through such Contracts have been registered under the Securities Act of 1933 on Form N–4. The application sets forth the registration file numbers for the Contracts under the Separate Account.

4. The Contracts are either individual flexible premium deferred variable annuity contracts (''Retail Contracts'') or group variable annuity contracts for employer-sponsored qualified and non-qualified retirement plans (''Group Contracts''). The Retail Contracts are: Principal Freedom Variable Annuity, Principal Investment Plus Variable Annuity, Principal Variable Annuity (Flexible Variable Annuity), Principal Variable Annuity (Flexible Variable Annuity with Purchase Payment Credit), Principal Freedom 2 Variable Annuity, Principal Lifetime Income Solutions, Principal Investment Plus Variable Annuity, and Principal Pivot Series Variable Annuity (''Pivot''). The Group Contracts are: Premier Variable Annuity Contract, Personal Variable Annuity Contract and Pension Builder Plus-Group Variable Annuity Contract.

5. Pursuant to the Contracts, Retail Contract owners and Group Contracts plan participants (together referred to as ''Contract Owners'') may select among several variable account investment options. Applicants state that, as disclosed in the prospectuses for the Contracts, PLIC reserves the right, subject to Commission approval and compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a subaccount of a Separate Account.

6. Principal Variable Contracts Funds, Inc. (''PVC'') is organized as a Maryland corporation and is registered as an open-end management investment company under the Act. PVC currently offers 37 series, including the Existing Fund. Principal Management Corporation, (''PMC''), an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act''), provides investment advisory services and certain corporate administrative services to PVC and the Existing Fund. Principal Global Investors, an affiliate of PMC, is the sub-adviser for the Existing Fund and has day-to-day responsibility for selecting investments for the Existing Fund. The Existing Fund serves as the only underlying money market investment option for all Group Contracts. The Existing Fund also served as the only underlying money market investment option for all Retail Contracts until the addition of the Replacement Fund effective on February 6, 2016.

7. Fidelity Variable Insurance Products Fund V (''Fidelity VIP Fund V'') was created under a declaration of trust under Massachusetts law and is registered as an open-end management investment company under the Act. Fidelity VIP Fund V currently offers 32 series, including the Replacement Fund. Fidelity Management & Research Company (''FMR''), an investment adviser registered under the Advisers Act, serves as the investment adviser of the Replacement Fund, with overall responsibility for directing portfolio investments and handling Fidelity VIP Fund V's business affairs. Fidelity Investments Money Management, Inc. (''FIMM'') and other affiliates of FMR serve as sub-advisers to the Replacement Fund, with FIMM having day-to-day responsibility of choosing investments for the Replacement Fund. Effective December 1, 2015, the fundamental concentration policy of the Replacement Fund was modified in such a manner as to enable it to operate as a government money market fund. None of Fidelity VIP Fund V, FMR, FIMM, and other affiliates of FMR are affiliated persons (or affiliated persons of affiliated persons) of the Applicants or PVC.

8. With the exception of Pivot, Applicants propose to substitute Initial Class Shares of the Replacement Fund for Class 1 Shares of the Existing Fund. With respect to Pivot, Applicants propose to substitute Service Class 2 Shares of the Replacement Fund for Class 2 Shares of the Existing Fund (together, the ''Substitutions'').

9. Applicants represent that the Replacement Fund is an appropriate alternative for Contract Owners. Applicants state that the Replacement Fund and the Existing Fund each has an investment objective to seek current income as is consistent with preservation of capital and liquidity. In addition, while the principal investment strategies of the Replacement Fund may differ from those of the Existing Fund, the goal of each is to maintain a net asset value of $1.00 per share. Applicants note that although the risk profiles of the Replacement Fund and the Existing Fund differ, applicants believe that the Replacement Fund entails less investment risk than the Existing Fund. Additional information about the Existing Fund and the Replacement Fund, including investment objectives, principal investment strategies, principal risks and performance history, can be found in the application.

10. Applicants represent that the Substitutions will result in a decrease in overall expenses, which benefits the Contract Owners. The application sets forth the fees and expenses of the

appropriate class of the Existing Fund with the corresponding class of the Replacement Fund in greater detail.

11. Applicants state that the board of directors of PVC voted to terminate the Existing Fund and liquidate its assets effective April 8, 2016. In light of the impending liquidation and the importance of offering a money market fund investment option for the Contracts, the applicants determined that the Substitutions are necessary and in the best interests of Contract owners.

12. Applicants represent that the Substitutions and the selection of the Replacement Fund were not motivated by any financial consideration paid or to be paid to PLIC or to its affiliates by the Replacement Fund, its adviser or underwriter, or their affiliates.

13. Applicants state that as of the effective date of the Substitution, April 8, 2016 (''Substitution Date''), shares of the Existing Fund will be redeemed for cash. PLIC, on behalf of the Existing Fund subaccount of the Separate Account, will simultaneously place a redemption request with the Existing Fund and a purchase order with the Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the Replacement Fund.

14. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the Act) with no change in the amount of the contract value, cash value, accumulation value, account value or death benefit or in dollar value of the investment in the Separate Account. PLIC or its affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses.

15. The rights or obligations of PLIC under the Contracts of those Contract Owners with interests in the subaccount of the Existing Fund (''Affected Contract Owners'') will not be altered in any way. The Substitutions will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitutions. The Substitutions also will not adversely affect any riders under the Contracts. To the extent a Contract offers living benefits, death benefits, or other guarantees, the value of any such guarantee will not materially decrease directly or indirectly as a result of the Substitution.

16. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, PLIC will not exercise any right it may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

17. All Group Contract Owners were notified of this application by means of a supplement to the Contract prospectuses dated March 7, 2016. All Retail Contract Owners were notified of the intent to file this application by means of a supplement to the Contract prospectuses dated December 11, 2015. Among other information regarding the Substitutions, the supplement informed Affected Contract Owners of the right to transfer Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge. Additionally, a prospectus for the Replacement Fund was included with the supplement.

18. On March 9, 2016 (30 days before the Substitution Date) Affected Contract Owners were provided a ''Pre-Substitution Notice,'' setting forth: (a) The intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date (subject to approval and order by the Commission); and (c) information with respect to transfers. In addition, PLIC delivered a prospectus for the Replacement Fund with the Pre-Substitution Notice.

19. PLIC will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date, a written confirmation, which will include a confirmation that the Substitutions were carried out as previously notified, a restatement of the information set forth in the Pre-Substitution Notice, and before and after account values.

20. Applicants will not receive for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the proposed Substitutions, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including, without limitation, 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the proposed Substitutions. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(c) provides that such approval shall be granted by order of the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the concerns underlying that provision. Applicants represent that the Substitutions will provide Contract Owners with a comparable investment vehicle which will not circumvent Contract Owner-initiated decisions and PLIC's obligations under the Contracts, and will enable Contract Owners to continue to use the full range of applicable Contract features as they use today. Applicants further state that the Replacement Fund and the Existing Fund have essentially the same investment objectives, the Replacement Fund entails less investment risk than the Existing Fund, and the Substitutions will result in a decrease in overall expenses, thereby benefiting Contract Owners.

3. Applicants state that, as disclosed in the prospectuses for the Contract, PLIC reserves the right, subject to Commission approval, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a subaccount of a Separate Account. Applicants determined that the Substitutions are necessary and in the best interests of Contract Owners in light of the impending liquidation of the Existing Fund and the importance of offering a money market fund investment option for the Contracts.

4. Applicants also assert that the Substitutions do not entail any of the abuses that Section 26(c) was designed to prevent. Each Affected Contract Owner has been advised of his right, any time prior to the Substitution Date, and for at least 30 days after the Substitution Date, to reallocate account value under the affected Contract without any cost or limitation, or otherwise withdraw or terminate his interest in accordance with the terms and conditions of his Contract. Furthermore, Contract Owners will not incur any additional tax liability or any additional fees or expenses as a result of the Substitutions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless the Applicants determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the proposed Substitutions.

2. Applicants or their affiliates will pay all expenses and transaction costs of the proposed Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Affected Contract Owners to effect the proposed Substitutions.

3. The Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitutions will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the proposed Substitutions.

5. The rights or obligations of the PLIC under the Contracts of Affected Contract Owners will not be altered in any way. The Substitutions will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, PLIC will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All Affected Contract Owners will be notified, at least 30 days before the Substitution Date about: (a) The intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Applicants will deliver to all Affected Contract Owners, at least 30 days before the Substitution Date, a prospectus for the Replacement Fund.

8. Applicants will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the proposed Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the Pre-Substitution Notice; and (c) before and after account values.

9. Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitutions, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including without limitation 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77379; File No. SR–BATS–2016–16]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Pointbreak Diversified Commodity Fund of the Pointbreak ETF Trust Under BATS Rule 14.11(i), Managed Fund Shares

March 16, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2016, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade shares of the Pointbreak Diversified Commodity Fund (the ''Fund'') of the Pointbreak ETF Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are referred to herein as the ''Shares''.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed fund that seeks to provide long term capital appreciation, primarily through exposure to the commodity futures markets.

The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on June 18, 2015. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[4] The Commodity Futures Trading Commission (''CFTC'') has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be held by the Fund, prior to listing on the Exchange, the Adviser will be registered as a Commodity Pool Operator (''CPO'') and will become a member of the National Futures Association (''NFA''). The Fund and a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands (the ''Subsidiary'') will be subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools. The Fund will generally obtain its exposure to commodity markets via investments in the Subsidiary. These investments are intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. Henceforth, references to the investments of the Fund include investments of the Subsidiary to which the Fund gains indirect exposure through investment in the Subsidiary.

Description of the Shares and the Fund

Pointbreak Advisers LLC is the investment adviser (''Adviser'') to the Fund. Brown Brothers Harriman & Co. (''BBH'') is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. (''Distributor'') serves as the distributor for the Trust. The Adviser is not affiliated with either BBH or the Distributor.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[5] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. The Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Pointbreak Diversified Commodity Fund

According to the Registration Statement, the Fund is an actively managed exchange-traded fund (''ETF'') that seeks to provide total return that exceeds that of a benchmark, the Solactive Diversified Commodity Index (the ''Benchmark'') over time. The Fund is not an index tracking exchange-traded fund and is not required to invest in the specific components of the Benchmark. However, the Fund will generally seek to maintain a portfolio of instruments similar to those included in the Benchmark and will seek exposure to commodities included in the Benchmark. The Benchmark is a rules-based index composed of futures contracts on 16 heavily traded commodities across the energy, precious metals, industrial metals and agriculture sectors: Aluminum, Brent crude oil, cocoa, copper, corn, gold, heating oil, live cattle, natural gas, Reformulated Gasoline Blendstock for Oxygen Blending (''RBOB'') gasoline, silver, soybeans, sugar #11, wheat, WTI light crude oil, and zinc. The allocation among the Fund's investments generally approximates the allocation among the components of the Benchmark. The Benchmark will further seek to select the contract month, for each specific commodity, among the next 13 months that display the most backwardation, or the least contango, and does not attempt to always own those contracts that are closest to expiration. Although the Fund seeks returns comparable to the returns of the Benchmark, the Fund can have a higher or lower exposure to any component within the Benchmark at any time and may invest in other commodity-linked instruments as well, as described below.

Principal Holdings

According to the Registration Statement, under normal

[3] The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] *See* Registration Statement on Form N–1A for the Trust, dated December 4, 2015 [sic] (File Nos. 333–205324 and 811–23068). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812–14041) [sic].

[5] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

circumstances,[6] the Fund will invest, either directly or through the Subsidiary, in a combination of Commodity Futures, as defined below, and cash and cash-like instruments (''Cash Instruments''). Commodity Futures include only the following instruments: Exchange-traded futures on commodities; and exchange-traded futures contracts on commodity indices. These instruments provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities.

Under normal circumstances, in addition to investing in Commodity Futures through the Subsidiary, the Fund will invest its remaining assets in Cash Instruments, including cash, cash-like instruments or high-quality collateral securities that provide liquidity, serve as margin, or collateralize the Subsidiary's investments in Commodity Futures. Such Cash Instruments include only the following instruments: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments; (iii) money market mutual funds, including affiliated money market mutual funds; and (iv) repurchase agreements.[7] The Fund will not invest in Cash Instruments that are below investment grade.

The Fund generally will not invest directly in Commodity Futures. The Fund expects to gain exposure to Commodity Futures by investing a portion of its assets in the Subsidiary, which will invest in Commodity Futures.[8] The Subsidiary is also advised by the Adviser. Unlike the Fund, the Subsidiary is not an investment company registered under the 1940 Act. The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. The Subsidiary has the same investment objective and investment restrictions as the Fund. The Fund will generally invest up to 25% of its total assets in the Subsidiary.

During times of adverse market, economic, political or other conditions, the Fund may depart temporarily from its principal investment strategies (such as by maintaining a significant uninvested cash position) for defensive purposes. Doing so could help the Fund avoid losses, but may mean lost investment opportunities. During these periods, the Fund may not achieve its investment objective.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[9] The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser[10] under the 1940 Act.[11] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. Aside from the Fund's investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (*e.g.* two times or three times the Fund's benchmark).

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Shares of the Fund will be calculated by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management and administration fees, are accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund is generally determined at 4:00 p.m. Eastern Time each business day when the Exchange is open for trading. If the Exchange or market on which the Fund's investments are primarily traded closes early, the NAV may be calculated prior to its normal calculation time. Creation/redemption transaction order time cutoffs (as further described below) would also be accelerated.

Securities and other assets held by both the Fund and the Subsidiary are generally valued at their market price using market quotations or information provided by a pricing service. Certain short-term debt securities are valued on the basis of amortized cost. Commodity

[6] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[7] The Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. Such procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser [sic]. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser [sic], liquidity or other considerations so warrant.

[8] The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund's ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund's Board of Trustees (''Board'') has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[9] 26 U.S.C. 851.

[10] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[11] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

Futures are generally valued at their settlement price as determined by the relevant exchange. Repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. Cash and cash equivalents (other than money market mutual funds) also may be valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Short-term debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by an independent pricing service are not readily available will be valued at amortized cost. Shares of money market mutual funds will be valued at their current Net Asset Value per share.

For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

The Shares

The Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of the Fund may trade on the secondary market in amounts less than a Creation Unit.

Although the Adviser anticipates that purchases and redemptions for Creation Units will generally be executed on an all-cash basis, the consideration for purchase of Creation Units of the Fund may consist of an in-kind deposit of a designated portfolio of assets (including any portion of such assets for which cash may be substituted) (*i.e.,* the ''Deposit Assets''), and the ''Cash Component'' computed as described below. Together, the Deposit Assets and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The specific terms surrounding the creation and redemption of shares are at the discretion of the Adviser.

The Deposit Assets and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the assets held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Assets, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Adviser will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Asset and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Assets may change pursuant to changes in the composition of the Fund's portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Assets may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Asset that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[12]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor at a time specified by the Adviser. The Fund currently intends that such orders must be received in proper form no later than 10:30 a.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

A standard creation transaction fee may be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. Adviser will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of assets (including any portion of such assets for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). The redemption proceeds for a Creation Unit generally will consist of a specified amount of cash less a redemption transaction fee. The Fund generally will redeem Creation Units entirely for cash.

A standard redemption transaction fee, in an amount disclosed in the current prospectus for the Fund, may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. The Fund currently intends that such requests must be received no later than 10:30 a.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.pointbreakETFs.com*), as applicable.

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior

[12] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all authorized participants.

business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[13] daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing market price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours[14] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio Commodity Futures and other assets (the ''Disclosed Portfolio'') held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Disclosed Portfolio will include, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[16] In addition, the quotations of certain of the Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide an estimate of that value throughout the trading day.

Intraday price quotations on U.S. government securities, debt securities, and repurchase agreements of the type held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For futures, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Quotation and last sale information for the Shares will be available on the facilities of the CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[17] A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Commodity Futures and other assets composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 14.11(i)(2)(C), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying futures, including futures contracts held by the Subsidiary, via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive

[13] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[14] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[15] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund 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.

[16] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[17] *See* 17 CFR 240.10A–3.

surveillance sharing agreement.[18] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio are disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[19] and After Hours Trading Sessions[20] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[21] in general and section 6(b)(5) of the Act[22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. The Exchange may obtain information regarding trading in the Shares and the underlying futures, including those held by the Subsidiary, via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[23] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

Under normal circumstances, the Fund will invest, either directly or through the Subsidiary, in a combination of Commodity Futures and Cash Instruments. Commodity Futures provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities. The Fund generally will not invest directly in Commodity Futures. The Fund expects to gain exposure to these investments by investing a portion of its assets in the Subsidiary. Cash Instruments include only the following instruments: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments; and (iii) money market mutual funds, including affiliated money market mutual funds. The Fund will not invest in Cash Instruments that are below investment grade.

During times of adverse market, economic, political or other conditions, the Fund may depart temporarily from its principal investment strategies (such as by maintaining a significant uninvested cash position) for defensive purposes. Doing so could help the Fund avoid losses, but may mean lost investment opportunities. During these periods, the Fund may not achieve its investment objective.

Additionally, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the

[18] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also notes that all of the futures contracts in the Disclosed Portfolio for the Fund will trade on markets that are a member of ISG or affiliate or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[19] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[20] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] *See* note 21, supra.

Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's Web site including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Fund, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing market price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on U.S. government securities, debt securities, and repurchase agreements of the type held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For futures, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2016–16 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–BATS–2016–16. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2016–16 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06339 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77381; File No. SR–NASDAQ–2016–033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Offer Remote ITCH to Trade Options Wave Ports

March 16, 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 March 2, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 establish a fee for a new optional wireless connectivity service, Remote ITCH to Trade Options Wave Ports.

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

Nasdaq is proposing to amend Nasdaq Options Market (''NOM'') Rules chapter XV, section 3, to establish fees for Remote ITCH to Trade Options (''ITTO'') Wave Ports for clients co-located at other third-party data centers located in Mahwah, N.J. (''Mahwah'') and Secaucus, N.J. (''Secaucus''), through which Nasdaq ITTO market data will be distributed after delivery to those data centers via a wireless network. Nasdaq ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules chapter VI, section 8.[3] Nasdaq ITTO market data is subscribed to under NOM Rules chapter XV, section 4.

Nasdaq provides market data via two connectivity mediums: Fiber optic networks, and/or wireless networks, (aka, Remote Wave Ports). ITTO market data is currently provided only by Nasdaq through fiber optic networks. Nasdaq is now proposing to provide ITTO market data through Remote Wave Ports. A Remote Wave Port is a physical port located in Nasdaq's space within a third-party's (remote) data center that receives market data delivered by Nasdaq via a wireless network,[4] which is then simultaneously distributed to Wave Ports within that location. Clients must separately subscribe to the data received by the Remote Wave Port service.

Nasdaq offers TotalView ITCH equities market data through Remote MITCH Wave Ports for clients co-located at third-party data centers in Mahwah and Secaucus.[5] Nasdaq has recently increased the capacity of its wireless networks connecting Nasdaq's Carteret data center to those third-party data centers, so that they may now support delivery of ITTO market data.

Nasdaq is proposing to deliver ITTO market data to Nasdaq-owned cabinets at the third-party data centers located in Mahwah and Secaucus via a wireless network, as is currently done for TotalView ITCH market data. This offering, which is entirely optional, will enable delivery of Nasdaq ITTO market data to the third-party data centers at the same low latency.[6] Clients will have the option of cross-connecting to their subscribed ITTO Wave Ports in those data centers to receive the ITTO data feed.

Nasdaq is proposing to assess an installation charge for a Remote Wave Port in Mahwah of $5,000 and a charge of $2,500 for a Remote Wave Port in Secaucus. Nasdaq is also proposing a monthly recurring fee of $10,000 for a Remote Wave Port in Mahwah and $7,500 for a Remote Wave Port in Secaucus. Clients opting to subscribe to a Remote ITTO Wave Port will continue to be fee liable for the applicable market data fees as described in NOM Rules chapter XV, section 4(a).

Competition for market data distribution is considerable and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new data delivery option via Remote Wave Ports to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. The new delivery option is similar to existing offerings, entirely optional, and is geared towards attracting new customers, as well as retaining existing customers.

The proposed fees are based on the cost to Nasdaq and its vendors of installing and maintaining the wireless connectivity and on the value provided to the customer, which receives low latency delivery of data feeds. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation, and

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Nasdaq Options Rules chapter VI, section 1(a)(3)(A).

[4] Wireless technology has been in existence for many years, used primarily by the defense, retail, and telecommunications industries. Wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), message latency is reduced. The continued use of this technology by the defense industry and regulation of the spectrum by the FCC demonstrates the secure nature of wireless networks.

[5] Nasdaq assesses a MITCH Wave Port installation fee of $5,000 for Mahwah installations and an ongoing monthly fee of $12,500. *See* Nasdaq Rule 7015(g)(1). Nasdaq assesses a MITCH Wave Port installation fee of $2,500 for Secaucus installations and an ongoing monthly fee of $7,500. *Id.* Nasdaq notes that the higher ongoing fee for Mahwah is reflective of the longer distance from Carteret to Mahwah requiring greater investment in infrastructure to connect the two locations.

[6] Nasdaq cannot preclude minor latency variances in delivery of Nasdaq ITTO in the third-party data centers to individual clients because it does not control the cross-connects in those centers; however, the microwave connectivity will provide the same latency to all clients' Remote ITTO Wave Ports and offers an improvement in latency over fiber optic network connectivity.

testing. The differing fee levels between Mahwah and Secaucus are reflective of higher cost of connecting to Mahwah based on the longer distance to Mahwah, thus a higher network cost, and higher charges incurred by Nasdaq in co-locating and connecting within Mahwah.

The fees also allow Nasdaq to make a profit, and reflect the premium received by the clients in terms of lower latency over the fiber optics option. Clients can choose to build and maintain their own wireless networks or choose their own third party network vendors but the upfront and ongoing costs will be much more substantial than this Nasdaq wireless offering.

Nasdaq notes that the proposed fees are identical to, or less than, the analogous installation and monthly fees assessed for Remote MITCH Wave Ports located in the same third-party data centers in Mahwah and Secaucus.[7]

2. Statutory Basis

Nasdaq believes that its proposal is consistent with section 6(b) of the Act,[8] in general, and with sections 6(b)(4) and (b)(5) of the Act,[9] 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 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.

Nasdaq operates in a highly competitive market in which exchanges offer co-location and connectivity services as a means to facilitate the trading activities of those members who believe that co-location and low latency connectivity enhances the efficiency of their trading.

Accordingly, fees charged for co-location and connectivity services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for these services, affected members will opt to terminate their co-location and/or connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including using another vendor for connectivity services, co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Thus, the exchange charging excessive fees would stand to lose not only co-location and connectivity revenues but also revenues associated with the execution of orders routed to it by affected members.

Nasdaq notes that the Commission recently approved an NYSE MKT LLC (''NYSE MKT'') rule change to offer similar services.[10] Nasdaq believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location or connectivity services, including fees for wireless connectivity.

A co-location customer may obtain a similar service by contracting with a wireless service provider to install the required dishes on towers near the data centers and paying the service provider to maintain the service. However, the cost involved in establishing service in this manner is substantial and could result in uneven access to wireless connectivity. Nasdaq's proposed fees will allow these clients to utilize wireless connectivity and obtain the lower latency transmission of data from Nasdaq that is available to others, at a reasonable cost.

Moreover, Nasdaq believes that the proposed fees for wireless connectivity to Nasdaq are reasonable because they are based on Nasdaq's and its vendors' costs to cover hardware, installation, testing and connection, as well expenses involved in maintaining and managing the new connection. The proposed fees allow Nasdaq to recoup these costs and make a profit, while providing customers the ability to reduce latency in the transmission of data from Nasdaq, and reducing the cost to them that would be involved if they build or buy their own wireless networks.

Nasdaq believes that the proposed fees are reasonable in that they reflect the costs of the connection and the benefit of the lower latency to clients. Last [sic], the proposed fees are reasonable because they are identical to, or less than, the analogous installation and monthly fees assessed by Nasdaq for Remote Wave Ports located in the same third-party data centers in Mahwah and Secaucus that receive ITCH market data.

Nasdaq believes the proposed Remote Wave Port fees are equitably allocated and non-discriminatory in that all co-location clients that voluntarily select this service option will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among customers with regard to the fees charged for the service. Further, the latency reduction offered will be the same for all clients who choose to receive this wireless feed from the Remote Wave Ports, The [sic] same cannot be said of the alternative where entities with substantial resources invest in private services and thereby obtain lower latency transmission, while those without resources are unable to invest in the necessary infrastructure.

Nasdaq's proposal is also consistent with the requirement of section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade [sic] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is consistent with these requirements insomuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of receiving Nasdaq's market data feeds at third-party data centers.

Initially, Nasdaq will perform substantial network testing prior to making the service available to members. After this testing period, the wireless network will continue to be closely monitored and maintained by the vendor and the client will be informed of any issues. Additionally, during the initial roll-out of the service and on a rolling basis for future clients, the Exchange will enable clients to test the receipt of the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the

[7] *See* Nasdaq Rule 7015(g)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *See* Securities Exchange Act Release No. 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR–NYSEMKT–2015–85)(approving the offering of a wireless connection to allow users to receive market data feeds from third party markets).

near future when they order this service from the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

To the contrary, this proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement. Wireless technology has been in use for decades, is available from multiple providers, and has been adopted by other exchanges to offer microwave connectivity for delivery of market data.

As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Competition between the Exchange and competing trading venues will be enhanced by allowing the Exchange to offer its market participants a lower latency connectivity option to receive market data, which is currently available through other connectivity. Competition among market participants will also be supported by allowing small and large participants the same price for this lower latency connectivity.

The proposed rule change will likewise enhance competition among service providers offering connections between market participants and the data centers. The offering will expand the multiple means of connectivity available, allowing customers to compare the benefits and costs of lower latency transmission and related costs with reference to numerous variables.

The Exchange, and presumably its competitors, selects service providers on a competitive basis in order to pass along price advantages to their customers, and to win and maintain their business. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–033 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–2016–033. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–033 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06341 Filed 3–21–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 21, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other

documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

SBA is requesting that applicants include their email contact information when listing their (or their firm's) name and address. SBA is also requesting additional information pertaining to applicants' citizenship or Lawful Permanent Resident status. SBA made several minor changes to enhance the readability and clarity of the form, including renumbering Question 1, revising the wording of Questions 2 and 9, moving the burden information from Page 1 to Page 2, and explicitly instructing applicants that they ''must'' fully complete SBA Form 912, including furnishing details on a separate sheet for any ''Yes'' responses to Questions 7, 8, or 9.

Title: Statement of Personal History.

Description of Respondents: Applicants participating in SBA programs.

Form Number: 912.

Estimated Annual Responses: 142,000.

Estimated Annual Hour Burden: 35,500.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–06413 Filed 3–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14669 and #14670]

New Jersey Disaster #NJ–00046

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4264–DR), dated 03/14/2016.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 01/22/2016 through 01/24/2016.

Effective Date: 03/14/2016.

Physical Loan Application Deadline Date: 05/13/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 12/14/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/14/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: atlantic, bergen, burlington, camden, cape may, cumberland, essex, hudson, hunterdon, mercer, middlesex, monmouth, morris, ocean, somerset, union, warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14669B and for economic injury is 14670B.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–06385 Filed 3–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14625 and #14626]

Texas Disaster Number TX–00464

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of TEXAS (FEMA–4255–DR), dated 02/09/2016.

Incident: Severe Winter Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 12/26/2015 through 01/21/2016.

Effective Date: 03/15/2016.

Physical Loan Application Deadline Date: 04/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 11/09/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 02/09/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Borden, Cass, Collingsworth, Cottle, Crosby, Delta, Donley, Fisher, Floyd, Foard, Franklin, Haskell, Hockley, Jones, Knox, Leon, Motley, Nolan, Scurry, Shackelford, Stonewall, Terry, Trinity, Walker, Wheeler, Wilbarger.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–06387 Filed 3–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14667 and #14668]

Louisiana Disaster Number LA–00062

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4263–DR), dated 03/13/2016.

Incident: Severe Storms and Flooding.

Incident Period: 03/08/2016 and continuing.

Effective Date: 03/15/2016.

Physical Loan Application Deadline Date: 05/12/2016.

EIDL Loan Application Deadline Date: 12/13/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of LOUISIANA, dated 03/13/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Parishes: (Physical Damage and Economic Injury Loans):
Beauregard, Bienville, Caddo, Caldwell, De Soto, La Salle, Livingston, Madison, Natchitoches, Saint Tammany, Tangipahoa, Union, Vernon, Washington, West Carroll, Winn.

Contiguous Parishes/Counties: (Economic Injury Loans Only):
Louisiana: Allen, Ascension, Avoyelles, Calcasieu, Catahoula, East Baton Rouge, Jefferson, Jefferson Davis, Orleans, Sabine, Saint Charles, Saint Helena, St John The Baptist, Tensas.
Mississippi: Amite, Hancock, Marion, Pearl River, Pike, Walthall, Warren.
Texas: Cass, Harrison, Marion, Newton, Panola, Shelby.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–06386 Filed 3–21–16; 8:45 am]

BILLING CODE 8025–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at March 10, 2016, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on March 10, 2016, in Aberdeen, Maryland, the Commission took the following actions: (1) Approved or tabled the applications of certain water resources projects; (2) accepted settlements in lieu of penalties from Aqua Pennsylvania, Inc., Cabot Oil & Gas Corporation, and King Valley Golf Course; and (3) took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: March 10, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Adoption of a budget for the 2017 fiscal year; (2) a recommendation for engaging an independent auditor; (3) approval/ratification of a grant amendment and an agreement; and (4) a report on delegated settlements with the following project sponsors, pursuant to SRBC Resolution 2014–15: Dauphin County General Authority—Highlands Golf Course, in the amount of $2,000; Talisman Energy USA Inc., in the amount of $1,000; and Mountain Energy Services, Inc., in the amount of $1,000.

Compliance Matters

The Commission approved settlements in lieu of civil penalties for the following projects:

1. Aqua Pennsylvania, Inc. (Beech Mountain System), Butler Township, Luzerne County, PA—$9,000.
2. Cabot Oil & Gas Corporation (GillinghamR P1 Pad (ABR–201305017; Forest Lake Township) and DeluciaR P1 Pad (ABR–201211002; Harford Township)), Susquehanna County, PA—$11,000.
3. King Valley Golf Course, Kimmel Township, Bedford County, PA—$10,000.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Anadarko E&P Onshore LLC (Lycoming Creek), Lewis Township, Lycoming County, PA. Renewal of surface water withdrawal of up to 1.340 mgd (peak day) (Docket No. 20120301).
2. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, PA. Groundwater withdrawal of up to 0.115 mgd (30-day average) from Dug Road Well.
3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, PA. Groundwater withdrawal of up to 0.035 mgd (30-day average) from Hilltop Well.
4. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, PA. Groundwater withdrawal of up to 0.158 mgd (30-day average) from Midway Well 1.
5. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Midway Manor System, Kingston Township, Luzerne County, PA. Groundwater withdrawal of up to 0.110 mgd (30-day average) from Midway Well 2.
6. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, PA. Groundwater withdrawal of up to 0.044 mgd (30-day average) from Well 1.
7. Project Sponsor and Facility: East Berlin Area Joint Authority, Reading Township, Adams County, PA. Groundwater withdrawal of up to 0.065 mgd (30-day average) from Well 2.
8. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, PA. Groundwater withdrawal of up to 0.058 mgd (30-day average) from Well 4.
9. Project Sponsor and Facility: East Berlin Area Joint Authority, East Berlin Borough, Adams County, PA. Renewal with modification to increase groundwater withdrawal limit, for a total of up to 0.051 mgd (30-day average) from Well 5 (Docket No. 19860601).
10. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, PA. Groundwater withdrawal of up to 0.059 mgd (30-day average) from Well 3A.
11. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, PA. Groundwater withdrawal of up to 0.023 mgd (30-day average) from Well 4.
12. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, PA. Groundwater withdrawal of up to 0.056 mgd (30-day average) from Well 5.
13. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, PA. Groundwater withdrawal of up to 0.022 mgd (30-day average) from Well 6.
14. Project Sponsor and Facility: East Cocalico Township Authority, East Cocalico Township, Lancaster County, PA. Groundwater withdrawal of up to 0.046 mgd (30-day average) from Well 7.

15. Project Sponsor and Facility: EQT Production Company (Wilson Creek), Duncan Township, Tioga County, PA. Renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20120307).

16. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, PA. Renewal of groundwater withdrawal to include a phased implementation of seasonal groundwater withdrawal limits for Well 1 (Docket No. 19850901).

17. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, PA. Renewal of groundwater withdrawal to include a phased implementation of seasonal groundwater withdrawal limits for Well 4 (Docket No. 19850901).

18. Project Sponsor and Facility: Furman Foods, Inc., Point Township, Northumberland County, PA. Renewal of groundwater withdrawal to include a phased implementation of seasonal groundwater withdrawal limits for Well 7 (Docket No. 19850901).

19. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, PA. Modification to increase withdrawal limit from Well 2 by 0.105 mgd (30-day average), for a total Well 2 withdrawal limit of 1.270 mgd (30-day average), and to increase the combined withdrawal limit by an additional 0.199 mgd (30-day average), for a total combined withdrawal limit of 1.799 mgd (30-day average) from Wells 1 and 2 (Docket No. 20110617).

20. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, PA. Groundwater withdrawal of up to 0.324 mgd (30-day average) from Well 5.

21. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, PA. Groundwater withdrawal of up to 0.352 mgd (30-day average) from Well 6.

22. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, PA. Groundwater withdrawal of up to 0.126 mgd (30-day average) from Well 7.

23. Project Sponsor and Facility: Muncy Borough Municipal Authority, Muncy Creek Township, Lycoming County, PA. Groundwater withdrawal of up to 0.276 mgd (30-day average) from Well 8.

24. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Borough, Cambria County, PA. Groundwater withdrawal from the Argyle Stone Bridge Well as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.

25. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Cresson Township, Cambria County, PA. Groundwater withdrawal from the Cresson No. 9 Well as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.

26. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, PA. Groundwater withdrawal from the Gallitzin Shaft Well 2A (Gallitzin Shaft #2) as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.

27. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Conservation and Restoration. Project Facility: Cresson Mine Drainage Treatment Plant, Gallitzin Township, Cambria County, PA. Groundwater withdrawal from the Gallitzin Shaft Well 2B (Gallitzin Shaft #1) as part of a four-well system drawing up to 6.300 mgd (30-day average) from the Gallitzin Shaft and Cresson Mine Pools.

28. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Mehoopany Township, Wyoming County, PA. Surface water withdrawal of up to 1.500 mgd (peak day).

29. Project Sponsor and Facility: SWN Production Company, LLC (Susquehanna River), Oakland Township, Susquehanna County, PA. Renewal of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20120311).

30. Project Sponsor and Facility: SWN Production Company, LLC (Tunkhannock Creek), Lenox Township, Susquehanna County, PA. Renewal of surface water withdrawal of up to 1.218 mgd (peak day) (Docket No. 20120312).

Project Application Tabled

The Commission tabled action on the following project application:

1. Project Sponsor and Facility: Black Bear Waters, LLC (Lycoming Creek), Lewis Township, Lycoming County, PA. Application for renewal of surface water withdrawal of up to 0.900 mgd (peak day) (Docket No. 20120303).

Project Application Approved Involving a Diversion

The Commission approved the following project application involving a diversion:

1. Project Sponsor: Gas Field Specialists, Inc. Project Facility: Wayne Gravel Products Quarry, Ceres Township, McKean County, PA. Into-basin diversion from the Ohio River Basin of up to 1.170 mgd (peak day).

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: March 17, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–06428 Filed 3–21–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver of Aeronautical Land-Use Assurance Mankato Regional Airport, Mankato, MN

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 2.35 acres of the airport property at the Mankato Regional Airport, Mankato MN. The City is proposing a land swap to exchange this 2.35 acre parcel for another parcel of 2.0 acres.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. The acreage comprising this parcel was originally acquired in 1982 and funded with an Airport Improvement Program (AIP) grant (3–27–0055–05–87). In exchange for the 2.35 acres the airport will receive a new parcel of land in the Runway Protection Zone (RPZ) to Runway 33. The FAA approved a Categorical Exclusion for environmental requirements on May 30, 2014. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before April 21, 2016.

ADDRESSES: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4642/ FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Minnesota Department of Transportation, 222 East Plato Blvd., St. Paul, MN 55107.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4642/FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at this same location or at the Minnesota Department of Transportation, 222 East Plato Blvd., St. Paul, MN 55107.

SUPPLEMENTARY INFORMATION: Following is a description of the subject airport property to be released at Mankato Regional Airport in Mankato, Minnesota and described as follows:

A parcel of land to the Southeast of the Airport along the extended centerline of Runway 15/33, East of 594th Avenue, and North of 230th Street. Also identified as Lot 1, Block 3, Hilgers subdivision #2 (Hilgers Lot 1).

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN, on January 28, 2016.

Andy Peek,

Manager, Dakota-Minnesota Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2016–06464 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at Peoria International Airport, Peoria, Illinois.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at Peoria International Airport, Peoria, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on December 15, 2015, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for a Proposed Airport Traffic Control Tower (ATCT) with Associated Base Building at Peoria International Airport (PIA), Peoria, Illinois. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents and was signed on September 25, 2015. Copies of the FONSI/ROD and/or Final EA are available by contacting Ms. Virginia Marcks through the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW–2C15H, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294–7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the construction and operation of a new ATCT and Base Building at PIA. The ATCT will be located approximately 660 feet east of the existing ATCT facility on vacant land located on airport property. The new ATCT will be a Low Activity Level facility with a 440 square foot cab and will be at an overall height of 162 feet above ground level. The Base Building will be 11,000 sq. feet to house the Terminal Radar Approach Control (TRACON) facility. The project also includes, and the Final EA evaluated, construction of a paved parking area next to the Base Building; site work, including, grading, drainage, utilities, and fencing; decommissioning the existing ATCT; modification to the existing FAA Remote Transmitter/ Receiver (RTR) and Low Level Windshear Alert System (LLWAS) including upgrade and/or relocation; unconditional approval of the revised Airport Layout Plan; and Federal funding of the project.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' which is compliant with FAA Order 1050.1F, effective July 16, 2015, paragraph 1–9, pertaining to ongoing environmental documents. In addition, FAA Order 5050.4B, ''National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions'' has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on February 17, 2016.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–2C15H, Federal Aviation Administration.

[FR Doc. 2016–06321 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Request to Release Airport Property at the Humboldt Municipal Airport, Humboldt, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Humboldt Municipal, Humboldt, Iowa, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before April 21, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Humboldt Airport Commission, Dave Dodgen, City of Humboldt, 29 Fifth Street South, Humboldt, IA 50548, 515–332–3435.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request

to release approximately 3.82 acres of airport property at the Humboldt Municipal Airport (0K7) under the provisions of 49 U.S.C. 47107(h)(2). On January 18, 2016, the Airport Commission at the Humboldt Municipal Airport requested from the FAA that approximately 3.82 acres of property be released for sale to AP Air for use as a storage and distribution facility. On March 10, 2016, the FAA determined that the request to release property at the Humboldt Municipal Airport (0K7) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Humboldt Municipal Airport (0K7) is proposing the release of one parcel, of 3.82 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Humboldt Municipal Airport (0K7) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Humboldt Municipal Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Humboldt Municipal Airport.

Issued in Kansas City, MO, on March 11, 2016.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2016–06320 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice For Waiver for Aeronautical Land-Use Assurance at Big Spring McMahon-Wrinkle Airport, Big Spring, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent for Waiver of Aeronautical Land-Use.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to nonaeronautical use and to authorize the conversion of the airport property. The proposal consists of one parcel of land containing a total of approximately 120.4 acres and one parcel of land containing a total of approximately 86.0 acres.

Ownership of the associated property transferred Webb Air Force Base to the City of Big Spring via an ''Indenture'' between the United States of America and the City of Big Spring, Texas on October 6, 1978. The land comprising this parcel is outside the forecasted need for aviation development and, thus, is no longer needed for indirect or direct aeronautical use. The airport wishes to develop this land for compatible commercial, nonaeronautical use. The income from the conversion of this parcel will benefit the aviation community by reinvestment in the airport. Approval does not constitute a commitment by the FAA to financially assist in the conversion of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the conversion of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. In accordance with Section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before April 21, 2016.

ADDRESSES: Send comments on this document to Mr. Cameron Bryan, Federal Aviation Administration, Acting Manager, Texas Airports Development Office, 10101 Hillwood Parkway, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Little, Director, City of Big Spring/McMahon-Wrinkle Airport & Industrial Airpark, 3200 Rickabaugh Dr. West, Big Spring, TX 79720, telephone (432) 264–2362, or Mr. Anthony Mekhail, Federal Aviation Administration, Texas Airports Development Program Manager, 10101 Hillwood Parkway, Fort Worth, TX 76177, telephone (817) 222–5663, FAX (817) 222–5989. Documents reflecting this FAA action may be reviewed at the above locations.

Issued in Fort Worth, Texas on 15 January 2016.

Ignacio Flores,

Manager, Airports Division, FAA, Southwest Region.

[FR Doc. 2016–06322 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0190; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 66 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before April 21, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0190; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2–13–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 66 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 66 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following group(s) of drivers will receive renewed exemptions effective in the month of February and are discussed below.

As of February 9, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 54 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (63 FR 66226; 64 FR 16517; 64 FR 27027; 64 FR 40404; 64 FR 51568; 64 FR 54948; 64 FR 66962; 65 FR 159; 65 FR 45817; 65 FR 77066; 66 FR 41656; 66 FR 48504; 66 FR 53826; 66 FR 66966; 66 FR 66969; 67 FR 71610; 68 FR 37917; 68 FR 44837; 68 FR 48989; 68 FR 52811; 68 FR 54775; 68 FR 61860; 68 FR 69432; 68 FR 69434; 70 FR 25878; 70 FR 41811; 70 FR 42615; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 71884; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 4632; 71 FR 6825; 72 FR 39879; 72 FR 40360; 72 FR 52419; 72 FR 62896; 72 FR 62897; 72 FR 64273; 72 FR 67340; 72 FR 71993; 72 FR 71995; 72 FR 71998; 73 FR 1395; 73 FR 5259; 73 FR 6246; 74 FR 34632; 74 FR 37295; 74 FR 43217; 74 FR 43221; 74 FR 43222; 74 FR 48343; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 60022; 74 FR 62632; 74 FR 65845; 74 FR 65847; 75 FR 1450; 75 FR 1451; 75 FR 4623; 76 FR 25766; 76 FR 37885; 76 FR 49528; 76 FR 53708; 76 FR 61143; 76 FR 62143; 76 FR 64171; 76 FR 66123; 76 FR 70210; 76 FR 70212; 76 FR 70215; 76 FR 75942; 76 FR 78728; 76 FR 78729; 76 FR 79760; 77 FR 543; 77 FR 545; 77 FR 3554; 78 FR 34143; 78 FR 47818; 78 FR 52602; 78 FR 62935; 78 FR 63302; 78 FR 63307; 78 FR 64271; 78 FR 64274; 78 FR 66099; 78 FR 67452; 78 FR 67454; 78 FR 67462; 78 FR 68137; 78 FR 76395; 78 FR 76704; 78 FR 76705; 78 FR 76707; 78 FR 77778; 78 FR 77780; 78 FR 77782; 78 FR 78475; 78 FR 78477; 79 FR 2247; 79 FR 2748; 79 FR 3919; 79 FR 4803):

Larry Adams, Jr. (FL)
Dennis S. Anderson (MN)
James S. Ayers (GA)
Garry A. Baker (OH)

Edgar G. Baxter (FL)
Morris R. Beebe, II (CO)
Craig J. Belles (NY)
John E. Bellosi, Jr. (MD)
William Bucaria, Jr. (FL)
Freddie A. Carrasquillo (TX)
Martina B. Classen (IA)
Jimmie L. Crenshaw (AL)
Robert L. Cross, Jr. (MO)
Herman R. Dahmer (MD)
Vincent DeMedici (PA)
Vernon J. Dohrn (MN)
Michael M. Edleston (MA)
Daniel W. Eynon (OH)
Russell W. Foster (OH)
Richard L. Gandee (OH)
Christopher L. Granby (MI)
James B. Grega (PA)
James Hawthorne (NM)
Britt D. Hazelwood (IL)
Leonard R. Jackson (IN)
Kevin Jacoby (NJ)
Wayne C. Knighton (NV)
Jeremy W. Knott (NC)
Michael R. Leftwich (GA)
Michael S. Maki (MN)
Leonard A. Martin (NV)
Dennis L. Maxcy (NY)
Cameron S. McMillen (NM)
Joseph W. Meacham (MS)
David L. Menken (NY)
Gilberto Miramontes (TX)
Rashawn L. Morris (VA)
Charles D. Oestreich (MN)
Dean B. Ponte (MA)
Jack E. Potts, Jr. (PA)
Andres Regalado (CA)
Riland O. Richardson (GA)
Thenon D. Ridley (TX)
Richard S. Robb (NM)
Harry Smith, Jr. (NC)
John R. Snyder (WA)
Scott C. Star (NJ)
Kirk A. Thelen (MI)
Clifford B. Thompson, Jr. (SC)
Roger L. Unser (OR)
Steven M. Veloz (CA)
Daniel G. Wilson (IL)
Jason M. Wolf (DE)
Walter M. Yohn, Jr. (AL)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170. Their exemptions are effective as of February 9, 2016 and will expire on February 9, 2018.

As of February 11, 2016 and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Bobby R. Cox (TN), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 1908; 79 FR 14333).

The driver was included in Docket No. FMCSA–2013–0174. The exemption is effective as of February 11, 2016 and will expire on February 11, 2018.

As of February 22, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (72 FR 67340; 73 FR 1395; 74 FR 65845; 76 FR 64169; 76 FR 70213; 76 FR 75943; 76 FR 78728; 77 FR 539; 77 FR 541; 77 FR 10608; 79 FR 6993):

Brian K. Cline (NC)
Richard D. Hackney (MO)
Mickey Lawson (NC)
Robbey Nelson (NC)
John E. Nichols (PA)
Thomas M. Nubert (OH)
Robert T. Reynolds (OH)
Glenn T. Riley (OH)
Gary S. Warren (IA)
Chadwick L. Wyatt (NC)

The drivers were included in one of the following dockets: Docket No. FMCSA–2007–0017; FMCSA–2011–0190; FMCSA–2011–0298; FMCSA–2011–0325. Their exemptions are effective as of February 22, 2016 and will expire on February 22, 2018.

As of February 27, 2016 and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Danielle Wilkins (CA), has satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 1908; 79 FR 14333).

The driver was included in Docket No. FMCSA–2013–0174. The exemption is effective as of February 27, 2016 and will expire on February 27, 2018.

Each of the 66 applicants listed in the groups above has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 21, 2016.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 66 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0190; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2–13–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change the decision based on your comments. FMCSA may issue a response at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–2000–7363; FMCSA–2001–10578; FMCSA–2003–15268; FMCSA–2003–15892; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0303; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2011–0190; FMCSA–2011–0298; FMCSA–2011–0325; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2–13–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and related comments.

Issued on: March 3, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–06390 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0070]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 36 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions were granted December 3, 2015. The exemptions expire on December 3, 2017.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On November 2, 2015, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (80 FR 67476). That notice listed 36 applicants' case histories. The 36 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 36 applications on their merits and made a determination to grant exemptions to each of them.

III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 36 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aniridia, anisotropic amblyopia, Best disease, branch retinal artery occlusion, chronic retinal detachment, complete loss of vision, corneal scar, fibrovascular

ingrowth, hypertropia, macular degeneration, macular edema, macular scar, partial coloboma, prosthetic eye, pseudophakia, refractive amblyopia, retinal detachment, retinal vein occlusion, strabismic amblyopia. In most cases, their eye conditions were not recently developed. Twenty-six of the applicants were either born with their vision impairments or have had them since childhood.

The 10 individuals that sustained their vision conditions as adults have had it for a range of 2 to 54 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 36 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 54 years. In the past three years, 2 drivers were involved in crashes, and 3 drivers were convicted of moving violations in CMVs.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the November 2, 2015 notice (80 FR 67476).

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 36 applicants, 2 drivers were involved in crashes, and 3 drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 36 applicants listed in the notice of November 2, 2015 (80 FR 67476).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 36

individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

V. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 36 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)):

Raymond H. Annis (CA)
Joseph A. Basista (PA)
James T. Bauer (PA)
Duane W. Brzuchalski (AZ)
John D. Burns, Jr. (NY)
Stephen J. Calandrino (PA)
Randall S. Canedy (PA)
Rufus A. Dennis (TN)
David Diamond (IL)
David D. Frey (FL)
Jason T. Glaude (ME)
Patrick Griffin (OK)
Roger J. Hansen (WI)
Elvin M. Hursh (PA)
Tommy R. Jefferies (FL)
Jeffrey A. Keefer (OH)
Dale R. Knuppel (CO)
James J. Kopesky (WI)
Richard W. Korthanke (KS)
William E. Leimkuehler (CA)
Michael R. Letson (MI)
Jose A. Marco (TX)
Cole W. McLaughlin (SD)
Javier R. Morales (CA)
Clarence L. Ogle (SD)
Roy A. Quesada (PA)
Rafael Quintero (TX)
Clark M. Robinson (SC)
Donald L. Schoendienst (MO)
Wesley C. Slattery (KS)
James J. Slemmer, Jr. (PA)
Jeffrey W. Smith (NC)
Mark R. Stevens (IA)
Kevin A. Szafranski (ND)
Gerry W. Talbott (VA)
Raymond W. Teemer (NJ)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 16, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–06395 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0005]

Notice of Proposed Buy America Waiver for Special Trackwork Turnout Switch Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Detroit Transportation Corporation (DTC) for a Buy America non-availability waiver for the procurement of two special trackwork turnout switch components (switch). The existing switches were installed as original equipment in 1987 and designed to European standards, using AREMA 115RE rail throughout the turnout with a special 60E1A1 switch point section. The proper operation of the switch is essential for the continued, safe operations of DTC vehicles. DTC seeks a waiver for the switch because there are no domestic manufacturers of the switch. In addition, European design and the proprietary nature of the equipment means that alternative proposers would need to first familiarize themselves with European standards, design, construction, and installation procedures to provide a replacement switch. DTC issued two requests for proposals (RFPs) for procurement of the switch, and received only one proposal, which was not Buy America-complaint. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply for the switch identified in the waiver request.

DATES: Comments must be received by March 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0005:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2016–0005. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide

notice and seek public comment on whether the FTA should grant a Buy America non-availability waiver for the Detroit Transportation Corporation (DTC) for the procurement of replacement special trackwork turnout switch components. On July 13, 2015, DTC requested a Buy America waiver for the switch because it is not produced in the United States in sufficiently and reasonably available quantities or of a satisfactory quality. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

By way of background, DTC is the owner and operator of the Detroit People Mover, which is the largest municipal rail system in Michigan. It is a fully automated light rail system that operates twelve (12) rail cars between thirteen (13) passenger stations on an elevated single track in a 2.9 mile loop in Detroit's central business district. In March 2015, DTC solicited bids to procure special trackwork switch point for Turnout 3, which is located adjacent to the Maintenance Facility Building and provides access to the building. The special trackwork of concern was originally procured from Germany (by Krupp Stahl AG) and is of European standards, using AREMA 115RE rail throughout the turnout with special 60E1A1 (formerly Zu-160) track point section. The project includes replacing stock rails that connect the switch point section to the original running rails, as well as rubber pads; both the rails and pads will be sourced domestically. The waiver only applies to the switch component of the project.

DTC issued the first RFP in March 2015 to thirteen (13) companies: Atlantic Track & Turnout Co.; LB Foster Co.; Cleveland Track Materials (Vossioh); Progress Rail Services Corp.; Unitrac Railroad Materials, Inc.; London Trackwork, Inc.; Skelton; Voestalpine Nortrak, Inc.; RailWorks Projects, Inc.; All American Track; Construction Data Company; IntegriCo Composites; and Delta Railroad Construction, Inc. DTC received no responses. It contacted all the companies, and reissued the RFP in May 2015 to six (6) firms that expressed an interest in the project. From this RFP, DTC only received one proposal, from Delta Railroad Construction, Inc. (Delta). Delta, however, cannot comply with Buy America requirements because the only manufacturer of the switch is a German company. To change the manufacturer, Delta would need to re-engineer the switch and modify the ''frog'' section and guideway elements; this design would need to be certified. Delta would then need to locate a domestic source to manufacture the re-engineered switch. Upon installation, the proprietary software designer of the automated control train system would need to certify the switch's performance in order to ensure it could be safely used with the existing guideway switch machines. Moreover, DTC believes there is inadequate competition for the project and needs to move forward with this important maintenance project. Thus, DTC is seeking a Buy America non-availability waiver under 49 CFR 661.7(c)(1) for the switch.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). Under 49 CFR 661.7(c)(1), ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' In addition, ''If the Secretary denies an application for a waiver . . . the Secretary shall provide to the applicant a written certification that—the steel, iron, or manufactured goods, as applicable, (referred to in this subparagraph as the 'item') is produced in the United States in a sufficient and reasonably available amount; (i) the item produced in the United States is of a satisfactory quality; and (ii) includes a list of known manufacturers in the United States from which the item can be obtained.'' 49 U.S.C. 5323(j)(6).

The purpose of this notice is to publish DTC's request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the merits of the request. A full copy of the request has been placed in docket number FTA–2016–0005.

Issued on March 16, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–06375 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0006]

Notice of Proposed Buy America Waiver for Steel Excavator With a Continuous Wield Platform

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Metro North Railroad (MNR) for a Buy America non-availability waiver for the procurement of a steel excavator with a continuous wield platform (CWP). MNR seeks to procure a CWP to clear the right-of-way after storms and thereby enabling the timely resumption of passenger train service. MNR seeks a waiver for the requirement that final assembly take place in the United States because there is no domestic manufacturer available to produce the equipment. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply to a one-time procurement only for the specific equipment identified in the waiver request.

DATES: Comments must be received by March 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0006:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30,

West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2016–0006. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *laura.ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a non-availability waiver to the Metro North Railroad (MNR) for the procurement of a steel excavator with a continuous wield platform (CWP). On May 13, 2015, Metro requested a Buy America waiver for the CWP because the only responsive bidder to its solicitation was a Canadian manufacturer. While 77% of the content of the material would be domestic origin, the CWP would be assembled in Canada. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

By way of background, MNR operates commuter rail service spanning 787 track miles. Metro North has a large length of track along the shore line and flooding along the line can occur regularly at many of these locations. The risk of flooding can be reduced by keeping drainage infrastructure, clear of debris. Specialized equipment such as the CWP can quickly clear the right of way after storms enabling the resumption of passenger train service. After Hurricane Sandy, MNR leased a CWP, but given limited availability as well as the higher cost of leasing, MNR believes that purchase of the CWP is necessary to ensure that it will be available to expedite service restoration and was provided funding to purchase such equipment from FTA through the Section 5324 Emergency Relief Funds allocated for Superstorm Sandy.

A CWP is a train that consists of several platform suitable for holding/hauling and picking up or distributing a variety of materials, such as rocks, riprap, dirt or debris. The equipment is similar to a excavator which has an articulated arm, with the main difference being that it rides on rails and sits on a connected platform where it can dump or pick up material from in order to perform its functions. The main tasks the MNR uses the CWP for is shoreline stabilization/restoration and for removing debris from the right-of-way after storms.

MNR prepared and advertised a solicitation for the CWP on January 9, 2015. Bids were due and opened on February 5, 2015. The solicitation was advertised in local newspapers, the New York State Contract Report and the MTA Metro-North Web site. A single bid was submitted by BRRI, a Canadian firm. BRRI submitted a Certificate of Non-Compliance because the final assembly of the equipment would take place in Canada, although content of the material used would be 77% domestic origin. The total gross sum of the bid submitted is $3,930,000.00.

MNR states that it received ''No Bid'' response forms from seven vendors and that MNR contacted the vendors to determine why they did not submit bids. The responses from the vendors varied from ''not interested in selling'' to ''could not meet the requested bid due date.'' MNR then performed an internet search to for American made excavators with no results. MNR states that it then reached out to Herzog Railroad Services, Inc. and Dymax Rail and was told by both that they do not have the CWP in their fleet. Finally, MNR also contacted the National Institute of Statistics and Technology (NIST) to determine if there had been any research performed to identify U.S. manufacturers for this equipment. To date NIST has not conducted any supplier scouting or analyses for the item.

On August 15, 2015, FTA contacted MNR, noting that one of the No-Reponse bidders, Mecfor Inc. (Mecfor), stated that it could not meet the request bid due date but that it was not clear if Mecfor could meet FTA's Buy America requirements since it is a Canadian Firm. FTA asked MNR to contact Mecfor to confirm whether it had the CWP that would meet FTA's Buy America requirements. On August 25, 2015, MNR provided FTA Mecfor's response. Mecfor stated that more than 60% of the main componeents would be American made and that assembly of the CWP would be sub-contracted in the USA; however, Mecfor also declined for the second time an invitiation to re-bid stating that the company's workload was overbooked. Due to the fact that MNR did not receive a responsive bid for a CWP produced in the U.S. nor could it identify any potential bidders through research and outreach, MNR seeks a non-availability waiver of the Buy America requirements for final assembly pursuant to 49 U.S.C. 5323 (j)(2)(B).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

MNR is requesting a Buy America non-availability waiver for the requirement that final assembly occur in the United States in order to procure a CWP for its shoreline stabilization/restoration and for removing debris from the right-of-way after storms.

The purpose of this notice is to publish MNR's request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the merits of the request. A full copy of the request has been placed in docket number FTA–2016–0006.

Issued on March 16, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–06417 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0004]

Notice of Proposed Buy America Waiver for Ductless Mini-Split System Air Conditioning Systems

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received requests from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of an Enviroair inverter-driven ductless mini-split system air conditioner, from the York Adams Transportation Authority (YATA) for ductless split system air conditioning units, from Key West Transit (KWT) for a ductless mini-split mechanical system for the City of Key West Public Transportation Facility, and from the Springfield Redevelopment Authority (SRA) for ductless mini-split air conditioners for the Union Station Regional Intermodal Transportation Center in Springfield, Massachusetts. IPTC is constructing its Downtown Transit Center which is expected to be Leadership in Energy and Environmental Design (LEED) certified and will incorporate many sustainable and energy efficient elements. The Enviroair inverter-driven ductless mini-split system air conditioner will contribute to the building's efficiency and is essential to achieving silver LEED certification. YATA is currently constructing a new Operations and Maintenance Facility in York, Pennsylvania and seeks to install several ductless air conditioning units at the facility. KWT is finishing construction on the bus transit operation and maintenance facility, which is a U.S. Green Building Council LEED project. The building contains many sustainable and efficient elements, including a variant refrigerant flow (VRF) heating, ventilation, and air conditioning (HVAC) system. KWT seeks a waiver for this VRF ductless mini-split mechanical system because there is no domestic manufacturer. The SRA seeks a waiver for ductless mini-split air conditioners as part of the renovation of the existing Terminal Building and the construction of a six story garage at the Union Station Regional Intermodal Transportation Center, because there is no domestic manufacturer. IPIC, YATA, KWT, and SRA seek waivers for these air conditioner systems because there are no domestic manufacturers. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver requests and seeks public comment before deciding whether to grant the requests. If granted, the waivers would apply to one-time procurements only for the specific air conditioning systems identified in the waiver request.

DATES: Comments must be received by March 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0004:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2016–0004. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant non-availability waivers to the Indianapolis Public Transportation Corporation (IPTC) for the procurement of an Enviroair inverter-driven ductless mini-split system air conditioner, to the York Adams Transportation Authority (YATA) for the procurement of ductless split system air conditioning units which are needed at the new Operations and Maintenance Facility, to Key West Transit (KWT) for the procurement of a variable refrigerant flow (VRF) ductless mini-split mechanical system, and to the Springfield Redevelopment Authority (SRA) in Springfield, Massachusetts for the procurement of nine ductless mini-split air conditioners for the Union Station Regional Intermodal Transportation Center. IPTC, YATA, KWT, and SRA requested Buy America non-availability waivers on May 5, 2015, July 26, 2015, December 2, 2015, and on March 9, 2016, respectfully. All seek non-availability waivers since none of these air conditioning systems are produced in the United States in sufficient and reasonably available quantities or of satisfactory qualities. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

By way of background, IPTC is constructing its Downtown Transit Center and the contractor and subcontractor hired for the project, Weddle Bros. Building Group, LLC and Commercial Air Inc., previously certified Buy America compliance. After awarding the contract, Commercial Air became aware that the inverter-driven ductless mini split system air conditioner selected for the center, was non-compliant. Enviroair manufactures this air conditioning system in China, although certain equipment is stocked and shipped from Utica, New York. IPTC selected the Enviroair system, which will be installed in the transit center's information technology room, because it will keep the room constantly cool and is the only way to cool the room in the space provided. IPTC also hopes to receive Silver LEED certification for the transit center and the Enviroair system is critical for achieving this certification. IPTC identified six other ductless mini-split air condition system manufacturers, all of which are manufactured abroad.

YATA seeks to install multiple ductless split system air conditioning units in its Operations and Maintenance Facility. These units will regulate environmental conditions in areas with specific temperature and/or humidity requirements, such as in server rooms or elevator machine rooms, or in rooms where conventional ductwork is not possible. YATA's successful bidder certified Buy America compliance, although later learned that the units

from ECR international-EMI-USA of Utica, New York, are in fact manufactured abroad. YATA identified one ductless split system unit that is manufactured in the U.S. by Modine, however, this unit has a larger capacity than YATA's project requirements for the Operations and Maintenance Facility. Use of this unit would result in constant compressor cycling and a limited lifespan. Moreover, YATA states that it cannot use a standard split system unit as an alternative to the ductless split system, because a standard system is incapable of treating ventilation air and the required ductwork cannot be installed in locations that need environmental control. Therefore, no domestic manufacturer exists that would satisfy YATA's project needs.

KWT is completing construction of its City of Key West Public Transportation Facility, which is a U.S. Green Building Council LEED project and includes many sustainable and efficient elements, including that of the HVAC system. The project consists of an 18,300 square foot bus operations and maintenance building, a 2,100 square foot bus wash building, fueling station, and parking facilities. The facility will serve as the City's transportation operations center and will provide maintenance, repair, cleaning, and bus parking facilities. The front portion of the main building includes offices for administration and operations, while the rear portion provides space for bus maintenance, repairs and cleaning, parts storage and technician amenities.

According to KWT's waiver request, the HVAC system is Buy America-compliant, with the exception of the VRF mechanical system which will be placed in three of the electrical, mechanical, and server rooms in the new facility. KWT states that these rooms must be able to function separately from the main operations building. KWT also is building this facility to be LEED silver certified and the energy-efficient VRF system will help KWT attain this certification. The VRF system sought will also better accommodate spatial constraints since the new facility is surrounded by a landfill, school bus parking lot, and other construction projects. It is also located in a highly-trafficked area, which limits the footprint of the project. Unlike other HVAC systems, the ductless mini-split system will be able to fit into the available space.

KWT is installing a Carrier ductless mini-split system in the facility. Before selecting this system, KWT conducted extensive research and reached out to domestic manufacturers, however, KWT was unable to find a domestically manufactured mini split air conditioning system. In fact, KWT states that it contacted the remaining America manufacturer of VRF HVAC systems and this manufacturer ceased production two years ago. As a result, KWT procured the Carrier ductless mini-split air conditioning equipment for the facility as no domestic manufacturer was available.

SRA is constructing the Union Station Regional Intermodal Transportation Center, which includes renovation of the existing Terminal Building and the construction of a six story parking garage. SRA is seeking to procure nine ductless mini-split air conditioners for the construction project. Each building within the transportation center will have its own HVAC system. SRA states that it is necessary to install ductless mini-split air conditioners in each individual room in order to maintain environs in each room. The air conditioners will be independent of other heating and cooling systems and will be backed up by a generator. Initially, SRA's contractor thought that Trane's product was Buy America-compliant. Subsequently, however, Trane notified SRA that its product was mislabeled and is actually foreign-made. SRA also contacted 8 other companies who manufacture ductless mini-split air conditioners, although none of these companies manufacturer the product domestically. As a result, SRA is seeking a non-availability waiver for the ductless mini-split air conditioners as there is no domestic manufacturer.

FTA also conducted a scouting search for ductless air conditioning systems through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search identified two domestic manufacturers as potential matches for this opportunity: Kentuckiana Curb Company/KCC International in Louisville, Kentucky and Climate Conditioning Company, Inc./Liebert also in Louisville, Kentucky. The manufacturers identified either produce similar products to the ductless air conditioning systems, possess the capabilities to produce ductless air conditioning systems, have produced an item similar to ductless air conditioning systems in the past, or have expressed a business interest in producing ductless air conditioning systems. Upon request from FTA, IPTC and YATA reached out to these potential domestic suppliers. However, neither company manufactures the specific mini-split air conditioning systems sought and as described in this Notice. As such, IPTC and YATA are pursuing their non-availability waiver applications. FTA did not reach out to KWT or SRA as they submitted their waiver requests after scouting was complete.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

The purpose of this Notice is to publish IPTC's, YATA's, KWT's, and SRA's requests and to seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the requests, including the merits of the requests. A full copy of the request has been placed in docket number FTA–2016–0004.

Issued on March 16, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–06416 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0002]

Notice of Proposed Buy America Waiver for a Radio Communications System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request for a waiver to permit the use of FTA funding to purchase a radio communication system that is non-

compliant with the Buy America requirements. The request is from the Kansas City Area Transportation Authority (KCATA). KCATA is in the process of updating its current analog system with a digital voice system, compatible with its operating system. KCATA also plans to enter into a tri-party agreement with the City of Kansas City, Missouri, and the Kansas City Streetcar Authority (KCSA) to install the radio system into the new streetcars. The new radio system will increase KCATA's systems capacity and allow KCSA to have a dedicated talk group on KCATA's system. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver only would apply to a one-time FTA-funded procurement by KCATA.

DATES: Comments must be received by March 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0002:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2016–0002. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *laura.ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the FTA should grant a non-availability waiver for KCATA's purchase of a new radio communication system. The new radio system will replace KCATA's analog system, increase its systems capacity and allow KCSA to have a dedicated talk group on KCATA's system.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

KCATA is a provider for public transportation services for Kansas City, Missouri. KCATA provides service to the entire Kansas City metropolitan area, operating in seven counties. KCATA's current radio system was purchased in 2002 and fully activated in 2005. The radio system is analog and operates on two separate channels. It has limited growth capabilities, issues with ''talk over,'' inaccessible voice connections, and after ten (10) years the maintenance costs are rising. KCATA is in the process of upgrading its radio system.

As part of its plan to upgrade the radio system, KCATA issued a Request for Proposals (RFP) seeking a ''turnkey project that includes a DMR Tier III Trunked UHF Voice radio system, full integration of the radio system with the Trapeze TransitMaster CAD/AVL system, and extended maintenance and support.'' KCATA only received on response to the RFP. Tait North America (''Tait'') expressed interest in the project but noted that it is headquartered in New Zealand and that a majority of the products would be assembled in New Zealand, making them non-compliant with Buy America. Under 49 CFR 661.7(c)(1), ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' Since receiving the Tait proposal, KCATA has not been able to identify any companies in the United States that can meet the Buy America requirements for its project.

FTA also conducted a scouting search for comparable radio system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search identified no domestic manufacturers as matches for this opportunity. The scouting search identified one domestic manufacturer as a partial match, but that manufacturer does not currently manufacture a comparable radio system. As such, KCATA is pursuing its non-availability waiver applications.

The purpose of this notice is to publish KCATA's request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. A full copy of the request has been placed in docket number FTA–2016–0002.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–06376 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0003]

Notice of Proposed Buy America Waiver for a Fall Arrest System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System (System). IPTC is constructing a

new Downtown Transit Center, and according to the Occupational Safety and Health Administration regulations, must provide fall protection for employees performing maintenance on the building. IPTC seeks a waiver for the system because there are no domestic manufacturers of the system that meet the Buy America requirements. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). IPTC issued a request for proposals (RFPs) for procurement of the system, and two firms were identified and showed an interest in providing the system. Neither firm, however, was Buy America-complaint. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply to a one-time procurement only for the specific fall arrest system identified in the waiver request.

DATES: Comments must be received by March 29, 2016. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0003:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2016–00XX. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a Buy America non-availability waiver for the Indianapolis Public Transportation Corporation (IPTC) for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System (the ''System''). On June 2, 2015, IPTC requested a Buy America waiver for the System because it is not produced in the United States in sufficiently and reasonably available quantities or of a satisfactory quality. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

IPTC is constructing a new Downtown Transit Center (DTC) in Indianapolis, Indiana that will serve as the hub for public transit. It will include a large indoor public waiting area and bus bays while serving pedestrians, cyclists, and bus riders. Per Occupational Safety and Health Administration (OSHA) regulations, IPTC has a duty to provide fall protection for employees performing maintenance on the new building. IPTC entered into a contract with Weddle Bros. Building Group (WBBG) in early September 2014 for the construction of the DTC. WBBG certified in good faith that it would comply with Buy America. As part of the project, IPTC issued an RFP for the complete design, supply and installation of a fall protection maintenance tie-back system to safeguard personnel to include all cable, intermediate brackets, end terminations, and modifications of structural steel as required for supplementary support of stanchions, user equipment, and attachment to roof structure for a complete and working fall protection maintenance tie-back system. It also included experience criteria for the professional engineer designing the system and a firm that has manufactured at least five (5) similar systems with specific liability insurance policies.

The two firms that responded to the RFP were American Anchor and Pro-Bel Group. Neither firm was able to certify a system as compliant with the Buy America regulations. The cables and tensioning system are not manufactured domestically for Pro-Bel. The hands-free set ups are not manufactured domestically for American Anchor. IPTC thus requests approval for WBBG to procure a System from Pro-Bel.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). Under 49 CFR 661.7(c)(1), ''It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.'' In addition, ''If the Secretary denies an application for a waiver . . . the Secretary shall provide to the applicant a written certification that—the steel, iron, or manufactured goods, as applicable, (referred to in this subparagraph as the 'item') is produced in the United States in a sufficient and reasonably available amount; (i) the item produced in the United States is of a satisfactory quality; and (ii) includes a list of known manufacturers in the United States from which the item can be obtained.'' 49 U.S.C. 5323(j)(6).

FTA also conducted a scouting search for the fall arrest system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search identified one domestic manufacturer as a potential match for this opportunity: Starr Products in Butler, Pennsylvania. The manufacturer identified has either produced similar products to the fall arrest system, possesses the capabilities to produce a fall arrest system, has produced an item similar to a fall arrest system in the past, or have expressed a business interest in producing a fall arrest system. Upon request from FTA, IPTC reached out to this potential domestic supplier. However, the company does not design or install fall arrest systems as defined in IPTC's project manual. As such, IPTC is pursuing its non-availability waiver application.

The purpose of this notice is to publish IPTC's request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the merits of the request. A full copy of the request has been placed in docket number FTA–2016–0003.

Issued on March 16, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–06419 Filed 3–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Increase in Civil Penalty for Violations of National Traffic and Motor Vehicle Safety Act

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Public notice.

SUMMARY: This notice is to inform the public that NHTSA has satisfied the requirements in the Fixing America's Surface Transportation Act (FAST Act) necessary for increases in the maximum amount of civil penalties that NHTSA may collect for violations of the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) to become effective.

DATES: *Effective date:* The amendments to 49 U.S.C 30165(a) authorized by Section 24110(a) of the FAST Act are effective March 17, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas Healy, Office of the Chief Counsel, NHTSA, 1200 New Jersey Ave. SE., West Building, W41–211, Washington, DC 20590. Telephone: (202) 366–2992 Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On December 4, 2015, the FAST Act, Public Law 114–94, was signed into law. Section 24110 of the FAST Act increases the maximum civil penalty that NHTSA may collect for each violation of the Vehicle Safety Act to $21,000 per violation (currently $7,000) and the maximum amount of civil penalties that NHTSA can collect for a related series of violations to $105 million (currently $35 million). In order for these increases to become effective, the Secretary of Transportation must certify to Congress that NHTSA has issued the final rule required by Section 31203 of the Moving Ahead for Progress in the 21st Century Act. Section 31203 required NHTSA to provide an interpretation of civil penalty factors in 49 U.S.C. 30165 for NHTSA[1] to consider in determining the amount of penalty or compromise for violations of the Vehicle Safety Act. Pub. L. 112–141, § 31203, 126 Stat. 758 (2012). The increases in maximum civil penalties in Section 24110 of the FAST Act became effective the date of the Secretary's certification.

NHTSA issued the final rule required by Section 31203 of MAP–21 on February 24, 2016. On March 17, 2016, the Secretary certified to Congress by letter to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation, and to the Chairman and Ranking Member of the House Committee on Energy and Commerce that NHTSA had issued the Final Rule. Therefore, NHTSA shall enforce the increased maximum civil penalties for violation of the Vehicle Safety Act in 49 U.S.C. 30165 effective March 17, 2016.

Authority: Pub. L. 114–94.

Issued on: March 17, 2016.

Anthony Foxx,

Secretary of Transportation.

[FR Doc. 2016–06433 Filed 3–21–16; 8:45 am]

BILLING CODE 4910–59–P

[1] NHTSA has been delegated the Secretary of Transportation's authority to determine the amount of civil penalty or compromise for violations of the Vehicle Safety Act. 49 CFR 1.95.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Design Challenge; Requirements and Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This Notice announces the requirements and procedures for the Tax Design Challenge (''the Challenge). The Challenge is a crowdsourcing competition, with cash prizes, that the IRS is hosting to begin reimagining the taxpayer experience of the future. The goal of this design challenge is to develop new concepts for designing, organizing and presenting tax information in a way that makes it easier for taxpayers to understand their taxpayer responsibilities and effectively use their own taxpayer data.

DATES: Effective on April 17, 2016. Challenge submission period ends May 10, 2016, 11:59 a.m. ET.

ADDRESSES:

1. The kickoff meeting for the Tax Design Challenge will take place at 1776, 1133 15th Street NW., Washington, DC 20005.

2. Challenge submissions must be submitted electronically at *www.taxdesignchallenge.com.*

FOR FURTHER INFORMATION CONTACT: Christopher Daggett, 503–330–6311 or Michael Lin, 202–317–6381.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Tax information is available to taxpayers across multiple IRS channels and contains a wealth of information. Many taxpayers, however, might not know where to find this information or how to use it, as much of this information reads like a receipt and can be incomprehensible to those who are not financial professionals.

The Challenge asks: How might we design, organize, and present tax information in a way that makes it easier for taxpayers to manage their taxpayer responsibilities, and to use their own taxpayer data to make informed and effective decisions about their personal finances?

This is an incredible opportunity for civic-minded technologists, designers, and innovative thinkers to improve and shape the user experience of one of the most visited government Web sites in the U.S.

Challenge entrants will submit a design that

* Improves the visual layout and style of the information for the taxpayer
* Makes it easier for a taxpayer to manage his/her taxpayer responsibilities
* Empowers a taxpayer to make informed and effective decisions about his/her personal finances.

Entrants should consider end users in developing their design. Our tax system includes people from many different socioeconomic backgrounds, with different needs and responsibilities.

The Challenge is an opportunity for talented individuals to touch the lives of Americans across the country through design. The most innovative designs will be showcased in an online gallery. Winning submissions will receive monetary prizes.

The IRS enthusiastically supports crowdsourcing competitions, as they have proven to be cost-efficient vehicle for catalyzing innovation in government.

Submission Requirements

In order for an entry to be eligible to win the Challenge, it must meet the following requirements:

Deliverable: Must be an image or browser viewable file. The acceptable image formats: .PNG, .JPG, .GIF, .TIFF, and .PDF. The acceptable browser viewable format is .HTML.

Feasibility: The Challenge requires only that the design of the taxpayer experience be submitted. It is not the responsibility of the entrant to build or code a working version of the design. However, the design must be ultimately implementable using HTML, CSS, and JavaScript.

Data: The design must be built off the data fields found in the Tax Data Document (TDD), which will be posted on *www.taxdesignchallenge.com.*

Eligibility Rules for Participating in the Challenge

To be eligible to win a prize under the Challenge, an individual or entity—

(1) Must register to participate in the Challenge under the rules promulgated by the Internal Revenue Service.

(2) Must comply with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) Shall not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an employee of the Internal Revenue Service or the Mortgage Bankers Association (''the Cosponsor'').

(6) Shall not be affiliated with any judge on the review panel. In the case of a private entity, this means that no judge currently serves as a director, officer, or employee of the entity. In the case of a private individual, the individual shall not have a close family or professional relationship with any judge.

(7) Federal grantees may not use Federal funds to develop Challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop Challenge applications or to fund efforts in support of a Challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the Challenge on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government, its related entities, and the Cosponsor, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in the Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third-party claims for damages arising from or related to Challenge activities.

Terms and Conditions for Participating in the Challenge

(1) *Employment and Compensation.* Participation in the Challenge does not create an employment relationship between participants and the IRS. Except for the prize winners, participants will not receive any compensation or other payment for any products or services that they provide to the IRS during the Challenge.

(2) *Contracting.* Participation in the Challenge does not establish a contractual relationship between the participants and the IRS. The Challenge results are not subject to protest or appeal under federal contracting laws.

(3) *Intellectual Property.*

(i) Each participant retains title and full ownership in and to their submissions. Participants expressly reserve all intellectual property rights not expressly granted under this notice.

(ii) By participating in the Challenge, each participant grants the IRS a non-exclusive, royalty-free, worldwide, irrevocable license to use any of participant's intellectual property incorporated in the participant's submission, in furtherance of the IRS's mission. This license includes the right to incorporate the submission into IRS products or processes, and to reproduce, publicly perform, publicly display, and use the submission, including, without limitation, for advertising and promotional purposes related to the Tax Design Challenge Series.

(iii) Participants warrant that they have permission to use any intellectual property of third parties that is included in their submissions, and that such permission extends to the IRS to the extent set forth in paragraph (3)(ii) of these Terms and Conditions.

(4) *Liability.* Participants agree to assume any and all risks and waive claims against the Federal Government, its related entities, and the Cosponsor, except in cases of willful misconduct, for any injury, death, damage or loss of property, revenue, or profits, whether direct, indirect or consequential, arising from their participation in the Challenge, whether the injury, death, damage or loss arises through negligence or otherwise.

(5) *Challenge Judgments Final.* Participants agree that the selection of prize winners is a matter of discretion for the judges, and all selections are final and binding.

Registration Process for Participants

To register for this challenge participants should either:

Access the *www.challenge.gov* Web site and search for the ''Tax Design Challenge''.

Access the Tax Design Challenge Web site at: *www.taxdesignchallenge.com.*

A registration link for the Challenge can be found on the landing page under the Challenge description.

Amount of the Prize

Each submission will be considered for all three prize categories listed below. A review panel will select winners based on defined criteria (below). An individual submission can win multiple awards.

Overall Design: $10,000 (1st), and $5,000 (2nd).

Best Taxpayer Usefulness: $2,000 (1st), and $1,000 (2nd).

Best Financial Capability: $2,000 (1st), and $1,000 (2nd).

Awards may be subject to Federal income taxes and IRS will comply with all tax withholding and reporting requirements, where applicable.

Prizes will be funded by Cosponsor (Mortgage Bankers Association) and paid by IRS.

Basis Upon Which Winners Will Be Selected

The review panel will make selections based upon the following criteria:

—Overall Appeal

—Taxpayer Usefulness: Does it address the taxpayer's responsibilities?

—Financial Capability: Does it make it easier for the taxpayer to make informed and effective decisions about his/her personal finances?

—Visual Hierarchy: Can the most important information be easily found?

—Information Density: Is it easy to digest the information that is presented?

—Accessibility: Can a varied population make use of this document?

The review panel will operate in a transparent manner. Following the Challenge, the IRS will publish information about the panel's decision.

Authority: 15 U.S.C. 3719.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–06432 Filed 3–21–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 17, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 21, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov*, calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov*.

Departmental Offices

OMB Control Number: 1505–NEW.

Type of Review: New information collection.

Title: Information Collection for Research to Evaluate the Effectiveness of the Thrive 'n' Shine Financial Capability Curriculum and Application.

Abstract: The Department of the Treasury, Office of Consumer Policy, will use a combination of in-person interviews and web-based products to survey high school students and classroom teachers from approximately two high schools to participate in the evaluation of the Thrive 'n' Shine Financial Capability curriculum and technology application (app). The information collection is planned to be implemented in the classroom setting in spring 2016. The data collected will be used to evaluate the effectiveness of the new financial capability curriculum and app.

Affected Public: Individuals and households.

Estimated Total Annual Burden Hours: 806.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–06415 Filed 3–21–16; 8:45 am]

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